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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005.

F.No.195/417,418,419/13-RA / 103^{MA}

Date of Issue: 22.03.2018

ORDER NO. 82-84/2018/CX(WZ)/ASRA/MUMBAI DATED 21-03-2018, OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

Sl. No	Revision Application No.	Applicant	Respondent
1.	195/417/13-RA	M/s. BDH Industries Ltd.	Commissioner, C Ex, Raigad.
2.	195/418/13-RA	M/s. BDH Industries Ltd.	Commissioner, C Ex, Raigad.
3	195/419/13-RA	M/s. BDH Industries Ltd.	Commissioner, C Ex, Raigad.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order -in-Appeal No. BC/ 431/RGD(R)/2012-13 dated 29.11.2012 passed by the Commissioner, Central Excise, (Appeals) Mumbai-III, and Order -in-Appeal No.US/892 & 893/RGD/2012 dated 13.12.2012 passed by the Commissioner, Central Excise, (Appeals) II Mumbai.



ORDER

These Revision applications are filed by M/s. BDH Industries Limited, Mumbai (hereinafter referred to as 'applicant') against the Orders-in-Appeal as detailed in Table below, passed by the by the Commissioner, Central Excise, (Appeals), Mumbai.

TABLE-1

Sl. No	Revision Application No.	Order-in-appeal No. & Date	Order-in-original No. & Date	Amount of rebate (Rs.)
1	2	3	4	5
1	195/417/13-RA	BC/431/RGD(R) 2012-13 dated 29.11.2012	1038/12-13/DC(R) / RGD/ dtd. 29. 06. 2012	23,652/-
2	195/418/13-RA	US/893/RGD/ 2012 dated 13.12.2012	764/11-12/DC (R) Raigad dated 31.05.2012	6,922/-
3.	195/418/13-RA	US/892/RGD/ 2012 dated 13.12.2012	765/11-12/DC (R) Raigad dated 31.05.2012	1,45,774/-

Revision Application No. 195/417/13-RA.

1. Brief facts of the case are that the applicant had filed rebate claim for Rs.23,652/- and the same was rejected vide Order in Original No.1038/12-13/DC(R) / RGD/ dtd. 29.6.202, as the claim was hit by time bar provisions in as much as the goods were exported on 22.12.2008 and claim was submitted on 22.12.2009.

2. Being aggrieved by the aforesaid Order in Original, the applicant filed appeal before Commissioner (Appeals) on the following grounds :-

- They have forwarded all the relevant documents for claiming rebate on 16.12.2009 and the goods in the instant case were exported on 22.12:2008. Hence, the claim was submitted within one year.



- They have filed the rebate claim within one year in terms of the provisions of Section 9 of the General Clauses Act.
- They relied upon Rolltainers Ltd - 2002(144) ELT 649 (Tri-Del).

3. Commissioner (Appeals) in his impugned order observed that Rebate claim is sanctioned under section 11 B of the Central Excise Act,1944 and in terms of the above provisions, a rebate claim is required to be submitted within one year of export of goods. The applicant's claim is that in terms of provisions of Section 9 of the General Clauses Act, even though the relevant export papers were received the Department on 22.12.2009, it was well within time of one year of date of export. Commissioner (Appeals) further observed that Hon'ble Tribunal in the case of M/s Vishal Exports Overseas Ltd 2008 (232) E.L.T. 857 (Tri - Ahmd.) in Para 6 observed that "*Further, the Supreme Court in the ease of Mafatlal Industries Limited reported in 1997 (89) E.L.T. 247 held that all refunds relating to Central Excise and Customs Duty have to be filed within the provisions of Customs and Central Excise Acts and not under any General Clause Act*". Accordingly, relying on the judgement passed in the case of M/s Vishal Exports Overseas Ltd., supra, Commissioner (Appeals) vide Order in Appeal No. BC/431/RGD/R//2012-13 dated 29.11.2012 rejected the appeal filed by the applicant.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed the revision application (No.195/417/13-RA) under Section 35 EE of Central Excise Act, 1944 before Central Government mainly on the following grounds that:-

