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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

F. NO. 198/286/16-RA/4037

Date of Issue:

22.09.2022

ORDER NO. 870 /2022-CX (WZ) /ASRA/MUMBAI DATED .09.2022 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** : Commissioner of Central Excise, Ahmedabad – II,  
1<sup>st</sup> floor, Custom House, Near Old High Court,  
Navrangpura, Ashram Road,  
Ahmedabad – 380009.
- Respondent** : M/s Mascot Valves Private Limited,  
Plot No.166/167, GIDC Estate, Naroda,  
Ahmedabad – 382330.
- Subject** : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
255/2009 (Ahd-II) CE/CMC/Commr.(A)/Ahd dated  
25.08.2009 passed by the Commissioner of Central  
Excise (Appeals - I), Central Excise, Ahmedabad.

**ORDER**

The subject Revision Application has been filed by the Department (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 25.08.2009 passed by the Commissioner (Appeals – I), Central Excise, Ahmedabad. The said Order-in-Appeal disposed of an appeal filed by M/s Mascot Valves Pvt. Limited, Ahmedabad (here-in-after referred to as 'the respondent') against the Order-in-Original No. 26/AC/08/Dem dated 23.02.2009 passed by the Assistant Commissioner, Central Excise, Division – I, Ahmedabad –II, which in turn had rejected rebate claims of the respondent amounting to Rs.16,36,327/-.

2. Brief facts of the case are that the respondent, a manufacturer holding Central Excise registration filed four rebate claims in respect of the duty paid on goods exported by them. The same was rejected by the original authority as it was found that the respondent had submitted these claims before the Assistant Commissioner after the stipulated period for filing the same, i.e. one year from the date of exports. The plea of the respondent that they had filed the same before the Range Superintendent before the expiry of the stipulated period was rejected by the original authority. The details of the claims, as recorded by the original authority in the Order-in-Original is as under:-

<b>Sl. No.</b>	<b>ARE-1 No.</b>	<b>Date of Export</b>	<b>Date of filing with Range Superintendent</b>	<b>Date of filing before Asst. Commissioner</b>
1	38/07-08	20.07.2007	14.07.2008	12.08.2008
2	44/07-08	18.07.2007	14.07.2008	12.08.2008
3	45/07-08	25.07.2007	14.07.2008	12.08.2008
4	46/07-08	29.07.2007	14.07.2008	12.08.2008

3. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who vide impugned Order-in-Appeal dated 25.08.2009 found that the said claims were filed within the stipulated time as he held that the date of filing of the said claims before the Superintendent should be treated as the date of filing before the Department and allowed the appeals filed by the respondent. The Department chose to file an appeal against the said Order-in-Appeal before the Hon'ble CESTAT, which was rejected by the Tribunal vide its Order dated 23.09.2016 on the grounds of the same being not maintainable before it.

4. Thereafter, the applicant Department has filed the present Revision Application on 22.11.2016 followed by an application dated 29.03.2017 seeking condonation of the delay in filing the said application. The Revision Application has been made on the following grounds:-

(a) The respondent should be well aware of the Central Excise Rules and regulations and hence they should have filed the rebate claims before the Assistant Commissioner of Central Excise who was the proper authority for deciding the rebate claims; as laid down by Section 11B of the Central Excise Act, 1944.

(b) The claim of the respondent that the same were filed before the Superintendent of Central Excise was not acceptable as he was not mentioned in the said Section and that he had not received the letter but had immediately on 14.07.2008, without acknowledging receipt had directed the respondent to file the same before the Assistant Commissioner; that the said claim was not received by the Superintendent as receipt involves an acknowledgment duly signed by the officer with entry in the appropriate register; that the Superintendent, while returning the claims had specifically remarked on the letter dated 14.07.2008 of the respondent that the same should be filed with the concerned Assistant Commissioner, Division - I along with all the required documents and that the claim with the original papers were being returned; that even after specific guidance given by the Superintendent, the respondent

who is regular exporter, had failed to file the rebate claims before the Assistant Commissioner within the stipulated time;

(c) The Commissioner (A) had committed an error in holding that the respondent had filed the claims before the Superintendent well within the time limit prescribed and would hence be eligible to the rebate claimed, as the same was without the backing of any statutory provisions.

In light of the above, the applicant has stated that the impugned Order-in-Appeal is not proper and legal and hence prayed that the impugned Order-in-Appeal be set aside and the order of the original authority be restored. They have also filed an application for condonation of delay of for the delay in filing the present Revision Application.

5. The respondent vide their submissions in response to the subject Revision Application have submitted the following;

(a) The subject Revision Application has been filed by the Assistant Commissioner without proper authorization; that there was a delay of more than seven years in filing the subject application and that the Department had not filed an application for condonation of the said delay;

(b) They had satisfied the conditions prescribed in notification no.19/2004-CE(NT) governing the grant of rebate and hence the Commissioner (Appeals) had correctly allowed the rebate;

(c) The date of filing the claim before the Range Superintendent should be taken as the date of filing of the rebate claims and placed reliance on the decision of the Hon'ble Tribunal in the case of Dell International Service vs CCE, Bangalore [208 (10) Service Tax Rules, 1994 -152 (Tri.-Bang)] in support of their argument;

(d) That the submission of the Department that the claims were not received by the Superintendent was incorrect as the same were returned only after the same was received by the Superintendent and that in any case such claims were sent to the Range Superintendent for verification and hence the

date of filing the same before the Range Superintendent should be taken as the date of filing the said rebate claims;

(e) That after the said rebate claims were returned by the Superintendent they were in consultation with their consultants as to how the same should be presented again before the Assistant Commissioner and that there was no negligence on their part;

(f) That it has been held by several Courts that rebate claims should not be denied due to procedural lapses and in their case presenting the claims before the Superintendent should be treated as a procedural lapse and they relied on the following decisions in support of their case:-

- Air Control System vs CCE, Lucknow [2001(130)ELT -212 (Tri.-Del)]
- CCE, Noida vs Kohinoor Enterprises [2011(266)ELT-397(Tri-Del)]
- CCE, Chennai-II vs Sun Pharma [2003(158)ELT-94 (Tri- Chennai)]
- JSL Lifestyle vs UOI [2015(326)ELT-265(P&H)]

In light of the above submissions, the respondent requested that the subject Revision Application be rejected and consequential relief be granted to them.

