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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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

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F. NO. 195/342/14-RA / 7153

Date of Issue: 09.12.2021

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ORDER NO. 865/2021-CX (WZ) /ASRA/Mumbai DATED 08.12.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Chandra Net Pvt. Limited,  
401, Parshwa Tower, Near Pakwan – II,  
S.G. Highway, Bodakdev, Ahmedabad – 380 054.

Respondent : Commissioner of CGST & Central Excise, Ahmedabad  
North Commissionerate.

Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against Order-in-Appeal  
No.AHM-EXCUS-002-APP- 039 to 052 - 14-15 dated  
26.05.2014 passed by Commissioner (Appeals –I), Central  
Excise, Ahmedabad.

**ORDER**

The subject Revision Application has been filed by M/s Chandra Net Pvt. Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 26.05.2014 passed by the Commissioner (Appeals -I), Central Excise, Ahmedabad. The said Order-in-Appeal disposed of appeals against Orders-in-Original both dated 30.09.2013 passed by Assistant Commissioner, Central Excise, Division - V, Ahmedabad - II Commissionerate.

2. Brief facts of the case are that the applicant exported wireless network equipment falling under Chapter 85 of the first schedule to the Central Excise Tariff Act, 1985. They had filed a total of 14 claims seeking rebate of the Central Excise duty paid on goods cleared for export, of which, three claims were rejected vide Order-in-Original No. MP/118-120/2013-14/Rebate dated 30.09.2013 and 11 claims were rejected by Order-in-Original No. MP/121-131/2013-14/Rebate dated 30.09.2013, both passed by the same original authority, who found that all the claims were time barred in terms of Section 11B of the Central Excise Act, 1944.

3. The applicant preferred appeals against the said Orders-in-Original before the Commissioner (Appeals) who decided the same vide the impugned Order-in-Appeal dated 26.05.2014. The Commissioner (Appeals) found that in the case of the three claims dealt with by the Order-in-Original No.MP/118-120/2013-14/Rebate dated 30.09.2013, though the applicant had filed the rebate claims in time, they themselves had withdrawn the same vide written correspondence with the Department indicating the said claims to be incomplete and had stated that filing them was a clerical mistake. No deficiency memo was issued by the Department in respect of these three cases. Thereafter, the applicant had once again filed these three rebate claims along with the relevant documents on 25.06.2013, which the Commissioner (Appeals) treated as the relevant date for computing the

period of one year. The Commissioner (Appeals) found these claims to be time barred in terms of Section 11B of the Central Excise Act, 1944, as the exports in these three cases had taken place on 01.12.2011, 13.04.2012 and 28.03.2012 and the rebate claims were filed after a period of more than one year from the date of export. As regards the rest of the 11 claims, the Commissioner (Appeals) found that the same were earlier filed within the time limit and that the jurisdictional Central Excise authorities having found certain discrepancies in the same, had returned the said claims to the applicant vide letter dated 01.04.2013. Thereafter, the applicant had filed these 11 claims once again on 25.06.2013. The original Authority had treated 25.06.2013 as the relevant date of filing of the said 11 claims, as a result he found that the same were filed beyond a period of one year from the date of export and proceeded to reject the same. The Commissioner (Appeals) found that Para 2.4 of Chapter 9 of the CBEC Central Excise Manual clarified that in such situations, if the documents not available are solely due to Central Excise or Customs Department, the claim may be received so that the claimant is not hit by the limiting period. The Commissioner (Appeals) examined the discrepancies pointed out by the Department with respect to each of the said 11 rebate claims in light of the said clarification and allowed those claims wherein the delay was due to documents/certificates not issued by the Central Excise/Customs authorities and rejected those where he found that the delay was due to the negligence of the applicant. Of the 11 claims, the Commissioner (Appeals) allowed eight claims and rejected three claims on the above basis.

4. Aggrieved, the applicant has filed the subject Revision Application along with an application for condonation of delay. The Revision Application has been preferred in respect of the rejected rebate claims on the following grounds:-

- (a) They had re-submitted the claims within a reasonable time period;

- (b) That if a claim had been submitted within the time limit once, it should be considered as having been submitted in time, even if it delayed;
- (c) The claims should be scrutinized for its eligibility in terms of whether the export has taken place, whether duty was paid by PLA or challan; that time limit was not set to deny those who are entitled;
- (d) They placed reliance upon the following orders of the Tribunal in support of their case:
  - i) Arunoday Mills Ltd vs CCE [2003 (156) ELT 790 (Trb)]
  - ii) Poulouse & Mathew vs CCE [1989 (43) ELT 424]
  - iii) KLRF Textiles Unit vs CCE [1999 (33)RLT 544];
- (e) They also filed an application dated 27.04.2015 for condonation of the delay in filing the subject appeal. They submitted that they were a small firm and that the delay occurred in gathering the supporting documents and that the delay was not intentional. They prayed that the delay may be condoned.

