

**REGISTERED**  
**SPEED POST**



**F.No. 195/645/2011-RA-CX**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
( REVISION APPLICATION UNIT )

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

Date of Issue...13/1/16...

**ORDER NO. 01/2016-CX DATED 08.01.2016** OF THE GOVERNMENT OF INDIA,  
PASSED BY SMT. RIMJHIM PRASAD, 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.268-CE/Appeal/Ghaziabad/  
2010 dated 24.11.2010 passed by Commissioner of Customs and  
Central Excise, (Appeals), Ghaziabad.

Applicant : M/s Rama Steel Tubes Ltd.

Respondent : Commissioner of Central Excise, Ghaziabad.

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## ORDER

This revision application is filed by M/s Rama Steel Tubes Ltd. (hereinafter referred to as applicant) against the Order-in-Appeal No. 268-CE/Appeal/Ghaziabad/2010 dated 24.11.2010 passed by Commissioner of Customs and Central Excise, (Appeals), Ghaziabad with respect to Order-in-Original No. 91/Rebate/10-11 dated 20.09.2010 passed by the Assistant Commissioner, Central Excise Division-II, Ghaziabad.

2. Brief facts of the case are that the applicant is engaged in the manufacture of Galvanized Steel Pipes /Tubes falling under Chapter Subheading no. 73069090 of the Central Excise Tariff Act, 1985. The applicant exported the said excisable goods vide ARE-1s as per the details given under:-

ARE -1		Comm. Invoice		Shipping Bill		Bill of Lading No. & Date	Amount Claimed as rebate
No. & date	FOB Value (Rs)/US\$	No. & Date	Value (CIF) US \$	No. & Date	Value (FOB) US\$		
RST/111/ 09-10 dt. 19.12.09	1689653 36851.75	RST/Exp.541/09 dt 16.12.09	38892.92	1036791 Dt 16.12.09	36851.7 5	0560DEL00041 Dt.	139227
RST/121/ 09-10 dt. 08.01.10	1871957 40431.04	RST/Exp.550/09 dt 07.01.10	42879.20	1045171 Dt 07.01.10	40431.0 5	DEL/ATL/ANT/0 95 dt.19.01. 10	154250
RST/122/ 09-10 dt. 11.01.10	1871957 40431.04	RST/Exp.551/09 dt 09.01.10	42879.20	1046962 dt 11.01.10	40431.0 5	DEL/ATL/ANT/0 95 dt.19.01. 10	154250
<b>Total</b>							<b>447727</b>

The goods were cleared from the factory under ARE-1s as detailed above on payment of Central Excise duty and the applicant submitted original and duplicate copies of the said ARE-1s duly endorsed by the Customs authorities. On examination of ARE-1 No. RST/121/09-10 dated 08.01.2010, it was found that in the part B of the said ARE-1 the Customs Authority has mentioned the shipping bill No. 1044599 as evidence that the goods under ARE-1 121 dated 08.01.2010 have been exported under shipping bill no. 1044599, whereas the party submitted the shipping bill no. 1045171 dated 07.01.2010 along with said ARE-1. Further in the shipping bill no. 1045171 the ARE-1 No. has been mentioned as 120 dated 08.01.2010 which proved that this shipping bill is not pertaining to the ARE-1 No. 121 dated 08.01.2010. The original and duplicate copies of the said ARE-1 were sent to ICD Dadri for verification but no reply was received in spite of several reminders. Hence, an amount of Rs. 1,54,250/- pertaining to the said ARE-1 No. RST/121/09-10 dated 08.01.2010 was passed not admissible to the applicant.



Hence, the Assistant Commissioner vide Order-in-Original No. 91/Rebate/10-11 dated 20.09.2010 sanctioned an amount of Rs. 2,93,477/- (Rs.4,47,727- Rs.1,54,250).

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) Ghaziabad, who vide Order-in-Appeal No. 268-CE/Appeal/Ghaziabad/2010 dated 24.11.2010 rejected the appeal of the applicant.

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 along with application for condonation of delay:

4.1. That the appellate authority in the course of disposal of rebate claim chose to ignore substantive evidences like shipping bill, bill of lading, bank realization certificate etc. submitted by the applicant with their rebate claim, evidencing export of goods and receipt of sale proceeds of such transaction. That he merely placed reliance on endorsement of shipping bill number appended by customs officials at the port of export which is purely a human error and cannot be relied upon for rejecting the claim of rebate being not substantiated or supported by any other document.

4.2. That the appellate authority had sought to verify the correctness of such endorsement of shipping bill number on the back of ARE-1 from the concerned Customs authorities. That they could not obtain the same as the letter purported to have been sent for verification got misplaced. That no sincere efforts were made by the department to take up the matter with the customs to verify the unfounded doubt and to dispose of their claim of rebate judiciously.

4.3. That the Assistant Commissioner lay hands for a staggering six months period to dispose the claim that too without addressing the issue on the face hard and irrefutable evidences which squarely substantiated that the goods cleared under impugned ARE-1s were actually exported and sale proceed in terms of foreign exchange realized.