6. Personal hearing in the matter was granted to both, the applicant and the respondent on 17.06.2022, 01.07.2022, 20.07.2022 and 27.07.2022. No one appeared on behalf of the applicant Department. Shri P.G. Mehta, Advocate, appeared online on behalf of the respondent. He reiterated their earlier submissions. He further submitted that their claims were filed before the Superintendent and pleaded that the said date be allowed as the date of filing the claims. Further, he submitted that there was a delay in filing the Revision Application. He finally requested that the order of the Commissioner (Appeals) be maintained.

7. Government has carefully gone through the relevant records, the written and oral submissions and also perused the impugned Order-in-Original and the impugned Order-in-Appeal. Government finds that there is a delay in filing of the subject Revision Application as the applicant Department

had filed an appeal before the Tribunal which was dismissed vide Order dated 23.09.2016 as non-maintainable. Government finds that the present Application has been filed within three months from the date of the said Tribunal Order and hence condones the delay in the filing of the same and proceeds to examine the subject application on merits.

8. Government finds that the issue involved in the present case is limited to deciding whether the date, on which the rebate claims in question were presented before the Range Superintendent, as against the Assistant Commissioner, could be held as the date on which the claims were submitted by the respondent. Government finds that in this case the rebate claims were presented by the respondent before the Range Superintendent on 14.07.2008 and on doing so, the Superintendent had returned the same on the same day with the following remarks :-

*"Under C.Ex. Rules the rebate claim shall be filed with the concerned A.C., C.Ex., Dn.I along with the required relevant documenters, therefore original papers received are returned herewith for further necessary action at your end please"*

Government finds merit in the submission of the applicant that the Superintendent had not accepted the said claims, but had merely made an endorsement on the same guiding the respondent to file the said claims with the proper officer. Government finds that the date of export of the consignments in question are 20.07.2007, 18.07.2007, 25.07.2007 and 29.07.2007, which indicates that the respondent had sufficient time available for submitting the subject claims to the proper officer, i.e. the jurisdictional Assistant Commissioner after the claims were returned by Superintendent on 14.07.2008. Government notes that the respondent, however, filed these claims before the Assistant Commissioner on 12.08.2007, which is almost a month after being correctly guided by the Range Superintendent. The explanation provided by the respondent that they were in consultation with

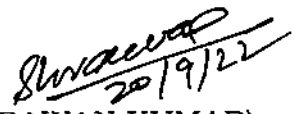
their consultant which led to such delay is unconvincing, particularly in light of the guidance provided by the Range Superintendent. Government notes that the issue involved in the present case was not of a technical or complicated nature wherein deliberations with a consultant could result in a delay; it was a simple matter of filing the said claims before the Assistant Commissioner and not the Superintendent. Thus, Government does not find any merit in this plea of the respondent and rejects the same.

9. Further, Government finds that here it is not the case that the Superintendent had accepted the rebate claims and forwarded the same to the jurisdictional Assistant Commissioner, in which case the argument of the respondent that they had submitted the claims in time, albeit to an incorrect officer, would hold good. As discussed above, the Superintendent had immediately returned the claims to the respondent with the remarks pointing them to the proper officer before whom the said claims should be filed. Government finds that in this case, accepting the date of presentation of the claims before the Superintendent as the date of submission, would lay down a bad precedent, as giving credence to such a practice would result in sanctifying a process which can be used to circumvent the limitation of time prescribed by laws governing grant of rebate/refund. Further, Government finds that the cases cited by the respondent in support of their arguments will not come to their rescue, as in all those cases the officer, who was not the proper officer, after receiving such claims, either did not act on the same or forwarded it to the proper officer at a later date; thus, in such cases the claims were in possession of the Department, which is not true in the present case, as the claims were not accepted by the Superintendent and were immediately returned to the respondent with proper guidance.

10. Given the above, Government holds that the date of presentation of the rebate claims by the respondent before the Range Superintendent cannot be

held to be the date on which they submitted the said rebate claims. It is not in dispute that the claims were submitted to the jurisdictional Assistant Commissioner after the expiry of the period of one year from the date of export, thus Government finds that the rebate claims in question filed by the respondent are time barred and liable for rejection and accordingly holds so.

11. In view of the above, Government sets aside the impugned Order-in-Appeal dated 25.08.2009. The Revision Application filed by the applicant Department is allowed.

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

ORDER No. 870 /2022-CX (WZ) /ASRA/Mumbai dated 20.09.2022

To,

The Pr. Commissioner of CGST & Central Excise,  
Ahmedabad North Commissionerate, 1st Floor, Custom House, Near All India  
Radio, Navrangpura, Ahmedabad 380009.

Copy to:

1. M/s Mascot Valves Private Limited, 166/167, Naroda GIDC, Ahmedabad - 382330.
2. The Commissioner of Service Tax (Appeals), Central Excise Bhavan, 7<sup>th</sup> floor, Near Polytechnic, Ambavadi, Ahmedabad - 380015.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.