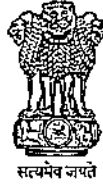


SPEED POST  
REGISTERED POST



**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

F NO. 195/50(I-III)/2015-RA. /113

Date of Issue: 10.01.2022

ORDER NO. 01-03 /2022-CX (SZ) /ASRA/MUMBAI DATED 07.01.2022  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : Ashley Alteams India Limited

Respondent : Commissioner CGST ,Chennai

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. 14-16/2014  
(P) dated 01.12.2014 passed by the Commissioner of Central  
Tax, Central Excise (Appeals -II), Chennai.

**ORDER**

This Revision Application is filed by the M/s Ashley Alteams India Limited, 8, SIPCOT Industrial Park, Chellaperumpulimedu Village, Sozhavaram Post, Akkur-via, Cheyyar Taluk, Thiruvannamalia District (hereinafter referred to as "the Applicant") against the Order-in-Appeal Order-in-Appeal No. 14-16/2014 (P) dated 01.12.2014 passed by the Commissioner of Central Tax, Central Excise (Appeals -II), Chennai.

2. The brief facts of the case are that the Applicant, manufacturer had filed various rebate claims in respect of their goods cleared to SEZ on payment of duty under claim for rebate of duty in terms of Rule 18 of the Central Excise Rules, 2002. After due process of the law Assistant Commissioner of Central Excise, Villupuram Division (hereinafter referred to as "the Respondent") had sanctioned the rebate claims.

Sl. No.	SCN No. & Date	OIO No & Date	Amount of Rebate disallowed	OIA No & date
(1)	(2)	(3)	(4)	(5)
1	4 to 7/2013 (R) dt. 19.03.2013	81/2013 dt.16.09.2013	6,74,300/-	14-16/2014 (P) dated 01.12.2014
2	01/2012 (R) dt. 13.07.2012	82/2013 dt. 17.09.2013	28,90,258/-	
3	-	Letter C.No. V/18/85/105/ 2013-Rebate dt. 16.05.2013	8,93,603/-	

However, on scrutiny of the sanctioned orders mentioned in the above table at Sr. No. 1 and Sr. No. 2 , it appeared that the sanctioning of the rebate was not correct in as much as the rebate claims had been hit by the limitation of time. Therefore, show cause notices were issued to recover the rebate sanctioned erroneously. After due process of law, the Respondent vide the impugned orders demanded the rebates to the extent of the amounts which were allowed erroneously. In respect of the appeal against SI. No. 3 of the above Table, the Applicant has preferred the appeal against a letter C.No. V/18/85/105/2013-Rebate dated 03.09.2013 of the Assistant Commissioner wherein he had refused to admit the supplementary rebate claim filed by the Applicant. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Tax, Central Excise (Appeals-II), Chennai who vide Order-in-Appeal No. 14-16/2014 (P) dated 01.12.2014 rejected their appeal and upheld the Orders-in-Original dated 16.09.2013 ,17.09.2013, and rejection of the supplementary rebate claim cited above.

4. Being aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) There had been delay in filing refund claim beyond one year period prescribed but the fact is that it has taken place only due to the reason that the situations were beyond the control of the Applicant.
- (ii) The ADC in one of the order has rejected the refund claim as erroneous refund stating that, the ARE1 would be the only mandatory document to clear the goods to SEZ unit. Sub rule (1) of the Rule 30 of SEZ Rules 2006 states "*DTA May supply the goods to SEZ, as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of ARE 1*".
- (iii) The ARE1 would be basic document to clear the goods to SEZ; Customs in SEZ would sign in the ARE1, after clearance of the goods to the SEZ

unit. Clearance will be valid only after the due verification by the officer of the customs. The rebate claim was filed with the department based on the ARE1.

- (iv) The main reason for the delay in filing of the rebate claim was due to non-availability of the physical document related to rebate claim as ARE1 and Shipping Bills were with Customs Authorities for verification and it was the delay that has taken place at their end for processing and verification has resulted in delay in claiming the refund claim.
- (v) The issue was handled by CHA who was new to the Customs operation and was not well versed with Exim procedures had also sent the documentation belatedly and in some cases, instead of sending the claims to the Applicant's address; it was addressed to the Superintendent of Central Excise, which were sent to the Central Excise Officials directly and subsequently redirected to the Applicant's Company. This was one of the major factor in delay in filing of the claims.
- (vi) They had submitted the Supplementary Rebate claim, under provision of section 118 of the central excise Act 1944, with Part IV (Miscellaneous) of supplementary instructions Issued by CBEC.
- (vii) They were also not given any opportunity by the Jurisdictional Authority processing the refund claim as explained in the supplementary instruction chapter 8 of export under claim for Rebate .
- (viii) For granting of the refund claim, the jurisdictional authority has not followed the principles of natural justice of fair hearing rule. The maxim audi alteram partem accentuates the rule of fair hearing. It lays down