4.4. That the substantive right of the applicant to get the rebate on duty paid export goods cannot be denied on the ground that a human error had occurred that too on the part of the departmental officer and as it was for the department to verify the genuineness of the endorsement made by the customs officials.

4.5. That it is highly unreasonable on the part of the sanctioning authority to reject the claim of rebate on the ground that the applicant could not secure the verification report from the concerned customs formation.

4.6. That the applicant is within right to claim rebate of duty on export goods within a time frame stipulated under the provisions of rule and any action on the part of the departmental authorities to pre-empt the statutory right of the exporter deserved sanction of interest as applicable.

5. The applicant also made additional written submissions which are as under:-



- 5.1. That the customs authorities while signing certificate on triplicate of ARE-1 against Part-B inadvertently endorsed wrong shipping bill no. 1044599 which was subsequently was got corrected as no. 1045171 bearing the dated signatures of the customs officers on such corrections made by them dated 07.01.2010.
- 5.2. That all relevant documents viz Customs invoices, quantity, bill of lading are tallied with and are correlated with corrected shipping bill no. 1045171 as also tallied with the details mentioned in ARE-1 no. 121 except wrongly certified shipping bill by the Customs Officer which was subsequently corrected as Shipping Bill No. 1045171 and the same could have been got verified by the revenue and there is no fault of the applicant and the department has also not held the applicant for such mistake done by the Customs Officer and also not denied categorically of such corrections made by the Customs Officers.
- 5.3. That the details of the ARE-1 and the shipping bill no. 1045171, under dispute are co-related with the customs invoice no. 550 dated 07.10.2010, Net Weight 51.150 MT and Bill of lading also contains entry of shipping bill no. 1045171.
- 5.4. That the revenue has not denied the export of goods under dispute under the aforesaid orders as also clearance made for goods exported on payment of duty and the same has been verified with RG 23 A II records regarding having debited the duty involved and thus merely because of mis-match of details of shipping bill as occurred on the part of the Customs Officers, which was got rectified under dated signature later on, should not made the sole basis to object the rebate claim, especially when the original authority had not disputed that goods have been exported.
- 5.5. That in regard to rebate claims, the procedural infraction of Notifications, Circulars etc are to be condoned if exports have really taken place and the law is settled now that substantive benefit cannot be denied for procedural lapses. That procedure has been prescribed to facilitate verification of substantive requirement. That the core aspect or fundamental requirement for rebate is its manufacture and subsequent export. And as long as this requirement is met other procedural deviations can be condoned.
- 5.6. The applicant relied upon the following cases laws:
- TVS Suzuki Ltd CCE-2004(165)ELT 192 Tri
  - Daggers Forst Tolls Ltd -2011 (271)ELT 0471 GOI
  - Shreyas Packaging -2013(297) ELT 0476 GOI
  - Shreejee colors chem.Vs Commissioner 2009 (233)ELT 367 Tri-Ahmd

6. A show cause notice was also issued to the Respondent Commissionerate on 1.09.2015, in response to which the following submission have been made:

6.1. That the appellate authority in his order clearly mentioned that the applicant had produced the copies of some supplementary documents to their office and these documents are the copies of the export challan, bill of lading, ARE-1 form and packing list etc. But these documents do not indicate the cross reference of the ARE-1 and shipping bill in question.



6.2. That on examination of ARE-1 No. RST/121/09-10 dated 08.01.2010, it was found that in the part B of the said ARE-1 the Customs Authority has mentioned the Shipping Bill No. 1044599 as evidences that the goods under ARE-1 121 dated 08.01.2010 have been exported under shipping bill no. 1044599, whereas the party has submitted the shipping bill no. 1045171 dated 07.01.2010 along with said ARE-1. Further in the shipping bill no. 1045171 the ARE-1 No. has been mentioned as 120 dated 08.01.2010 which proved that this shipping bill is not pertaining to the ARE-1 No. 121 dated 08.01.2010.

6.3. That if there is any discrepancy (i.e. wrong mention of shipping bill no., wrong mention of container no. etc) occurred in the Part-B of the ARE-1 after passing by the Customs Authority, the same should be in the knowledge of the applicant first of all and the applicant may approach itself the Customs Authorities for rectification of such discrepancy. That the applicant vide their rebate claim dated 30.03.2010 submitted the original and duplicate copies of subject ARE-1. But they fail to notice the discrepancies in the subject ARE-1 No. That on filing the rebate claim by the applicant the department noticed the same and forward to Customs Authorities for rectification. That the rebate claim of the applicant was sanctioned after deducting the rebate claim in respect of ARE-1 No. 121 as the same was not admissible to them on the grounds that the cross details of shipping bill no. and ARE-1 no. were not found tallied.