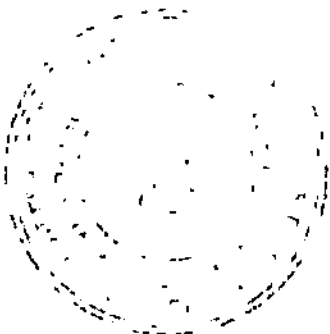
- 4.1 They manufacture various Pharmaceutical products and export the same to various countries through Air or sea. They pay the excise duty and file the claim for rebate of excise duty paid under Rule 18 of Central Excise Rules. They file with Rebate claim all requisite documents like Invoice, Shipping Bill, Bill of Lading, APEI etc;



- 4.2 They exported pharmaceutical products on 22/12/2008 and filed rebate claim of Rs.23,652/- through Speed Post on 16/12/2009. The Speed Post receipt issued by Kandivali Post office was attached. The claim papers were received by the department on 22/12/2009.
- 4.3 DC (Rebate) rejected the claim on the ground that it is time barred. The claim should have been filed on 21/12/2009.
- 4.4 As per Section 9 of General Clauses Act, 1897 limitation is to be computed excluding the relevant date. In the present case relevant date is date of export i.e. 22/12/2008 and on exclusion of this date one year ends on 22/12/2009 and that the date of export i.e. 22/12/2008 is to be excluded and accordingly date of 22/12/2009 as within one year of export and kindly allow rebate claim.
- 4.5 They place reliance on following judicial pronouncements
Rolltainers Ltd. - 2002(144) ELT 649 (Tri-Del),
Sail Rourkela Steel Plant - 1992(61) ELT 732(T)
- 4.6 Rebate/drawback are export oriented schemes and technical interpretation of procedure to be avoided in order to comply with the purpose of the Scheme which serves as Export incentive to boost export and earn foreign exchange. The substantive fact of export having been made, a liberal interpretation is to be given in case of technical/minor issues.

Revision Application No. 195/418/13-RA & 195/419/13-RA .

5. Brief facts of the case are that the applicants filed Rebate claims for Rs.1,45,774/- and Rs. 6,992/- before Deputy Commissioner (Rebate) Central Excise, Raigad who vide Order in Original No 765/11-12/DC (Rebate)/Raigad and No 764/11-12MC (Rebate)/Raigad both dated 31.05.2012 rejected the said claims respectively, on the ground that the applicant had failed to file the duplicate and triplicate copy of ARE-1s as required in terms of Para 3 (b) of



Notification No. 19/2004 CE (NT) dated 06.09.2004 and Chapter 8 of CBEC's Excise manual of Supplementary Instruction, 2005.

6. Being aggrieved by the aforesaid Orders in Original, the applicant filed appeal before Commissioner (Appeals), who on carefully going through the appeal observed that the applicant admittedly received the impugned Orders dated 31.05.2012 on 12.06.2012 and the appeals have been filed on 14.08.2012 which is beyond the period of 60 days laid down in Section 35 of Central Excise Act, 1944 for presenting the appeal. Commissioner (Appeals) also observed that the applicant had not filed any application for condonation of delay in filing the appeals nor did they furnish any reasons for the delay, therefore Commissioner (Appeals) dismissed both the appeals as non maintainable in terms of first proviso to Section 35 ibid.

7. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed the revision application (No.195/418 & 419/13-RA) under Section 35 EE of Central Excise Act, 1944 before Central Government mainly on the following grounds that:-

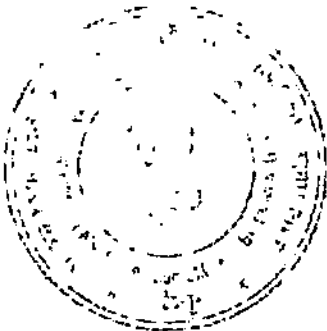
7.1 The impugned order passed by the learned Appellate Authority is on wrong appreciation of facts. The applicant submits that adjudication order dated 31.05.2012 was received by them on 25.06.2012 and not on 12.06.2012. The envelope showing date of receipt i.e. 25.06.2012 is annexed herewith. It is relevant to note that the appeal was admittedly filed on 14.08.2012 and considering date of receipt of order on 25.06.2012, their appeal before the Appellate Authority was in appealable period of 60 days. On this ground alone their application deserves to be allowed.

7.2 Their Rebate claim was rejected on the ground of non-submission of Duplicate/Triplicate copy of ARE-1, Custom Seal and stamp not appearing on original copy whereas all documents confirming exports were submitted along with application.

