



**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.195/231/2017-RA

6309

Date of Issue: 10.11.2022

ORDER NO. 1035/2022-CX (WZ) /ASRA/Mumbai DATED 10.11.2022
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 : M/s Nepa Overseas,
Plot No.5, Phase – II, GIDC, Vatva,
Ahmedabad – 382445, Gujarat.

Respondent : Pr. Commissioner of Central Excise, Ahmedabad – I.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
AHM-EXCUS-001-APP-071-2016-17 dated 28.02.2017
passed by the Commissioner (Appeals -I), Central Excise,
Ahmedabad.

ORDER

The subject Revision Application has been filed by M/s Nepa Overseas, (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 28.02.2017 passed by the Commissioner (Appeals - I), Central Excise, Ahmedabad which decided an appeal filed by the applicant against the Order-in-Original dated 28.06.2016 passed by the original Adjudicating Authority, which in turn decided a rebate claim filed by the applicant.

2. Brief facts of the case are that the applicant had filed a rebate claim for Rs.7,49,757/- under Rule 18 of the Central Excise Rules, 2002 on 25.04.2016. The goods in question having been exported on 12.03.2015 a Show Cause Notice was issued to the applicant seeking to reject the rebate claims on the grounds that they were filed beyond the period of one year from the date of export and were hence time barred in terms of Section 11B of the Central Excise Act, 1944. The Show Cause Notice was adjudicated by the original authority vide Order-in-Original dated 28.06.2016 who rejected the said claim as time barred. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) on the grounds that the final assessment of the Shipping Bill done on 15.04.2016 and that the EP copy of the same was released by the Customs authority on the same day, ie.15.04.2016 and that they had filed the claim on 25.04.2016; and that neither Rule 18 of the Central Excise Act, 1944 nor notification no.19/2004-CE(NT) dated 06.09.2004 laid down any time limit for filing of rebate claim. The Commissioner (Appeals) relied on several decisions of the higher Courts to hold that the rebate claim filed by the applicant was hit by limitation of time and rejected the appeal.

3. Aggrieved by the impugned Order-in-Appeal 28.02.2017, the applicant has filed the subject Revision Application on the following grounds:-

(a) The Commissioner (Appeals) had erred in not appreciating the fact that they could not have filed the rebate claim without proper supporting documents, particularly the EP copy of the Shipping Bill and the original

and duplicate copy of the ARE-1; that the date of final assessment of the subject Shipping Bill was done on 15.04.2016 and hence this date is the relevant date under Section 11B of the Central Excise Act, 1944 for computing the period of one year statutory period for filing the refund claim; they relied on the decisions of the Hon'ble High Court of Gujarat in the case of Cosmonaut Chemicals [2009 (233) ELT 46 (Guj)] and Rolwell Forge Pvt. Ltd. [2015 (327) ELT 10 (Guj)] and Gravita India Limited [2016 (334) ELT 321 (Raj)] in support of their submissions;

(b) That the Supplementary instructions in the CBEC Manual would not prevail over the notification no.19/2004-CE(NT) and that this notification did not prescribe any time limit for filing a rebate claim; they placed reliance on, amongst others, the decision of the Hon'ble High Court of Madras in the case of Dorcas Market Makers P. Ltd. [2012 (281) ELT 227 (Mad)] which they submitted was maintained by the Apex Court; that the limitation specified by Section 11B of the Central Excise Act, 1944 would not be applicable to claims of rebate; that procedural infractions should be condoned and substantive benefit of rebate should be denied in the case of export.

4. The applicant made further written submissions on 20.10.2022, wherein they, apart from reiterating their earlier submissions, stated that :-

(a) They had enclosed copy of letters dated 25.05.2016 and 11.07.2016 issued by the Customs authorities stating that after final assessment the EP copy of the Shipping Bill along with ARE-1 No.29/2014-15 dated 27.02.2015 was released by them to the applicant on 15.04.2016;

(b) That both the lower authorities had relied upon judgments wherein the delay was not attributable to the Department, which was not true in their case and relied upon the decision of Hon'ble High Court of Rajasthan in the case of M/s Banswara Syntex Ltd. vs UOI [2017 (349) ELT 90 (Raj)] in support of their submissions.

