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F.No. 195/915/10-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
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NEW DELHI-110 066

Date of Issue 04/02/13

Order No. 94 /2013-CX dated 31.01.2013 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 order-in-appeal No. 72/2010(M-IV) dated 11.10.10 passed by Commissioner (Appeals) Central Excise, Chennai.

Applicant : M/s PCW Castings Pvt. Ltd., Chennai

Respondent : Commissioner of Central Excise, Chennai.

ORDER

This revision application is filed by the applicant M/s PCW Castings Pvt. Ltd., Chennai against the order-in-appeal No. 72/2010(M-IV) dated 11.10.10 passed by the Commissioner (Appeals) Central Excise, Chennai with respect to order-in-original No. 19/2008 dated 24.11.08 passed by Assistant Commissioner of Central Excise, Chromepet Division, Chennai IV Commissionerate.

2. Brief facts of the case are that the applicants are manufacturers of parts of insulators falling under Chapter sub-heading 85381090 of the Central Excise Tariff Act, 1985. They filed rebate claim seeking rebate of duty paid by them on their goods being cleared for export to their foreign customers. After due process of law, their refund claim was rejected by the lower adjudicating authority, on the ground that the rebate application was hit by limitation in terms of Section 11B of the Act and failed to prove that they had paid the duty under protest.

3. Being aggrieved by the said order-in-original, the applicant filed appeal before Commissioner (Appeals) who rejected the same.

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

4.1 The order-in-appeal says that Section 11B of the Central Excise Act, 1944 does not allow any deviation from the stipulated time limit and the rebate claim is barred by limitation on account of the fact that it has been filed beyond one year from the relevant date as contemplated by Section 11B of the Act. The first

appellate authority ought to have seen that as per Section 11B, limitation of one year shall not apply where any duty has been paid under protest.

4.2 That the RG 23A Part II register itself contains entries made for export of finished goods. Wherever there is an export, the applicants had clearly indicated in the RG23A Part II register itself that the duty paid is subject to rebate claim. This register has been periodically verified by the concerned authorities every month. In other words, the moment export was completed; it has been intimated to the department that payment of duty on exported finished goods is subject to rebate claim.

4.3 That the Form ARE-1 which is the application for removal of excisable goods for export. In the form ARE-1 itself, the applicants had indicated the reference to the debit entries in the RG23A Part II register to the date of debit entries. This debit entry indicates the fact that payment of duty was provisional and subject to rebate claim.

4.4 The claim for rebate is one which arises under Rule 18 of Central Excise Rules, 2002. Rule 18 makes it clear that where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on the excisable goods exported, and the rebate shall be subject to conditions and limitations and fulfillment of procedures as may be specified in the notification.

4.5 Case laws cited by the applicants are:

- Birla Ltd. vs. Collector of CX - 1998 (99) ELT 387
- Barot Exports - 2006 (203) ELT 321
- Procter & Gamble India Ltd. - 1991 (53) ELT 563(GOI)
- Modern Process Printers reported in 2006 (204) ELT 632
- Uttam Steel Ltd. - 2003 (158) ELT 274 (Bom)
- CCE Chennai vs. ITC Ltd. - (Hon'ble Madras High Court)
- Crompton Greaves Ltd. vs. CCE - 1997 (92) ELT 251 (Tri.)

5. Personal hearing held in this case on 30.1.13 was attended by Shri R.Satish Kumar, Advocate on behalf of applicant who reiterated grounds of revision application. Shri Basant Garhwal ACCE attended hearing on behalf of department who stated that order-in-appeal being legal and proper, may be upheld. The applicant vide their undated letter stated that Hon'ble Madras High Court has held in W.P.No.26236/2010 in the case of M/s Dorcas Market Makers Pvt. Ltd., Chennai Vs. Commissioner of Central Excise, Chennai that rule 18 of CER 2002 & Notification No.19/04-CE (NT) do not stipulate any time limit for filing rebate claim and time limit prescribed in Section 11B cannot be made applicable to rebate claims.

