

REGISTERED SPEED 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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/228/2012-RA/3

Date of Issue:- 03/01/2020

ORDER NO. 102/2020-CX(SZ)/ASRA/MUMBAI DATED 02.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl. No.	Revision Application No.	Applicant	Respondent
1	195/228/2012-RA	M/s Bharat Petroleum Corporation Ltd., Calicut	Commissioner, CGST, Cochin.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. 32/2011 dated 30.12.2011 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

ORDER

This revision application is filed by M/s Bharat Petroleum Corporation Ltd., Malappapuram, Calicut against the Order-in-Appeal No.32/2011 dated 30.12.2011 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin with respect to Order-in-Original passed by the Assistant Commissioner, Central Excise, Kozhikode Division, Calicut, Kerala.

2. Brief facts of the case are that the applicant exported the goods viz. ATF to foreign-going Aircraft from Calicut AFS during 24.04.2008 to 16.05.2008 and filed rebate claim for Rs.10,63,961/- (Rupees Ten Lakh Sixty Three Thousand Nine Hundred Sixty One Only) in respect of such exports on 24.04.2009 under the provisions of Section 11B of Central Excise Act, 1944. The rebate claim was returned for the resubmission along with all relevant documents. The claim was resubmitted on 22.05.2009. The original authority after following the due process, rejected this rebate claims as time barred having filed after one year stipulated period vide Order in Original No. 54/2009-CEX dated 29.10.2009.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin, who rejected the same vide Order in Appeal No. 32/2011-CX dated 30.12.2011.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant have filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The Applicants has exported the duty paid ATF to foreign going Aircraft from Calicut AFS during 24.04.2008 to 16.05.2008 and as per provision of Sec.11B of Central Excise Act, 1944, application for refund is to be submitted before expiry of one year from the date of export and in Applicants case last date of application comes to 24.04.2009 and Applicant has submitted his application on that date itself and the same has been accepted by the, Central Excise Calicut.

4.2 Furthermore the applicants had submitted application in prescribed format i.e. Form-R along with the required documents which is required as per

information available to him and when the Assistant commissioner has asked to submit duplicate ARE-1 & disclaimer certificate the same has been submitted on 22.05.2009. Submission of documents/explanation is subsequent to submission of application hence date of application should be the date when the application were originally submitted and not the date on which the remaining documents/application were submitted.

4.3 The Commissioner has erred in not considering the plea of Applicant that the application was prepared and submitted by the person other than the person who has earlier submitted the application & was well-versed with the refund procedure.

4.4 The Commissioner has failed to consider the plea that the applicant had filed all documents on 24.04.2009 except duplicate ARE-1 & Disclaimer Certificate & even without these documents the application for claim of refund of duty remains maintainable. Further the order are very harsh and against natural justice.

4.5 The intention of Government is not export taxes but only to export goods. If refund of duty paid on exported goods is not allowed, the Indian manufacturer will become internationally uncompetitive. This is contrary to the intention of the legislature. This view is fortified by decision of this Hon'ble Bombay High Court in the case of *Repro India Vs Union of India 2009 (235) ELT 614, Para 8* thereof.

4.6 The applicant submit that in *Re: Harrison Chemicals 2006 (73) RLT 325 (GOI)*, the Government has held that rebate should not be rejected merely on procedural or technical formalities. –

5. Personal hearing was held in this case on 20.11.2019. Shri Ritesh Mehta, Executive & Ms. Kanika Khandelwal, Assft. Manager attended the same on behalf of the applicant.

6. Government has carefully gone through the relevant case records, written/oral submission and the impugned Order-in-Original/Order-in-Appeal.

7. On perusal of records, Government observes that applicant's claims were rejected by the Original Authority as time barred as the same were filed with all relevant documents after expiry of stipulated one year. Commissioner (Appeals) upheld

impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that there are several judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court, Tribunal and GOI, have held in following cases that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

“Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944.”

Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

“claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962.”

In a case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}], wherein the petitioner had submitted the rebate claim in time although, in wrong format and the said claim was returned to the petitioner upon which the petitioner represented the same claims along with necessary supporting documents later on and these applications were treated by the Department as time barred and claims were rejected. While disposing

the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that :

Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules.

Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

9. In view of foregoing discussions, it is quite clear that time limitation as stipulated in Section 11B of Central Excise Act, 1944 is to be computed from the initial date of filing such claims as available in relevant office records. Since the rebate claims in the instant case were initially filed within stipulated time limit, Government is of the considered view that the same are to be treated as filed within stipulated time limit.

10. Hence, the said rebate claim cannot be treated as time barred since it was originally filed before department on 24.04.2009 which was well within the limit period of one year stipulated in Section 11B of Central Excise Act, 1944. Government is of


considered view that case is required to be remanded back for denovo consideration, for deciding the case on merits.

11. In view of position explained above, the impugned Order-in-Appeal is set aside and the case is remanded back to original authority to decide the same afresh on merits. The original authority will complete the requisite verification expeditiously and pass a speaking order within six weeks of receipt of this order after following the principles of natural justice.

12. Revision Application is disposed off in above terms.

13. So, ordered.

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(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To

M/s Bharat Petroleum Corporation Ltd.,
Aviation Fuelling Station,-----
Karipur Airport, Konodtty,
Malappapuram, Calicut- 673 638.

Copy to :

1. The Commissioner of Central Goods & Service Tax, Cochin, C.R. Building, I.S. Press Road, Cochin - 18.
2. The Commissioner of Central Goods & Service Tax (Appeals), Cochin, C.R. Building, I.S. Press Road, Cochin - 18.
3. The Assistant Commissioner, CGST, Kozikode Division, C.R. Building, Mananchira, Calicut, Kerala- 673 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.