7.3 The Order passed by Deputy Commissioner states that order of deficiency was issued but no such order was received by them.



- 7.4 An ex-parte order was passed by Deputy Commissioner rejecting our claim for Rebate ignoring documents available on record.
- 7.5 Being aggrieved by order they preferred an appeal before the learned Commissioner Appeals who rejected vide Order-in-Appeal Nos.US/892-893/RGD/2012 dated 13/12/2012 on a wrong notion that appeal is filed after 60 days.
- 7.6 They hereby submit that facts of export of goods is established and not in dispute. The fact that Invoice, shipping bill and bill of lading is taken into consideration, hence there is no dispute that goods covered under these documents are exported. The rebate of duty is given to the Exporter to make products competitive in the foreign market on economic principle that local taxes cannot be exported to the foreign country.
- 7.7 The Order passed by DC does not speak anything about duty paid goods being not exported. In other words, the adjudicating authority is admitting export of duty paid goods but rejecting the rebate claim merely on technical aspect of non-submission of duplicate copy of ARE-1 though original copy is available on record. The Hon'ble Joint Secretary to Government of India in the case of Zandu Chemicals emphasized on identity and duty paid nature of goods along with submission of ARE-1 is enough to process the claim of refund.
- 7.8 They submit herewith that rebate/drawback are export oriented schemes and technical interpretation of procedure to be avoided in order to comply with the purpose of the Scheme which serves as Export incentive to boost export and earn foreign exchange. The substantive fact of export having been made, a liberal interpretation is to be given in case of technical/minor issues.
- 7.9 The Hon'ble Supreme Court in case of Suksha International has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In case of A.V.Narasimhalu, Supreme Court observed that administrative authorities should instead of relying on technicalities act in a manner consistent with broader concept of justice.



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7.10 The Government of India in its order No.198/2011-CX, dated 24-2-2011 in Sanket Industries endorsed the view of condoning the procedural infractions when actual exports of duty paid goods have taken place.

7.11 The core aspect or fundamental requirement for rebate is manufacture of goods, subsequent export and realization of foreign exchange.

8. Personal Hearing was held on 17.01.2018. Since, all the three Revision Applications pertained to the applicant, they were tagged together for the personal hearing and heard together. Shri J.N.Thakkar, General Manager of the applicant appeared for hearing and reiterated the submission filed through instant three Revision Applications and written submission of the three Revision Applications filed on the date of the hearing. In view of the same it was pleaded that Orders-in-Appeal be set aside and Revision applications be allowed.

9. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

10. Government observes that in **Revision Application No. 195/417 /13-RA** arising out of Order in Appeal No. BC/431/RGD(R) 2012-13 dated 29.11.2012, a rebate claim filed by the applicant was rejected by the Original authority as hit by time bar provisions in as much as the goods were exported on 22.12.2008 and claim was submitted on 22.12.2009, as in terms of provisions of Section 11 B of the Central Excise Act, 1944, a rebate claim is required to be submitted within one year of export of goods by the claimant. The applicant in his revision application has contended that they exported pharmaceutical products on 22/12/2008 and filed rebate claim of Rs.23,652/- (Rupees Twenty Three Thousand Six Hundred and Fifty Two) through Speed



Post on 16/12/2009 and the claim papers were received by the department on 22/12/2009. The applicant further contended that as per Section 9 of General Clauses Act, 1897 limitation is to be computed excluding the relevant date and in the present case relevant date is date of export i.e. 22/12/2008 and on exclusion of this date one year ends on 22/12/2009 and that the date of export i.e. 22/12/2008 is to be excluded and accordingly date of 22/12/2009 as within one year of export and kindly allow rebate claim.

11. Government also observes that relying on Hon'ble Tribunal Judgement in the case of M/s Vishal Exports Overseas Ltd 2008 (232) E.L.T. 857 (Tri - Ahmd.) Commissioner (Appeals) vide Order in Appeal No. BC/431/RGD/R//2012-13 dated 29.11.2012 rejected the appeal filed by the applicant. Hence, the issue before the government to decide in this Revision Application, is whether the rebate claim filed by the applicant on 22.12.2009 in respect of export made on 22.12.2008 is hit by time bar in terms of provisions of Section 11 B of Central Excise Act, 1944 or otherwise.