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

7. On perusal of records Government observes that the original authority has rejected the rebate claim on the time limitation ground as the claim was filed after period of one year as stipulated in Section 11B of CEA 1944. Commissioner (Appeals) has upheld the impugned order-in-original. Now the applicant has filed this revision application on grounds mentioned in para (4) above.

8. In this case goods were exported in the month of February 2007 whereas rebate claim was filed on 10.9.2008 after lapse of one year from the date of export. This factual position is not in dispute. Government observes that the applicant has now relied upon Hon'ble Madras High Court judgement dated 23.12.11 in the case of M/s Dorcas Market Makers Pvt. Ltd., Chennai Vs. Commissioner of Central Excise, Chennai and contended that in view of said judgement their claim cannot be rejected as time barred. Government has held in the past that rebate claim filed after prescribed time limit of one year is time

barred in terms of Section 11B of CEA 1944. In the case of M/s Nector Life Sciences Ltd., Derabassi Punjab Vs.CCE, Chandigard-I, Government vide order No.1602/12-CX dated 19.11.12 has held as under:

"9. 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 11B of Central Excise Act, 1944. The explanation A of section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refunds 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:-

- "(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 load, leaves India, or"*

There is no ambiguity in provision of section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

10. Applicant has given various reasons for filing rebate claim after a stipulated period of one year. In addition, he contended that delay in filing rebate claim is a procedural lapse and same may be condoned as the substantial benefit cannot be denied to them due to procedural infractions. In this regard, Government observes that filing of rebate claim within one year is a statutory requirement which is mandatory to be followed. The statutory requirement can be condoned only if there is such provisions under Section 11B. Since there is no provision for condonation of delay in terms of Section 11B, the rebate claim has to be treated as time barred.

11. Government find support from the below mentioned judgments for the proposition that rebate claim filed after one year time limit stipulated in section 11B of Central Excise Act, 1944 being time barred is liable to be rejected.

11.1 Hon'ble High Court of Gujrat in its order dated 15.12.2011 in the case of IOC Ltd. Vs. UOI (SCA No. 12074/2011) has held as under:-

"We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11E, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.

Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 had the occasion to deal with the question of delayed claim of refund of Customs and Central Excise. Per majority view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.

The decision of the Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a different factual background. It was a case where the refund claim was filed beyond the period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under :

"32. 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 were made belatedly on 28th

December 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May 2000, wherein the limitation for applying for refund of any duty was enlarged from 'six months' to 'one year'. Although the amendment came into force with effect from 12th May, 2000, the question is whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May 2000 ?"

11.2 The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 (Tri.-Chennai) held as under:

"Tribunal, acting under provisions of Central Excise Act, 1944 has no equitable or discretionary jurisdiction to allow a rebate claim de hors the limitation provisions of Section 11B ibid – under law laid down by Apex Court that the authorities working under Central Excise Act, 1944 and Customs Act, 1962 have no power to relax period of limitation under Section 11B ibid and Section 27 ibid and hence powers of Tribunal too, being one of the authorities acting under aforesaid Acts, equally circumscribed in regard to belated claims – Section 11B of Central Excise Act, 1944 – Rule 12 of erstwhile Central excise Act, 1944 – Rule 18 of the Central Excise Rules, 2002. – Contextually, in the case of Uttam Steel Ltd. also, the Hon'ble Bombay High Court allowed a belated rebate claim in a writ petition filed by the assessee. This Tribunal, acting under the provisions of the Central Excise Act, has no equitable or discretionary jurisdiction to allow any such claim de hors the limitation provisions of Section 11B."

11.3 Further, it has been held by the Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag & Others vs. Ms. Katji & Others reported in 1987 (28) ELT 185 (SC) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

11.4 Hon'ble Supreme Court has also held in the case of UOI vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of the said Section. In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to

ignore or cut contrary to Section 27 of Customs Act. The ratio of this Apex Court judgment is squarely applicable to this case, as Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision under Section 11B to extend this time limit or to condone any delay.

