

REGISTERED  
SPEED POST



F.No.198/45/2014-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...7/12/18

Order No. 611/2018-CX dated 03-12-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional 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.NOI/EXCUS/000/APPL/252/13-14 dated 23.12.2013, passed by the Commissioner of Central Excise (Appeals), NOIDA.
- Applicant : The Commissioner of Customs & Central Excise, NOIDA.
- Respondent : M/s Global Auto Tech Ltd., NOIDA.

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**ORDER**

A Revision Application No.198/45/2014 dated 03.06.2014 is filed by the Commissioner of Central Excise, Noida (hereinafter referred to as the applicant), against the Order-In-Appeal No. NOI/EXCUS/000/APPL/252/13-14 dated 23.12.2013, passed by the Commissioner of Central Excise (Appeals), NOIDA, whereby the appeal of the respondent M/s Global Auto Tech Ltd., NOIDA, has been allowed and the OIO passed by the jurisdictional Assistant Commissioner has been set aside.

2. The revision application has been filed mainly on the grounds that the Commissioner (Appeals) has erred by holding the rebate claims within limitation period and by not taking into account the Explanations (B) (ec) to Section 11B of the Central Excise Act,1944.

3. A personal hearing was fixed on 05.10.2018. Shri Nidhish Singhal, Assistant Commissioner, Central Excise Division-I, Gautam Budh Nagar, appeared for the hearing and reiterated the grounds of revision already pleaded in their Revision Application. However, no one appeared for the respondent from which it is implied that they are not interested in availing personal hearing.

4. On examination of the revision application, Order-in-Appeals and Order-in-Original, it is observed that the respondent had filed rebate claims amounting to Rs. 20,16,037/- in the months of March and April,2011. However, the jurisdictional Assistant Commissioner rejected rebate claims of Rs. 6,83,727/- and allowed remaining amount vide his Order-in-Original dated 29.07.2011. The rebate claims for the said amount were rejected mainly on the ground that the MAWB nos. mentioned in the ARE-I did not match with the number given in the AWB. The respondent filed an appeal before the Commissioner(Appeals) against the rejection of their part rebate

claims which was allowed vide Order-in-Appeal No. 241-248/CE/APPL/NOIDA/2011 dated 24.10.2011 with a direction to sanction the same after verification of relevant documents. When the Assistant Commissioner did not sanction the rebate claims of Rs. 6,83,727/- ever after long time from having received the Order-in-Appeal in their favour, the respondent requested for sanction of the same vide their letter dated 15.04.2013 and 08.07.2013. But the Assistant Commissioner, instead of complying the Order-in-Appeal and sanctioning the rebate claims, issued a deficiency Memo to the respondent treating the above stated letters of respondent as fresh rebate applications and proposed rejection of the rebate claim of Rs. 6,83, 727/- on the ground that the respondent had lodged rebate claims after more than one year from the receipt of Order-in-Appeal. In this regard reliance was placed on Explanation B (ec) in Section 11B of Central Excise Act,1944 as per which where duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, the date of such judgment, decree, order or direction is the relevant date for filing the refund claim. Even after the respondent had strongly opposed the proposed action for rejection of their claim, the Adjudicating Authority, vide his order-in-original No. 386-R/AC/N-IV/13-14 dated 26.08.2013, rejected the respondent's rebate claims once again inspite of the Commissioner(Appeals) had earlier allowed the rebate claims of the respondent and had set aside the Assistant Commissioner's Order-in-Original dated 29.07.2011. Consequently, the respondent was forced to file an appeal for second time before Commissioner (Appeals) and the same was allowed vide Order-in-Appeal No. NOI/ EXCUS /000/ APPL/252/13-14 dated 23.12.2013. But the Commissioner of Central Excise, Noida, has not accepted the aforesaid Order-in-Appeal and has filed the Revision Application before the Government with a request

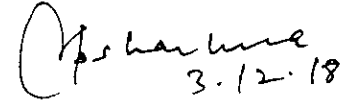
to set aside the Order-in-Appeal on the ground taken by the Assistant Commissioner of Division in his order as mentioned above.