12. Government notes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is a mandatory provision. As per explanation (A) to Section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used-in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of section 18 of Central Excise Act, 1944. The explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. As per explanation B(a)(i) of Section 11B, the relevant date for filing rebate claim means:-



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"(a) In the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,-

- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or"*

Government finds no ambiguity in provisions of Section 11 B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

13. To a specific question whether the rebate claim filed by the applicant on 22.12.2009 in respect of export made on 22.12.2008 is to be treated as claim filed within one year of export in terms of Section 9 of General Clauses Act, 1897 or is to be treated as time barred in terms of provisions of Section 11 B of Central Excise Act, 1944 as held by Commissioner (Appeals) in his impugned order, Government finds that there are no specific case laws covering this issue. However, the said question is plainly answered in the decision rendered by Hon'ble Bombay High Court [2003 (158) E.L.T. 274 (Bom.)] while deciding the issue whether Rebate claim filed beyond time-limit is admissible or otherwise to the petitioner M/s Uttam Steels Ltd. At para 32 of its order dated 12.08.2003 in Writ Petition No. 557 of 2003 Hon'ble Bombay High Court observed that

"In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May, 1999 and 10th June, 1999 the due date for application of rebate of duty was 20th November, 1999 and 10th December, 1999 respectively. However, both the applications

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were made belatedly on 28th December, 1999, as a result, the claims made by the petitioners were clearly time-barred.....

In this case Hon'ble Bombay High Court held that the limitation of one year provided by amendment to Section 11B with effect from 12th May, 2000 would apply retrospectively and would cover exports made one year prior to 12th May, 2000 and that the amended limitation of one year with effect from 12th May, 2000 would apply to all exports made after 12th May, 1999 and thus the exports were effected on 20th May, 1999 and 10th June, 1999 i.e. within one year from 12th May, 2000 and hence, the amended limitation period of one year would apply to the case of the petitioners.

14. On Civil Appeal No. 7449 of 2004, being filed by the Department challenging aforesaid High Court Order, Hon'ble Supreme Court vide its order dated 5.5.2015 [2015(319)E.L.T.598(S.C.)] held that the effect of amendment to Section 11B ibid was that all claims for rebate pending on 12-5-2000 would be governed by period of one year from date of shipment and not six months, however, it was subject to rider that rebate claim should not be made beyond original period of six months and since claims were made beyond original period of six months, assessee could not avail of extended period of one year. While arriving at the aforesaid decision Hon'ble Supreme Court at para 1 of its Order observed that

"The goods were shipped on board on 25-5-1999 and 10-6-1999 respectively in two lots. As per the law prevailing at the relevant time, the respondent had to file claims for rebate within six months from the date of shipment i.e. on or before 20-11-1999 and 10-12-1999 respectively. However, claims for rebate on both counts were filed only on 28-12-1999 beyond the period of six months under Section 11B of the Central Excise Act, 1944 as it stood at the relevant time".



15. Government observes that though the issue decided above is not squarely applicable to the issue of the Revision Application in hand, the consistent position as regards due date of filing the rebate claim vis a vis date of export (taking into account period of limitation of the relevant time) taken by both Hon'ble Bombay High Court as well as Hon'ble Supreme Court in their respective orders (supra) is relevant to decide the question in the present Revision Application. Both the abovementioned courts have observed that for exports made on 20.05.1999 and 10.06.1999 the respondent had to file claims for rebate within six months (the period of limitation present then) from the date of shipment i.e. on or before 20.11.1999 and 10.12.1999 respectively.

16. Applying the analogy to the facts of the present case, Government is of the view that the rebate claim filed by the applicant on 22.12.2009 in respect of export made on 22.12.2008 is not hit by time bar in terms of provisions of Section 11 B of Central Excise Act, 1944.

17. In view of the above, Government sets aside impugned order-in-appeal and remands the case back to original authority to decide the same afresh in view of above observations for sanctioning of the claimed rebates, after due verifications of documents submitted by the applicant after affording reasonable opportunity and pass well reasoned order within eight weeks from the receipt of this order. However, this decision is taken only on the facts presented in the present case and shall not be a precedent.

18. **Revision application No.195/417/2013-RA** is allowed in terms of above.