In view of the above, the applicant prayed that the impugned Order-in-Appeal be set aside and their rebate claim be allowed.

5. Personal hearing in the matter was held on 18.10.2022 and Shri Dharmendra K. Singh, Advocate, appeared online on behalf of the applicant. He submitted that time limit is not applicable in the case of rebate. He further submitted that the EP copy of the Shipping Bill was given to them late by the Customs authorities and pleaded that their case was not time barred.

6. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the said Order-in-Original and the impugned Order-in-Appeal.

7. Given notes that the issue for decision is whether the rebate claim filed by the applicant is hit by the limitation of time specified by Section 11B of the Central Excise Act, 1944 as held by both the lower authorities. Government notes that the applicant has sought to place reliance on the decision of the Hon'ble High Court of Madras in the case of Dy. CCE vs Dorcas Market Makers (P) Ltd [2015 (321) ELT 45 (Mad)] to submit that Notification no.19/2004-CE(NT) dated 06.09.2004, which laid down the conditions, procedures and limitations for grant of rebate, did not prescribe any time limit for filing of a rebate claim. On examining the same, Government finds that the Apex Court while maintaining this decision did not go into the merits of the case. Government finds that this issue is no more res integra and has been laid to rest by a number of decisions of the higher Courts. Government observes that the Hon'ble High Court of Madras, in a judgment subsequent to its decision in the case of Dy. CCE vs Dorcas Market Makers relied upon by the applicant, while dismissing a Writ Petition filed by Hyundai Motors India Limited [2017 (355) E.L.T. 342 (Mad.)] had upheld the rejection of rebate claims which were filed after one year from the date of export and held that the limitations provided by a Section will prevail over the Rules. Further, Government also notes that the Hon'ble High Court of Karnataka while deciding the case of Sansera Engineering Pvt. Ltd. Vs Dy. Commissioner, Bengaluru [2020 (371) ELT 29 (Kar.)], an identical case, had distinguished the decision of the Apex Court referred to by the applicant and had held as under:-

" It is well settled principle that the claim for rebate can be made only under section 11-B and it is not open to the subordinate legislation to dispense with the requirements of Section 11-B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11-B is only clarificatory.

14. *It is not in dispute that the claims for rebate in the present cases were made beyond the period of one year prescribed under Section 11-B of the Act. Any Notification issued under Rule 18 has to be in conformity with Section 11-B of the Act.*

15. *The decision of Original Authority rejecting the claim of rebate made by the petitioners as time-barred applying Section 11-B of the Act to the Notification No. 19 of 2004 cannot be faulted with."*

A Writ petition filed against the above decision was decided by a Larger Bench of the Hon'ble High Court of Karnataka in Sansera Engineering Limited vs Deputy Commissioner, LTU, Bengaluru [2021 (372) ELT 747 (Kar.)] wherein the Hon'ble High Court upheld the decision by the Single Judge in the above cited case with the following remarks :-

" A reading of Section 11B of the Act makes it explicitly clear that claim for refund of duty of excise shall be made before the expiry of one year from the relevant date. The time prescribed under Section 11B of the Act was earlier six months which was later on amended on 12-5-2000 by Section 101 of the Finance Act, 2000. Rule 18 of the Central Excise Rules and the Notification dated 6-9-2004 did not prescribe any time for making any claim for refund as Section 11B of the Act already mandated that such application shall be filed within one year. Section 11B of the Act being the substantive provision, the same cannot yield to Rule 18 of the Rules or the Notification dated 6-9-2004. As rightly held by the Learned Single Judge, the Notification dated 1-3-2016 was mere reiteration of what was contained in Section 11B of the Act, and therefore, the Law as declared by the Hon'ble Supreme Court in Uttam Steel (supra) is applicable to the facts of this case. In that view of the matter, the judgment of the Madras High Court in the case of Dorcas Market Makers Pvt. Ltd., (supra) is not applicable to the facts of this case. As a matter of fact, the Madras High Court in the case of Hyundai Motors India Ltd. v. Department of Revenue, Ministry of Finance reported in 2017 (355) E.L.T. 342 (Mad.) did not subscribe to the law declared in Dorcas Market Makers Pvt. Ltd., (supra) and held that the time prescribed under Section 11B of the Act is applicable.