5. In the light of above discussed facts the Government does not have any doubt that respondent had originally filed the rebate claims in time in the months of March & April 2011 and the same were substantially allowed earlier by the Assistant Commissioner and remaining amount was sanctioned subsequently by the Commissioner (Appeals) vide his order dated 24.10.2011. Thus, the net effect of the orders of the Assistant Commissioner dated 29.07.2011 and the Order-in-Appeal dated 24.10.2011 was that all rebate claims filed by the respondent in the months of March & April 2011 were found admissible and accordingly the Assistant Commissioner was bound to sanction the rebate claims of Rs. 6,83,727/- soon after having received the Order-in-Appeal. But he not only failed in complying the Order-in-Appeal but also aggravated the whole matter by issuing the deficiency memo for rejection of their rebate claims on the ground that the respondent had filed rebate claims after more than one year and thereby the rebate claims were hit by time limitation. To support his above conclusion a shelter of Explanation B (ec) in Section 11B was taken which is completely ridiculous as the respondent had filed all rebate claims well in time, they were not required to file any new rebate claim after having received the Order-in-Appeal dated 24.10.2011, their rejected claims had been restored by the Commissioner(Appeals), they had not filed any rebate claim thereafter and in fact the respondent had simply requested the jurisdictional Assistant Commissioner, vide their above two letters, to expedite sanctioning of their pending rebate claims in the light of the Commissioner(Appeals) order. These two letters were not the rebate claims at all and could not be considered the same by any officer having even

rudimentary knowledge of the Central Excise. Thus, the Assistant Commissioner did not have any legal basis for rejection of the respondent's rebate claims for second time by ignoring the Order-in-Appeal and by invoking above mentioned Explanation in Section 11B which is not relevant in the present context. The rebate claims allowed by the Commissioner(Appeals) clearly related to rebate claims filed by the respondent well in time and the same could not be considered as having arisen out of the Commissioner(Appeals)'s order as is envisaged in Explanation B (ec) in Section 11 B. The refund claim covered under the Explanation are apparently those which were not claimed on the basis of existing evidences of excess payment of duty and covers only those claims where excess payment of duty is established subsequently by virtue of the order of the Court or any other appellate authority while settling dispute regarding classification of goods , valuation of the goods or rate of duty etc. for which the refund claim is filed by the claimant later on on the basis of such Court's or appellate authority's order. But in the instant case the rebate of duty has not arisen due to any such situation and rebate of duties had been claimed on account of export of duty paid goods for which rebate claims had already been filed in time and the Commissioner(Appeals) had restored even the rejected claims. Hence, the respondent was not required to file the rebate claims for Rs. 6,83,627/- again after Commissioner(Appeals) had issued his order in 2011 and the same was sanctionable as per earlier Order-in-Appeal. The most surprising feature in the present proceeding is the Commissioner of Central Excise, Noida, has also not appreciated the correct and balanced view taken by Commissioner(Appeals) in her Order and has instead filed the Revision Application against the Order-in-Appeal by repeating the ridiculous reasons cited by the Assistant Commissioner in his Order-in-Original. Considering all

the above facts and legal provisions, the Government does not have any hesitation in saying that the Revision Application is frivolous and not maintainable.

6. In view of the above discussion, the Government does not find any fault in the Order-in-Appeal and the revision application filed by the Commissioner of Central Excise, NOIDA, is rejected.

  
3.12.18  
**(R.P. Sharma)**

Additional Secretary to the Government of India

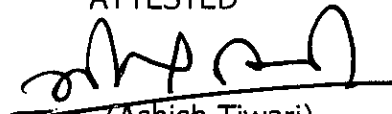
The Commissioner of Central Goods & Service Tax,  
NOIDA-I, C-56/42, Sector-62.  
NOIDA-201307.

Order No. 611/18-Cx dated 03-12-2018

Copy to:

1. The Commissioner of Central Excise (Appeals) , NOIDA-I, C-56/42, Sector-62. NOIDA-201307.
2. M/s. Global Auto Tech Ltd., 3D, Udyog Vihar, Ecotech-II, Greater Noida, 201306.
3. PA to AS(RA)
4. Guard File.
5. Spare Copy

ATTESTED

  
(Ashish Tiwari)

ASSISTANT COMMISSIONER(Revision Application)