In view of the above, they prayed for revision of the impugned Order-in-Appeal.

5. Personal hearings in the matter were granted to the applicant on 11.04.2018, 16.10.2019, 15.01.2020, 10.02.2021, 24.02.2021, 18.03.2021, 25.03.2021, 02.07.2021 and 16.07.2021, however, no one appeared for the same. Sufficient opportunity having being accorded to the applicant, the case is now being taken up for decision on the basis of records available.

6. Government has carefully gone through the relevant case records available in the case file, the written submissions and also perused the impugned Orders-in-Original and the Order-in-Appeal.

7. Government notes that there is a delay in filing the subject Revision Application. The applicant received the impugned Order-in-Appeal on 29.05.2014 and has filed this application on 05.11.2014. Government finds that though the application has been filed after the expiry of three months from the receipt of the impugned Order-in-Appeal, it is within the further three months period which is condonable. Government condones the delay in view of the reasons put forth by the applicant and the subject Revision Application is being taken up for decision on merits.

8. Government finds that the applicant had filed 14 rebate claims, all of which were rejected by the original authority. On the Orders-in-Original being challenged, the Commissioner (Appeals) allowed eight and rejected six of the said claims. The present Revision Application has been filed by the applicant in respect of the six claims found inadmissible by the Commissioner (Appeals).

9. Government finds that the crux of the submissions made by the applicant is that in the event of a rebate claim being proper the same should not be rejected on the grounds of the same being time barred. Government finds this submission of the applicant to be incorrect as Section 11B of the Central Excise Act, 1944 clearly lays down the time limit of one year for the purpose of claiming rebate.

10. As regards the three rebate claims which were rejected by the Order-in-Original No. MP/118-120/2013-14/Rebate dated 30.09.2013, the Commissioner (Appeals) has correctly held that since the applicant

themselves withdrew the rebate claims after filing it for the first time, the relevant date would be the date on which they filed the rebate claims for the second time. Government finds the decision of the Commissioner (Appeals) to hold these three claims to be inadmissible as they were filed after more than one year from the date of export and hence hit by limitation, to be legal and proper as it was the applicant themselves who withdrew the claims after having filed it for the first time. Having withdrawn the claims, they cannot claim that the date of earlier submission will still hold good for computing the period of limitation.

11. Government observes that as regards the rest of the three claims, covered by the Order-in-Original No.MP/121-131/2013-14/Rebate dated 30.09.2013 which were found to be inadmissible, the Commissioner (Appeals) had found that these rebate claims when filed for the first time had several discrepancies which was due to the negligence of the applicant and not due to delays caused by the Department; and had hence held that the date on which the said claims were submitted for the first time would be relevant date, and not the date on which they were filed again, for determining whether there was a delay in filing of the rebate claims. Government notes that the applicant, in their submission, has not disputed the finding of the Commissioner (Appeals) that there was negligence on their part while filing the said rebate claims for the first time. Government finds that the Commissioner (Appeals) has taken into account the directions of the CBEC given in the Central Excise Manual and allowed the rebate claims wherein the delay in filing the complete rebate claim was on account of delays on the part of the Department. Government also notes that it was only in those cases, wherein there was negligence on the part of the applicant which lead to a delay in filing of the claims, did the Commissioner (Appeals) hold the claims to be time barred. Government finds this decision of the Commissioner (Appeals) to be legal and proper as the same is in consonance with the provisions of Section 11B of the Central Excise Act, 1944 and the directions in the Central Excise Manual. Government has

examined the case laws cited by the applicant and has found that the same dealt with delays which occurred due to the Department, which is not the dispute in this case, and are hence not relevant to the present case.

12. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No.AHM-EXCUS-002-APP-039 TO 052-14-15 dated 26.05.2014 passed by Commissioner (Appeals -I), Central Excise, Ahmedabad.

13. The Revision Application is dismissed.

  
8/12/21  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 85/2021-CX (WZ) /ASRA/Mumbai dated 08.12.2021

To,

M/s Chandra Net Pvt. Limited,  
401, Parshwa Tower, Near Pakwan - II,  
S.G. Highway, Bodakdev, Ahmedabad - 380 054.

Copy to:

1. The Commissioner of CGST & Central Excise, Ahmedabad North, Customs House, 1<sup>st</sup> floor, Navrangpura, Ahmedabad - 380 009.
2. The Commissioner (Appeals-I), CGST & Central Excise, 7<sup>th</sup> floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad - 3800015.
3. The Deputy/Assistant Commissioner, Central Excise, Division V, Ahmedabad North Commissionerate, Customs House, 1<sup>st</sup> floor, Navrangpura, Ahmedabad - 380 009.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Notice Board.