that no one should be condemned unheard. It is the first principle of the civilized jurisprudence that a person facing the charges must be given an opportunity to be heard, before any decision is taken against him. No Show Cause Notice has been issued asking for the reasons for the alleged delay in the filing the claims.

- (ix) The main reason for the delay in filing of the Supplementary rebate claim was due to the non-availability of the physical document related to rebate claim mainly ARE1 and Shipping Bills which were lying in the Existing claims filed with department. Hence we submit that the date of original claims submission to be considered as the date of submission for supplementary claims also.
- (x) The Head of the Division who was primarily and principally responsible for the function had left the company and the position remained vacant for 4 months and thus resulting in accumulation of claims and delay in filing of claims.
- (xi) The operating level executive, who was required to file the claims had also fallen sick with his mobility totally affected and had taken medical leave for 4 to 5 months which further added up to the delay in filing the claims.
- (xii) Whatever had taken place was beyond the control of the Applicant and hence requested to kindly condone the delay in submission of the rebate claims. They relied upon the case of Cosmonaut Chemicals [2009 (233) ELT 46 (Guj)], Punjab General Mfg. Works Vs CCE Lucknow [2003 (158) ELT 177. (Tri. Del.)], M/s Dorcas Market Makers Pvt Ltd vs CCE [2012-TIOL-108-HC-MAD-CX] and few other case laws.

(xiii) The Applicant would be at loss in getting the benefit of export as the export price fixed had excluded the duties and taxes based on the principle that only goods can be exported and duties and taxes cannot be exported.

(xiv) There cannot be any dispute with regard to the following points :

a) The duty paid character of excisable goods exported

b) The exportation of the said goods

c) Realisation of foreign exchange on export

Therefore , in interest of exports , the same may kindly be condoned and issue may be decided on merits by granting the rebate claims.

(xv) They prayed that the Order-in-Appeal be set aside and to grant their refund condoning the delay in filing the claim.

5. An interim Order No. 03/2014 (P) dated 22.02.2014 was passed by Commissioner (Appeal) directing the Applicant to pre-deposit an amount of Rs. 3,37,150/-, which was complied with by the Applicant.

6. Personal hearing in this case was fixed for 14.09.2021. Shri Muthukumar R, C.F.O. with their consultant Shri. K K Sekar, Consultant appeared and reiterated their earlier submission. They submitted that there were genuine reasons for delay therefore the same may be condoned. They further submitted that their claims be allowed since duty has been paid and goods were exported.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

8. The issue involved in the instant Revision Application is whether Applicant is entitled for the rebate claim which was rejected on the grounds of limitation or not .

9.1 The first issue that the applicant had filed the rebate claim beyond one year from the date of export was a ground for rejection of rebate claim before the original authority and for rejection of their appeal by the Commissioner(Appeals). On perusal of the records, Government observes that the Applicant had cleared their goods to SEZ on payment of duty and had sought the rebate of the duty paid by them as per Rule 18 of the Central Excise Rules, 2002. The contention of the Department is that the claims were hit by the limitation of time as per section 11B which stipulates claims for rebate to be filed within one year from the relevant date prescribed therein and in case of exports such relevant date would be the date of export. In the instant case, the goods had been cleared to SEZ and in such situations date of shipment/admission into SEZ area as prescribed under Section 11B of the Central Excise Act would be the date of export. It is seen that in all cases the Applicant had filed their rebate claims beyond one year from the date of bill of export. The contention of applicant that the date on which the customs officer verifies and signs the ARE-1 should be the relevant date does not contain merit since the date on which the goods enter the SEZ would be the date of export.

9.2 Another contention of the Applicant is that the ARE-1 countersigned by the Custom authorities had not been given to them in time due to which there was delay in filing the claim. Government observes that any diligent applicant who was in their position would have persistently followed up for the document and filed the claim in good time. Other than the bald assertion made by them about non-receipt of countersigned ARE-1, the Applicant has not submitted any proof to show that they had difficulty in obtaining the copy of ARE-1. It shows that Applicant did not pursue the matter seriously. Therefore it is not correct to say that the delay in filing the rebate claims had occurred because

the said documents were not handed over to them by the Custom authorities in time and it appears to be an afterthought.