13. *In view of the aforesaid, the Learned Single Judge had extensively considered the questions of law and the applicability of Section 11B of the Act and has rightly held that the claim of the appellant for refund was time-barred as it was filed beyond the period of one year. We do not find any justification to interfere with the findings of the Learned Single Judge. Hence, W.A. No. 249/2020 lacks merit and is dismissed."*

Government finds the above decision is squarely applicable to the issue on hand and finds that it relies on the decision of the Hon'ble Supreme Court in the case of UOI & Others vs. Uttam Steel Limited [2015 (319) E.L.T. 598 (S.C.)] to hold that the limitation of one year prescribed by Section 11B of the Central Excise Act, 1944 is applicable to claims for rebate. Thus, Government rejects the contention of the applicant that there is no time limit for filing a rebate claim and holds that the time limit prescribed by Section 11B of the Central Excise Act, 1944 will be applicable in the instant case too. Having held so, Government now proceeds to examine whether the rebate claims filed by the applicant were within the prescribed time limit.

8. Government finds that the goods were exported on 12.03.2015 and the claim for rebate was filed on 25.04.2016. Government notes that the applicant has submitted that the Customs authorities had issued the EP copy of the Shipping Bill along with the copy of the relevant ARE-1 on 15.04.2016. Government finds that this submission of the applicant stands corroborated by the letter dated 27.05.2016 issued by the Deputy Commissioner (Export), Customs, ICD Khodiyar which confirms that after final assessment, the EP copy of the Shipping Bill was released on 15.04.2016. Government further finds that the Assistant Commissioner of Customs, ICD Khodiyar vide letter dated 11.07.2016 addressed to the A.C., Central Excise, Division III, Ahmedabad - I has stated that the EP copy along with the ARE-1 No.29/2014-15 dated 27.02.2015 was released to the applicant on 15.04.2016. Government notes that the applicant had made these submissions before the lower authorities and the same have been recorded by them in the respective orders, however, they have neither discussed it nor have given any finding on the same. Government finds that the EP copy of the Shipping Bill is a mandatory document to be filed along with a claim for rebate for duty paid on exported goods and in this case it is a fact that the applicant was not provided the same and the relevant ARE-1 till 15.04.2016 by the Customs Authorities. Government finds that the applicant was in no position to file a rebate claim with all the required documents, in the absence of receipt of the EP copy of the Shipping Bill and copy of the relevant ARE-1 from the Customs authorities.

Government finds that an identical issue was decided by the Hon'ble High Court of Rajasthan in the case of Banswara Syntex Limited vs UOI [2017 (349) ELT 90 (Raj)]. The relevant portion is reproduced below:-

"According to learned counsel the rebate claimed was filed within a period of two months from the date of issuance of relevant shipping bill, thus, the rebate should have been awarded by the respondents. The submission advanced is substantiated by a Division Bench judgment of this Court in Gravita India Ltd. v. Union of India, reported in 2016 (334) E.L.T. 321 (Raj.). In the case aforesaid a Division Bench of this Court, while examining the same issue, held as under :-

"17. There is no quarrel with proposition that if Statute provided for limitation, it has to be adhered to. What however is being claimed by the petitioner is different. The question which arises in the present case is as to what should be the starting point for computation of this period of one year. We are persuaded to follow the view taken by the Gujarat High Court in Cosmonaut Chemicals, supra, that any procedure prescribed by a subsidiary legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. The claimant cannot be asked to tender deficient claim within limitation period and claim cannot be simultaneously treated as not filed till documents furnished, if the manual of supplementary instruction indicating that refund or rebate claim deficient in any manner to be admitted when delay in providing document is attributable to the Department. Where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs Department, this would be mitigating circumstance flowing from the aforesaid legislative scheme. Limitation is to be considered in the light of availability of requisite documents and should be taken to begin when documents necessary for substantiating the claim of refund are furnished by the department, which, in our considered view, should be the starting point for computation of limitation."

4. In light of the judgment given by Division Bench of this Court in Gravita India Ltd. (supra), as per learned counsel appearing on behalf of the petitioner, the starting point for computation of limitation under Section 11B of the Act of 1944, would have started only from the date when necessary documents to substantiate the claim of refund were furnished to the petitioner.