11.5 In a very recent judgement, Hon'ble High Court of Bombay in the case of Everest Flavours Ltd. Vs. UOI reported as 2012 (282) ELT 481 (Bom) vide order dated 29.03.2012 dismissed a WP No. 3262/11 of the petitioner and upheld the rejection of rebate claim as time barred in terms of section 11B of Central Excise Act 1944. Hon'ble High Court has observed in para 11 & 12 of its judgement as under:-

"11. Finally it has been sought to be urged that the filing of an export promotion copy of the shipping bill is a requirement for obtaining a rebate of excise duty. This has been contraverted in the affidavit in reply that has been filed in these proceedings by the Deputy Commissioner (Rebate), Central Excise. Reliance has been placed in the reply upon Paragraph 8.3 of the C.B.E. & C. Manual to which a reference has been made above, and on a Trade Notice dated 1 June 2004 which is issued by the Commissioner of Central Excise and Customs Paragraph 8.3 of the Manual makes it abundantly clear that what is required to be filed for the sanctioning of a rebate claim is, inter alia, a self-attested copy of the shipping bill. The affidavit in reply also makes it clear that under the Central Excise rules, 2002 there are two types of rebates: (i) A rebate on duty paid on excisable goods and (ii) A rebate on duty paid on material used in the manufacture or processing of such goods. The first kind of rebate is governed by Notification No. 19/2004 dated 6 September 2004. In the case of the rebate on duty paid on excisable goods, one of the documents required is a self-attested copy of the shipping bill. For the second kind of rebate a self-attested copy of the export promotion copy of the shipping bill is required. Counsel appearing on behalf of the petitioner sought to rely upon a Notification issued by the Central Board of Excise and Customs on 1 May 2000. However, it is abundantly clear that this Notification predates the Manual which has been issued by the Central Board of Excise and Customs. The requirement of the Manual is that it is only a self-attested copy of the shipping bill that is required to be filed together with the claim for rebate on duty paid on excisable goods exported.

12. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law."

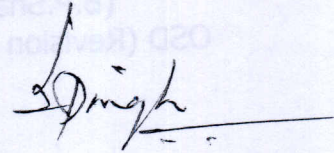
12. In view of above position, the rebate claim filed after stipulated time limit of one year being time barred in terms of section 11B of Central Excise Act, 1944 is rightly rejected by the Commissioner (Appeals). Therefore, Government upholds the impugned Order-in-Appeal. "

9. The instant case is of Tamilnadu State and Hon'ble High Court of Madras in its order dated 23.12.11 in the case of M/s. Dorcas Market Makers Pvt. Ltd., Chennai has held that since no time limit prescribed under rule 18 of CER 2002 & Notification No.19/04-CE (NT) dated 6.9.04 so rebate claim cannot be rejected as time barred. Government notes that said judgement being binding in nature was not before lower authorities while deciding the case. Therefore case needs to be remanded for fresh decision.

10. In view of above position, Government sets aside the impugned orders and remands the case back for denovo adjudication by taking into account the above said judgement of Madras High Court. A reasonable opportunity of hearing will be afforded to the applicants.

11. Revision application is disposed of in above terms.

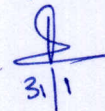
12. So ordered.



(D P Singh)
Joint Secretary (Revision Application)

M/s PCW Castings Pvt. Ltd
No.1/11, Mugalivakkam Main Road
Chennai.

Attended



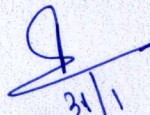
31/1

GOI Order No. 94 /13-CX dated 3 / .01.2013

Copy to:

1. Commissioner of Central Excise & Customs, R&T Section, Chennai-IV Commissionerate, Chennai-600035.
2. Commissioner of Central Excise (Appeals), Chennai, No.26/1, Mahatma Gandhi Road, Chennai-600034
3. Assistant Commissioner of Central Excise Chrompet Division of Chennai-IV Commissionerate, No 445, Annai Salai, Chennai-600018
4. Shri K.P.Rajeev, Advocate, C/o M/s PCW Castings Pvt. Ltd., No.1/11, Mugalivakkam Main Road, Chennai.
- ✓ 5. PS to JS (RA)
6. Guard File.
7. Spare Copy

ATTESTED



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