9.3 Government notes that the Applicant themselves have admitted that there had been a delay in filing of the claims and have attributed it to situations beyond their control. The reasons however are that the person in charge had left the company, operational executive had fallen sick, their CHA was new and not well versed with the Exim procedures thus sent the documents to Central Excise Officials directly rather giving it to the Applicant, all these reasons are not valid grounds for belated filing of claims. Government notes that the time limitation of one year prescribed under the act is reasonable time to collect and submit the documents in time for rebate even if the documents were circumvented to the Excise Office by their CHA. The ratio of the decision of the Honorable Gujrat High Court in the case of M/s Cosmonaut Chemicals vs Union of India as relied upon by the Applicant, is not applicable as there was no such thing cited in any of the scenario that establishes that the situation was beyond the control of the applicant.

10. The Government observes that the Applicant in the Revision Application has relied on the judgment of the Hon'ble Madras High Court in the matter of Dy. Commissioner of C. Ex., Chennai Vs. Dorcas Market Makers Pvt. Ltd. (2015 (321) E.L.T. 45 (Mad.)). The Government however finds that the same Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd., [reported in 2017 (355) E.L.T. 342 (Mad.)] upheld the rejection of rebate claim filed beyond one year of export by citing the judgment of In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai reported in 2015 (324) E.L.T. 270 (Mad.) and held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder :-



"29. In *Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai*, reported in 2015 (324) E.L.T. 270 (Mad.), it has been held as follows :

5. The claim for refund made by the Applicant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-

"(B) "relevant date" 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 loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;.....

8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period

*of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."*

11. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is thus a mandatory provision. 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) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund 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. Government finds 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.

12. Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below.

*"14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.*

15. *In Everest Flavours Ltd. v. Union of India [2012(282)ELT 481(Bom.)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree."*

In such manner, the Hon'ble High Court of Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it.

13. Taking up the second issue, the Applicant had submitted a supplementary rebate claim to their original claim in accordance with the Part-IV of the Supplementary Instructions issued by the CBEC. The department vide letter C.No. V/18/85/105/2013-Rebate dated 03.09.2013 returned their application for rebate claims stating there is no provision in section 11B of Central Excise Act, 1944 for filing supplementary rebate claim of duty. Government notes that it is stated in the supplementary instruction itself that any supplementary claim has to be filed within the time limit stipulated under section 11B of the Central Excise Act which is reproduced below:-

*"Supplementary rebate claim: 2.1 the supplementary rebate claim, if any, should be filed within the stipulated time provided under section 11B of the central excise Act, 1944."*

In this regards. Government observes that the Applicant himself has admitted that they had filed supplementary claims belatedly and the reasons stated by them was not valid reasons for such delay. Government finds that the original claims based on which the supplementary claims submitted were itself filed beyond one year, so there was no point in considering/accepting the belated supplementary claims as they were liable for rejection out rightly. Further, the case laws relied upon by the Applicant in this regards are factually different from the case on hand.

14. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that the Applicant has failed to act diligently in as much as they have failed to file rebate claim within the statutory time limit of one year from the date of shipment of the export goods. Therefore, the demanding of the erroneously sanctioned refund is correctly held in order by the Commissioner Appeals and the rejection of the supplementary rebate claim does not warrant interference.

15. In view of above, Government finds no infirmity in the impugned Orders-in-Appeal No. 14-16/2014 (P) dated 01.12.2014 and upholds the same.

*Shrawan*  
7/1/22  
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. <sup>01-03</sup> 7/2022-CX (SZ) /ASRA/Mumbai Dated 07.01.2022

To,  
M/s Ashley Alteams India Limited,  
8, SIPCOT Industrial Park, Chellaperumpulimedu Village,  
Sozhavaram Post, Akkur-via, Cheyyar Taluk,  
Thiruvannamalia District.

Copy to:

1. The Commissioner of CGST, Newry Towers, 12<sup>th</sup> Main Road, Annanagar(W), Chennai-600 040.
2. The Commissioner of CGST & CX(Appeals-II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai- 600 034.
3. The Deputy/Assistant Commissioner, Villupuram Division, Puducherry Commissionerate.
4. Sr. P.S. to AS(RA), Mumbai.
5. Guard File