

REGISTERED
SPEED POST



F.NO. 195/628-631/11-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...6.02.13

ORDER NO. 97-100/2013-CX DATED 04.02.2013 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 ORDER-IN-APPEAL NO. 210-213/2011 DATED 29.4.11 PASSED BY THE COMMISSIONER (APPEALS) CENTRAL EXCISE, MADURAI

APPLICANT : M/S BLUE MARINE LOGISTICS PVT. LTD. TUTICORIN

RESPONDENT : COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI

ORDER

These Revision Applications are filed by the applicant M/s Blue Marine Logistics Pvt. Ltd. Tuticorin against the Order-in-Appeal No. 210-213/2011 dated 29.4.11 passed by the Commissioner (Appeals) Central Excise, Madurai with respect to order-in-original C.No.IV/10/77&78/09-rebate dated 26.3.10 and C.No.IV/10/ 12&13/09 dated 11.5.10 passed by Assistant Commissioner of Central Excise, Tuticorin Division.

2. Brief facts of the case are that the applicants are merchant Exporters of various goods to foreign countries. The applicants have purchased duty paid TMT BARS and Steel Plates of different specifications falling under Chapter 7214.10.90 and Chapter 7212 of CETA, 1985 from M/s Mahaveer Agency, No: 14 (Old No: 34), Jones Street, 1stFloor, Chennai-600 001 who are operating as I Stage Dealer of M/s Pulkitt Steel Rolling Mills, Puducherry.M/s Mahaveer Agency, Chennai have duly registered themselves under Registration Certificate No: AFEPR 3124 HXD 001 with Central Excise Range-I/ Division D'at R 40, A-1, 100 Feet Road, TNHB Complex, Mogappair East, Chennai. M/s Mahaveer Agency, Chennai have purchased the TMT BARS/Steel Plates/P.F.Column on payment of duty from various manufacturers of non-alloy steel products. The applicants have exported the duty paid non-alloy steel products to "MT HOEJGAARD, A/s H. Galadhunge, Ameer Ahmed Magu, Male, Republic of Maldives" through Tuticorin Port. The lower authority vide its impugned orders dated 26.3.2010 and 11.5.2010 has rejected the above said four rebate claims on the grounds that as per Rule 18 of Central Excise Rules, 2002 read with Notification No.19/04-CE (NT) dated 6.9.04, merchant exporters are eligible for rebate only if the goods have been exported after payment of duty directly from a factory or warehouse and that the applicants have purchased from 2nd stage dealers of duty paid cenvatable goods. The lower

authority has rejected the above said four claims without issuing show cause notice to the applicants.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeal), who after due process of law, rejected the two claims against C.No.IV/10/77 and 78/09 dated 26.3.10 as time barred in terms of Section 35 of Central Excise Act, 1944 as the appeals were filed after a delay of 40 days and Commissioner (Appeals) has no power to condone the delay of more than 30 days. Regarding orders in C.No.IV/10/12&13/09-Rebate dated 11.5.10 issued by the adjudicating authority, he set aside the impugned order-in-original and allowed the appeal holding that the applicants were entitled to rebate covered in the said claim.

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

4.1 The impugned order in appeal holding the appeals in 190 & 191/2010 as time barred is erroneous and the learned Commissioner (Appeals) failed to note that no show cause notice or a speaking order was issued by the Asst.Commissioner but had simply returned the rebate claims. Thus the appellants are denied the principles of natural justice.

4.2 The non-issuance of show cause notice by the Asst.Commissioner has put the appellants into hardship as no proper legal recourse could be taken by them. The natural justice is violated by the Asst.Commissioner by not issuing a speaking order and simply returning the rebate claim.

4.3 Applicants states that minor procedural lapses are condonable for refund/rebate claims.

5. Personal hearing scheduled in this case on 14.12.12 was attended by Shri P.Mahalingam, Advocate on behalf of the applicant who reiterated the grounds of revision application and relied upon the GOI Order 2011(272)-ELT-637 (GOI).

