

**REGISTERED  
SPEED POST**



**F.No. 195/283/11-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.. 26/12/12

ORDER NO. 1771 /12-Cx DATED 24-12-2012 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,  
1944 AGAINST THE ORDER-IN-APPEAL No.  
46 (DKV) CE/JPR-I/11 dated 09/02/2011  
passed by Commissioner of Customs & Central Excise  
(Appeals), Jaipur-I.

APPLICANT : M/s. Gravita India Ltd.,  
Jaipur (Raj.)

RESPONDENT : Commissioner of Central Excise,  
Jaipur.

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## ORDER

This revision application is filed by M/s. Gravita India Ltd., Jaipur (Raj.) against the Orders-in-Appeal No. 46 (DKV) CE/JPR-I/11 dated 09/02/2011 passed by Commissioner of Customs & Central Excise (Appeals), Jaipur-I with respect to Order-in Original passed by Assistant Commissioner of Central Excise, Division-II, Jaipur.

2. Brief facts of the case are that M/s. Gravita India Ltd., Jaipur (Raj.) are engaged in manufacture of Lead & Lead Alloys falling under chapter Heading 78.11, 78.04, 28.24 and 78.01 of the schedule to the Central Excise Tariff Act, 1985. The applicant removed the goods manufactured by them on payment of duty of Rs. 4,75,039/- and the said goods were exported. After export of the said goods the applicants filed a rebate claim on 10-09-2009 for duty paid by them on the export goods. Simultaneously the applicants have filed a refund claim of Rs. 4,918/- along with the said rebate claim of Rs. 4,70,121/-. The said refund claim was filed on the grounds that the applicants had paid said amount of duty on the post removal expenses of Rs. 1,03,325/- which was otherwise not payable by them. The applicants were served with a Show Cause Notice on the grounds that both the claims i.e. rebate claim for Rs. 4,70,121/- and refund claim Rs. 4,918/- filed on 10-09-2009, should not be rejected as time barred having filed stipulated one year in terms of provisions of section 11B (1) of the Central Excise Act, 1944. The original authority vide impugned Order-in-Original rejected the claim as time barred.

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

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 delay in filing the refund had be caused due to the lack of promptness in feeding the stuffing report by the superintendent of customs and Shipping Line. It is submitted that even though the said goods were exported vide Bill No. 6474467 dated 10-07-2008 read with Bill of Lading No. APLU054659589 dated 21-07-2008

yet, since the relevant export documents and shipping bill were not made available to the applicants by the Customs authorities at the port of export, the applications failed to file the refund claim in time. Hence, there was some delay in filing the impugned refund claims. In order to substantiate their claim that filing of the present refund claim was cause due to a fault on the part of the Customs Department, the applicants cannot be made to suffer by rejected the refund claim on grounds of limitation which were not due to any fault on the part of the applicants. The applicant has relied upon judgment of Hon'ble High Court of Gujrat in the case of Cosmonant Chemicals Vs. UOI reported in 2009 (233) ELT- 46 (Guj.), in support of their contention.

4.2 The department have of course made a reference to the Deputy Commissioner (Export) Jawahar Lal Neheru, Customs House, Nava Sheva, District-Raigarh, Maharashtra to verify the facts stated by the applicants in their letter sent in reply to the Show Cause Notice. However, it has been stated that the officer of customs has not informed the date of generation of EP copy of the refereed Shipping Bill and considering the above facts it has been concluded that the claim filed by the applicants was time barred. It would be appreciated that in case the correct information regarding generation of EP copy of the referred shipping bill was not coming from the superintendent, Customs (Prev.) Jawahar Lal Neheru, Customs House, Nava Sheva, District-Raigarh, Maharashtra, it was obligatory on the department to make another reference for obtaining the said information from the Customs Authorities at Jawahar Lal Neheru, Customs House, Nava Sheva, District-Raigarh, Maharashtra. But no such attempt was made by the Assistant Commissioner and she abruptly jumped to a conclusion that the refund claim filed by the applicants was time barred.

5. Personal hearing was scheduled in this case on 10-10-2012 & 06-12-2012. Personal Hearing held on 06-12-2012 was attended by Shri Pankaj Malik, advocate on behalf of the applicant and he reiterated the grounds of Revision Application. Nobody attended hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the applicant's rebate/refund claim was rejected as time barred by the original authority on the grounds that the same was filed after one year in violation to proviso to section 11B (1) of the Central Excise Act, 1944. Commissioner (Appeals) rejected the appeal filed by the applicant. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the original authority rejected the rebate claim on the ground that rebate claim was filed after the prescribed time limit of one year as stipulated under section 11B of Central Excise Act 1944. The applicant stated that the relevant export documents and shipping bill were not provided to the applicant on time by the customs authorities at the port of export. The delay has occurred due to late receipt of E.P. copies from customs and therefore it cannot be attributed to them.

9. Government notes that 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 reason that some export documents were not provided to them by customs in time hence there was a delay in for filing rebate claim after a stipulated period of one year. In this regard, Government observes that it is mandatory to file rebate claim within one year in view of said statutory requirement of section 11B. The applicant could have filed rebate / refund claim with available documents in order to avoid the claim being hit by time limitation. There is no provision under section 11B of Central Excise Act, 1944 for condonation of any delay in filing rebate claim and therefore the rebate claim has to be treated as time barred.

11. Government note that as per below mentioned judgments the rebate claim filed after one year time limit as stipulated in section 11B of Central Excise Act, 1944 is liable to be rejected as time barred.

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

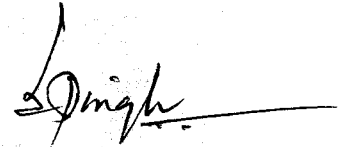
required to be filed together with the claim for rebate on duty paid on excisable goods exported.

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 in this case. Therefore, Government finds no infirmity in the impugned Order-in-Appeal and upholds the said order.

13. The revision application is rejected in terms of above.


14. So, ordered.

  
(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Gravita India Ltd.,  
Diggi Malpura Road,  
Tehsil-Phagi,  
Jaipur (Raj.)

ATTESTED

  
(Biregwat Sharma)  
Assistant Commissioner  
OSD (Revision Application)  
राजस्थान (राजस्व विभाग)  
Finance (Deptt of Rev)  
सरकार/Govt of India  
दिल्ली / New Delhi



Order No. 1771 /12-Cx dated 24.12.2012

Copy to:

1. The Commissioner, Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
2. The Commissioner (Appeal-I), Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
3. The Assistant Commissioner of Central Excise, Division-II, Jaipur.
4. Shri Pankaj Malik, Pankaj Malik & Co., Chartered Accountant, 207-208, Shri Gopal Tower, Krishna Marg, C-Scheme, Jaipur-302001.
5. Guard File.
6. PS to JS (Revision Application)
7. Spare Copy

ATTESTED

  
(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)

Dear Sir,  
I am writing to you regarding the matter of the  
contract for the supply of goods to the  
Government of India. I am pleased to hear  
that you are interested in the contract and  
I am sure that you will find the terms and  
conditions of the contract to be very  
attractive.

The contract is for the supply of goods to the  
Government of India for a period of 12 months.  
The goods to be supplied are of the highest  
quality and are available in large quantities.  
I am sure that you will find the contract to be  
very profitable.

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