19. Government now takes up **Revision Applications No. 195/418/2013-RA, 195/419/2013-RA** arising out of Order in Appeal No. US/892 & 893/RGD/2012 dated 13.12.2012. Government observes that the appeal filed



by the applicant was dismissed by Commissioner (Appeals) as not maintainable, as according to him as both the Orders in Originals No. 765/11-12/DC (Rebate) Raigad dated 31.05.2012 and No. 764/11-12/DC(Rebate) Raigad dated 31.05.2012 were received by the applicant on 12.06.2012 and the appeals against the same had been filed on 14.08.2012 which was beyond the period of 60 days laid down in Section 35 of Central Excise Act, 1944 for presenting the appeal. Commissioner (Appeals) also observed that the applicant had not filed any application for condonation of delay in filing the appeals nor did they furnish any reasons for the delay, therefore Commissioner (Appeals) dismissed both the appeals as non maintainable in terms of first proviso to Section 35 ibid.

20. Government also observes that the applicant has submitted that adjudication orders dated 31.05.2012 were received by them on 25.06.2012 and not on 12.06.2012. The applicant has also enclosed copy of envelope received from the office of the Maritime Commissioner, Central Excise, Raigad showing the date of receipt i.e. 25.06.2012 in its office. Government appositely notes that Orders in Originals No. 765/11-12/DC (Rebate) Raigad dated 31.05.2012 and No. 764/11-12/DC(Rebate) Raigad dated 31.05.2012 have been despatched by the Office of the Maritime Commissioner, Central Excise, Raigad on 12.06.2012 vide outward no. 998 and No.992 respectively and through Speed Post bearing No. EM 921137646 8 IN. Government observes that if both the Orders in Original (supra) were despatched on 12.06.2012 by speed post from the office of Maritime Commissioner, Khandeshwar, New Mumbai, it is a highly improbable that they were received by the applicant in his office situated at Kandivali (East), Mumbai on the same day as observed by the Commissioner (Appeals).



21. Government, however, observes that Commissioner (Appeals)' findings that the Orders in Original were received by the applicant on 12.06.2012 are based on Form E.A.-1 filled by applicant at the time of filing the Appeal against these Orders in Original wherein "*Date of Communication of the decision or order appealed against*" (Sr. No. 3 of the form) is shown by the applicant as 12.06.2012. From the impugned Order in Appeal it is seen that during the personal hearing held before Commissioner (Appeals) the applicant reiterated the arguments advanced in the appeals and submitted that original and duplicate copy of ARE-1 had been submitted by them and triplicate copies were sent by Superintendent directly to Rebate Section. The issue of time bar was never deliberated during the personal hearing as the applicant was unaware of the fact that mention of date 12.6.2012 as the date of communication of Orders in original in Form EA-1 would render the appeal as one filed beyond the normal period of limitation.

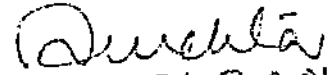
22. Government observes that as per Section 35(1) of the Central Excise Act, an appeal before Commissioner (Appeals) has to be filed within 60 days from the date of communication of the order of the adjudicating authority. This period of 60 days can be extended by the Commissioner (Appeals) by 30 days. In this case, the Commissioner (Appeals) has dismissed the appeal on the ground that the appeal has been filed beyond 60 days of the adjudication order. Assuming but not admitting that the Orders in Original were received by the applicant 12.06.2012, there is a delay of only 2 days which is condonable in terms of the provisions of Section 35(1) of the Central Excise Act. Government also notes that the applicant has produced before it the sufficient cause to believe that the Orders in Original were received by them on 25.06.2012.



23. In view of the foregoing discussions and its observations at para 19 (supra) Government holds that the appeal filed by the applicant is within the period of limitation of 60 days and the delay is condonable. Hence the impugned order holding that the appeal has been filed beyond the period of limitation is set aside and the matter is remanded back to the Commissioner (Appeals) to pass order on merits within eight weeks from the receipt of this order after giving an opportunity of being heard to the applicant.

24. The revision applications No. 195/418/2013-RA and 195/419/2013-RA are allowed in terms of above.

25. So, ordered.


21.7.2018


(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 82-84/2018-CX (WZ) /ASRA/Mumbai DATED 21-03-2018

To,

M/s. BDH Industries Ltd.,
Nair Baug Akurli Road,
Kandivali (East),
Mumbai-400101.

True Copy Attested


22/3/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C.)

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.