7 An application for condonation of delay in filing Revision Application is also filed by the applicant on the following grounds:-

7.1. That the applicant was pursuing a wrong remedy, in good faith, before the Tribunal through their previous consultant, who had erroneously filed the appeal before the CESTAT, New Delhi on 23.08.2011 well within stipulated time of 3 months against the order in appeal dated 20.04.2011 as received on 23.05.2011 and since then all papers were lying dormant which he returned to the applicant in June 2015.

7.2. That no appeal lie to the CESTAT and the Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) of Section 35 B of Central Excise Act, 1944 if such order relates to a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India, as such the CESTAT transferred said appeal along with all documents before Revisionary Authority for consideration.

8. Personal hearing scheduled in this case on 16.11.2015 was attended by Shri Ranjit Singh, Manager Commercial of the company who reiterated the grounds of revision application. Shri N.B. Shukla, Assistant Commissioner, Central Excise, Division-II, Ghaziabad attended the hearing on behalf of the department and reiterated the written submission.




9. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.
10. Government first takes up the application for condonation of delay in filing the Revision Application by the applicant after a delay of eight days. The applicant vide their letter dated 09.07.2015 has submitted that they were pursuing appeal before wrong forum (Hon'ble CESTAT) whereas in case of export of goods the appeal lies to Hon'ble Revisionary Authority. That they were pursuing a wrong remedy, in good faith, before the Tribunal through their previous consultant, who had erroneously filed the appeal before the CESTAT, New Delhi on 23.08.2011 well within stipulated time of 3 months against the order in appeal dated 20.04.2011 as received on 23.05.2011. And that no appeal lie to the CESTAT and the Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) of Section 35 B of Central Excise Act, 1944 if such order relates to a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India, as such the CESTAT transferred said appeal along with all documents before revisionary Authority for consideration. The applicant filed Revision Application on 28.08.2011.
11. Government finds that applicant has stated that on the advice of their Counsel they filed an appeal before CESTAT against impugned Order-in-Appeal on 23.08.2011 but Hon'ble CESTAT transferred the said appeal along with all documents before Joint Secretary, Revision Application, Government of India, New Delhi. However, the applicant failed to produce any documentary evidence supporting the same.
- 11.1 Government finds no merit in the contention of the applicant regarding filing of appeal before the wrong forum due to incorrect advise of their Counsel, as the notes of guidance of the impugned Order-in-Appeal clearly mentions where appeal would lie in such cases. Also the applicant has failed to place on record any evidence of having filed an appeal in CESTAT or copy of direction from CESTAT. Government, therefore cannot consider exclusion of time spent before CESTAT for purpose of condonation of delay in filing Revision Application.
- 11.2. Government further notes that the applicant on 28.08.2011 only endorsed to Joint Secretary, a copy of Form No. EA-3 which is meant for filing appeal before the CESTAT that too without enclosing any other supporting documents. Upon being informed by this office vide letter dated 07.04.2015, the applicant submitted the Revision Application in proper format Form EA-8 only on 17.06.2015, which is much beyond the condonable period.
12. Government notes that it is an undisputed fact that Commissioner (Appeals) order clearly mentions that appeal in cases falling under first proviso to sub-section (1) of Section 35 B ibid shall be under Section 35 EE with the Central Government and shall be presented in person to the Under Secretary, Revision Application Unit, Delhi. Despite that



the applicant claims that they filed appeal before CESTAT and CESTAT ordered them to file appeal before Revisionary Authority. However, no order of CESTAT has been furnished in support. Thereafter, they have claimed that delay in filing Revision Application before Central Government was due to the fact that their consultant erroneously filed the appeal before the CESTAT. Government observes that despite specific directions, applicant failed to file Revision Application promptly and the above reason for delay appears to be very vague, unclear and an afterthought. Under such circumstances, Government is of considered opinion that the applicant has clearly failed to show sufficient cause which prevented them from filing Revision Application within the prescribed time limit under Section 35 EE. As such, the applicant's application of condonation of delay is liable for rejection in view of aforesaid discussion.

13. In view of above discussion, Government rejects the Revision Application as time barred without going into merits of the case.

14. So, ordered.

  
( RIMJHIM PRASAD )  
Joint Secretary to the Govt. of India

M/s Rama Steel Tube Ltd.,  
B-21, Site-IV, Industrial Area,  
Sahibabad, Ghaziabad.

  
ATTESTED

प्रमाणित  
सहसचिव (स.स.)  
Under Secretary (P.A.)



**ORDER NO. 01/2016-CX DATED 08.01.2016**

Copy to:-

1. Commissioner of Central Excise , Ghaziabad
2. Commissioner (Appeals) Customs, Central Excise, and Service Tax, Ghaziabad, CGO Complex, Kamla Nehru Nagar, Ghaziabad.
3. The Assistant Commissioner of Central Excise Division-II, Ghaziabad.
4. PA to JS (RA)
- ✓ 5. Guard File
6. Spare Copy.

ATTESTED

(Shaukat Ali)

Under Secretary to the Government of India