5. Per contra, Shri Vipul Singhvi, learned counsel appearing on behalf of the respondents, states that as per Section 11B of the Act of 1944 refund of any duty of Excise could have been claimed by making application to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before expiry of one year from the relevant date in such form and manner as may be prescribed and the application should have been accompanied by such documentary or other evidence including the documents referred to in Section 12A to establish that the amount of duty of Excise on such duty was collected or paid by the claimant. The petitioner in the instant matter failed to furnish the application to claim the rebate within a period of one year from the date of shipment i.e. 4-1-2007, hence, the rebate was rightly denied. Learned counsel, while relying upon a judgment of Privy Council in Pakala Narayana Swami v. Emperor, reported in (1939) 41 BOMLR 428, submitted that the

language of Section 11B is very specific, clear and conveying only one meaning, therefore, it is not open for the Court to interpret the provision by taking into consideration the advantages and disadvantages of applying the plain meaning. According to learned counsel, this Court must declare the very conspicuous intention of the legislature i.e. the requirement of submitting application under Section 11B of the Act of 1944, within a period of one year from the date of shipment.

6. Having considered the arguments advanced, we are of the view that in the case of Gravita India Ltd. (supra) a Division Bench of this Court thrashed the entire issue in detail and the instant matter also deserves to be decided in the terms of the judgment aforesaid. In the case aforesaid it was held that the procedure prescribed by subsidiary legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. The claimant could have not been asked to tender a claim with deficiencies within the limitation period and claim could have not been simultaneously treated as not preferred till documents furnished, if the manual of supplementary instructions indicating that refund or rebate claimed deficient in any manner to be admitted when the delay is attributable to the Department.

7. In the case in hand it is not in dispute that the shipping bill itself was delivered to the petitioner after a lapse of one year and the petitioner after having the same filed the application to have rebate at earliest. Even as per Section 11B of the Act of 1944, refund of any duty of Excise could have been claimed by making an application accompanied by such documents or evidence including the documents referred in Section 12A to establish that the amount of duty of Excise was collected or paid by the claimant. In absence of shipping bill it would have not been possible for the claimant to make an application in accordance with law to claim the rebate as per Rule 18 of the Rules of 2002. In view of it, we are of considered opinion that no justification was available with the respondents to reject the claim application without examining its merits."

Given the above decision of the Hon'ble High Court, Government finds that the issue involved is not more *res integra*. As discussed above, Government finds that the applicant was not in a position to file a rebate claim with all the requisite documents till they received the EP Copy of the Shipping Bill from the Customs Authorities, which undisputedly was given to them on 15.04.2016 by the Customs Authorities. Thus, Government finds that the delay caused till 15.04.2016 is clearly attributable to the Department and hence, as held by the Hon'ble High Court in the decision cited above, the starting point for computation of limitation under Section 11B of the Central Excise Act, 1944 in this case will begin from the 15.04.2016, i.e. the date on which the EP copy of the Shipping Bill was endorsed/given to the applicant by the Customs authorities. Government notes that the applicant had filed

the rebate claim in question on 25.04.2016, which is well within the one year period stipulated by Section 11B of the Central Excise Act, 1944. In view of the above, Government finds that the rebate claim filed by the applicant will not be hit by the limitation of time and accordingly holds so. Given the fact that the subject rebate claim was rejected solely on the grounds of the same being hit by limitation of time, which has now been found to be incorrect, Government sets aside the impugned Order-in-Appeal and holds that the applicant will be eligible to the rebate claimed by them.

9. The subject Revision Application is allowed.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 1055/2022-CX (WZ) /ASRA/Mumbai dated 10.11.2022

To,

M/s Nepa Overseas,
Plot No.5, Phase – II, GIDC, Vatva,
Ahmedabad – 382445, Gujarat.

Copy to:

1. Pr. Commissioner of CGST, Ahmedabad South Commissionerate, CGST & Excise Bhavan, Ambawadi, Ahmedabad – 380 015.
2. Commissioner (Appeals - I), Central Excise, Ahmedabad, 7th floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad – 380015.
3. M/s Singh Associates, 69, 1st floor, Astha Kunj, DDA Flats, Ashoka Pahari, Link Road, Faiz Road, Opp. Bhai Jogasingh School, Karol Bagh, New Delhi – 110005.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.