6. Government has carefully gone through the relevant case records and perused the impugned orders.

7. On perusal of the records, Government observes that the adjudicating authority rejected the rebate claims of the applicants vide orders dated 26.3.10 and 11.5.10 without giving show cause notice to them on the grounds that as per Rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE(NT) dated 6.9.04 merchant exporter are eligible for rebate only if the goods have been exported after payment of duty directly from a factory or warehouse and that the applicants have purchased or duty paid cenvatable goods from 2nd stage dealer. In appeal procedure Commissioner (Appeals) found two rebate claims pertaining in the order C.No.IV/10/77 and 78/09 dated 26.3.10 time barred in terms of Section 35 of Central Excise Act 1944. For the rest 2 claims pertaining in the order C.No.IV/10/12&13/09 dated 11.5.10 Commissioner (Appeals) however found the rebate admissible to the applicants, hence he set aside the impugned order-in-original and allowed the appeal. Now the applicants have filed these revision applications on the ground stated at para (4) above. They have mainly contended that no show cause notice or a speaking order was issued by the Jurisdictional Assistant Commissioner and the rebate claim was simply returned to them denying principles of natural justice.

8. Government notes that since the department has not challenged the orders-in-appeal allowing the rebate claim pertaining to C.No.IV/10/12&13/09-

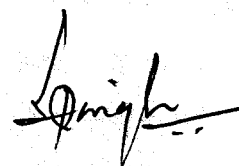
Rebate hence the limited issued to be decided in this very revision application whether the delay caused by the applicants in filing appeal pertaining to order C.No.IV/10/77&78/09-Rebate dated 26.3.10 before Commissioner (Appeals) in terms of Section 35 of Central Excise Act 1944 is condonable or not in the given circumstances. Government notes that the order passed in C.No.IV/10/77 &78/09-Rebate dated 26.3.10 was appealable one and in terms of section 35 of central excise act 1944 read with its first proviso the applicants should have filed appeal before Commissioner (Appeals) within prescribed time of 60 days with a condonable period of 30 days as they did against the order dated 11.5.10. The Commissioner (Appeals) has clearly observed that two impugned orders dated 26.3.10 have been received by the applicants on 29.3.10 vide applicants acknowledgement dated 29.3.10 and both the appeals were filed on 8.7.10 after a delay of 40 days. The reason given by the applicants for the said delay was that the Managing Director of the applicants unit had gone abroad on business matter. Commissioner (Appeals) has further observed that in terms of Section 35 of Central Excise Act 1944, he has no power to condone the delay of more than 30 days.

9. Government notes that appeal was filed before Commissioner (Appeals) after a delay of 40 days and the said fact is not disputed by applicant. As per provisions of section 35 of Central Excise Act, 1944, Commissioner (Appeals) is empowered to condone delay upto 30 days in filing appeal. There is no provision in section 35 ibid to condone delay exceeding 30 days. Hon'ble Allahabad High Court in the case of M/s India Rolling Mills (P) Ltd. 2004 (169) ELT 258 (All) has held that the Commissioner (Appeals) cannot condone delay in filing appeals beyond 30 days. Government also notes that Hon'ble Supreme Court in the case of Singh Enterprises Vs. CCE Jamshedpur 2008 (221) ELT 163 (SC) has also held that Commissioner (Appeals) is empowered to condone delay upto 30 days and has not power to allow appeal to be presented beyond the delay of 30 days.

10. In view of above circumstances, Government finds that Commissioner (Appeals) has rightly rejected the appeal as time barred. There is no infirmity in the said order-in-appeal and therefore the same is upheld. This revision application is therefore not maintainable under section 35 EE of central excise act 1944.

11. The revision applications thus stand rejected in terms of above.

12. So ordered.

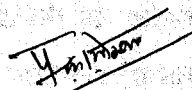


(D P Singh)

Joint Secretary (Revision Application)

M/s Blue Marine Logistics Pvt. Ltd
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Attested



K. RAMESHWAR
विशेष कार्य अधिकारी/OSD-II (RA)
वित्त मंत्रालय, (राजस्व विभाग)
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Copy to:

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2. Commissioner of Central Excise (Appeals), Lal Bahadur Shastri Marg, C R Building, Madurai 625 002.
3. Asstt. Commissioner of Central Excise, Tuticorin Division, Sipcot Indl. Complex, Tuticorin-08
4. PA to JS(RA)
5. Guard File
6. Spare Copy

ATTESTED



(P.K.Rameshwaram)
OSD (RA)

