



REGISTERED
SPEED POST

F.Nos. 198/210/2011-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...16/7/13

ORDER NO. 938/13-Cx DATED 16-07-2013 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35 EE of the
Central Excise Act, 1944 against the orders-in-appeal
No. M-I/AV/333/2010 dated 15.11.2010 passed by
Commissioner of Central Excise (Appeals) Mumbai
Zone-I

APPLICANT : Commissioner of Central Excise, Mumbai-I

RESPONDENT : M/s Deprint Exports, Surat

ORDER

This revision application is filed by Commissioner of Central Excise Mumbai-I against the order-in-appeal No. M-I/AV/333/2010 dated 15.11.2010 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I. M/s Deprint Exports, Surat are the respondents in this case.

2. The brief facts of the case are that M/s Deprint Exports, Surat (the applicant) filed 25 rebate claims which were returned to them as the applicants did not enclose:

(i) duplicate / triplicate copies of relevant ARE-1s,

(ii) documentary evidence of payment of central excise duty on goods exported, with the rebate claims filed. It was further alleged that the manner of transport of goods from Surat to Mumbai was also not mentioned on the central excise invoices. After a lapse of one and half years, the applicants re-submitted the claims. Thereafter, on adjudication, all the rebate claims were rejected treating them as time barred in terms of section 11B(1) of the Central Excise Act, 1944 considering that the goods were exported in October 2004 and the rebate claims were filed only in Jan / Feb 2007 by passing order in original KII/353-R/2007(MTC) dated 13.06.2007.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who held that initially rebate claims were filed in time and therefore the same cannot be treated as time barred. He remanded the case to original authority to decide the said case on merit.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :-

4.1 The order of Commissioner (Appeals) is contrary to the provisions of section 35A(3) of the Central Excise Act, 1944. Consequent to the amendment to the said

provisions brought about vide Finance Act, 2001, that came into effect from 11.05.2001, the power to remand the case to the adjudicating authority for a fresh consideration stands withdrawn.

4.2 The Commissioner (Appeals) should have decided the case finally as she does not have statutory power to remand. Therefore, Commissioner (Appeals) has erred by remanding the case, and her order-in-appeal deserves to be appealed against.

5. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply. No reply is filed by the respondent till date.

6. Personal hearing was scheduled in this case on 11.10.12, 20.12.12 and 27.06.12. Personal hearing held on 20.12.2012 was attended by Shri Dharam Singh Meena, DCCE on behalf of the applicant department who reiterated the grounds of revision application. Nobody attended hearing on any of these dates on behalf of the respondents.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. The instant rebate claims were filed in the month of September 2005 in respect of duty paid on goods exported in October 2004. The said claims were not accompanied with duplicate / triplicate copies of ARE-I form, documentary evidence of payment of duty and Central Excise invoices having details of mode of transport of goods, the said claims were returned to respondents for removing the defects. The said claims were resubmitted in February 2007 which were rejected as time barred by the original authority.

9. Government notes that the department has not disputed the fact that these claims were initially filed within one year time limit in September 2005 for exports made in October 2004. It is also on records that original authority has not issued any deficiency memo pointing out deficiencies in the said rebate claims. So the initial date

of filing rebate claim is rightly taken as the date of filing claim by the Commissioner (Apepals).

9.1 High Court and CESTA Tribunal, have held in following cases that original refund/rebate claim filed within prescribed time limit laid down in section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time barred as the time limit should be computed from the date on which rebate claim was initially filed.

- (i) CCE Delhi-I vs. Aryan Exports & Ind. 2005 (192) ELT 89 (DEL.)
- (ii) A Tosh & Sons Pvt. Ltd. vs. ACCE 1992 (60) ELT 220 (Cal.)
- (iii) CCE Bolpur vs. Bhandiguri Tea Estate 2001 (134) ELT 116 (T. Kol.)
- (iv) Good Year India Ltd. vs. CCE Delhi 2002 (150) ELT 331 (T. Del)
- (v) CCE Pune-I vs. Motherson Sumi System Ltd. 2009 (247) ELT 541 (T. Mum.)

Government of India has also held in a case of M/s IOC Ltd. reported as 2007 (220) ELT 609 (GOI) as under :-

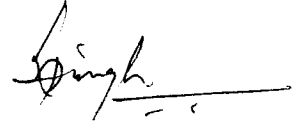
"Rebate limitation-Relevant date-time to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944."

9.2 The original authority has not passed order on merit of case. Therefore the said claims are required to be examined on merit in accordance with law by treating them filed within the stipulated time limit of one year.

10. Therefore, Government remands the case back to original authority for fresh consideration of case on merits in accordance with law after taking into account the above said observations. A reasonable opportunity of hearing will be afforded to the parties.

11. The revision application is disposed off in terms of above.

12. So ordered.



(D.P. Singh)

Joint Secretary(Revision Application)

Commissioner of Central Excise
Mumbai-I Commissionerate,
115, New Central Excise Building,
M.K. Road, Opp, Churchgate Station,
Mumbai – 400 020



(भगवत शर्मा/Bhagwat Sharma)

सहायक आयुक्त/Assistant Commissioner

C.E.C.-O.S.D (Revision Application)

वित्त मंत्रालय (राजस्व विभाग)

Ministry of Finance (Deptt of Rev)


एन.ए.ए.ए./Govt. of India

नई दिल्ली / New Delhi

Order No.938 /13-Cx dated 16-07-2013

Copy to:

1. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building, Dadi Seth Lane, Chowpatty, Mumbai
2. The Assisant Commissioner Central Excise (Rebate), Mumbai-IV, Estrella Batteries Compond, 2nd Floor, Dharavi, Mumbai – 400 019.
3. M/s Deprint Exports,Plot No.2, Behind Suryakiran Apartments, Sarelawadi, Ghod-Dod Road, Surat, Gujrat
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy


(B.P. Sharma)
OSD(Revision Application)