



**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, Cuff Parade,
Mumbai- 400 005

F NO. 195/29/2016-RA

Date of Issue: 24/11/2022

ORDER NO. ¹¹⁰² /2022-CX (WZ) /ASRA/MUMBAI DATED 21.11.2022
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. Steel Cast Ltd.

Respondent : Commissioner CGST & CX, Bhavnagar.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. Bhv-Excus-
000-App-042-15-16 dated 26.11.2015 passed by the
Commissioner (Appeals -III), Central Excise, Rajkot.

ORDER

This Revision Application is filed by M/s. Steel Cast Ltd. (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. Bhv-Excus-000-App-042-15-16 dated 26.11.2015 passed by the Commissioner (Appeals -III), Central Excise, Rajkot.

2. Briefly stated facts of the case are that the applicant are registered with Central Excise. They had exported excisable goods and had filed ten rebate claims totally amounting to Rs.58,89,725/ before the adjudicating authority along with relevant documents on 30.01.2015. The details of the same are as under:

S.No.	ARE-1 No. & Date	Date of Export	Last Date of filing claim
1	148 dated 20.11.2013	30.11.2013	29.11.2014
2	150 dated 26.11.2013	08.12.2013	07.12.2014
3	152 dated 27.11.2013	08.12.2013	07.12.2014
4	154 dated 28.11.2013	08.12.2013	07.12.2014
5	155 dated 29.11.2013	08.12.2013	07.12.2014
6	157 dated 30.11.2013	12.12.2013	11.12.2014
7	161 dated 30.11.2013	12.12.2013	11.12.2014
8	162 dated 30.11.2013	12.12.2013	11.12.2014
9	166 dated 05.12.2013	12.12.2013	11.12.2014
10	183 dated 31.12.2013	16.01.2014	15.01.2015

The provisions of Section 11B of the Central Excise Act, 1944, Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-CE (NT) dated 06.09.2004, as amended governs export under rebate. As per the same, the claim of rebate is required to be filed within one year from the export of goods. In the instant case, aforesaid claims were filed beyond the stipulated time limit. Accordingly, a Show Cause Notice proposing rejection of rebate claims was issued to the Applicant, which was adjudicated by the adjudicating authority vide OIO No. 20/D/Excise/2014-15 dated 26.03.2015 under which he rejected all ten rebate claims totally amounting to Rs.58,89,725/- filed by the applicant holding that the same were time barred. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner (Appeals -III), Central Excise, Rajkot who vide Order-in-Appeal No. Bhv-Excus-000-App-042-15-16 dated 26.11.2015 rejected their appeal and upheld the OIO.

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

- i. at the outset it is submitted that the applicant is well established and organized limited sector registered with the Companies Act, 1956 and also with the C. Ex. Department since long. As stated in foregoing para that the applicant is an active, alert, sincere, and well experienced regular exporter since long exporting their final products to their various abroad customers and nothing adverse has been detected by the department till the date. The applicant being very senior registered manufacturer and exporter strongly and firmly believes that the impugned order/OIA of the Appellate authority is not proper, just and also not in accordance with the provisions of the excise law. The respondent authority as well as first Appellate authority appears failed to construe, contemplate, comprehend and appreciate the material facts of the case while disposing the present refund case. The said authority has

not paid his proper attention towards lawful submissions of the applicant and facts contained therein and issued the subject OIO/OIA respectively without considering and discussing the written reply as well as various dictums cited by the applicant. Moreover the factual position has not been screened, scanned and analyzed in detail; thereby the disposal of the present rebate case appears not proper way to deal with the same which ultimately appears nothing but an arbitrary action of the said authority.

- ii. the lower authority totally failed to understand that while exporting the excisable goods the applicant has strictly and timely observed their all other vital liabilities as envisaged in the statute therefore for a minor or very slight delay in filing rebate claim is required to be condoned at least to grant relief to a genuine and bonafide exporter. The most vital thing is that the responsibility for delay whatever occurred in submission of this rebate claim is purely on the shoulder of the Customs department i.e. port of shipment who has despite of repeated request of the CHA of the applicant could not trace out the bunch of export documents and when trace it out by the officer of Customs House, Mundra, expiring date to file rebate claim was quite nearer or say received the documents only at 11th hours which ultimately resulted in delay so far prescribed relevant date to file rebate claim as per the statute. However, both the lower authority has unnecessary focused his entire vision simply on the point of time barring and debarred the applicant from availing legitimate benefit of enjoying handsome rebate amount in this case.
- iii. The revision authority is therefore requested and prayed to kindly examine the real facts involved in the present rebate case and to consider it sympathetically and save the innocent applicant from ruthless decision of the lower authority and simultaneously take out the applicant from present crux otherwise there would be very high and shocking impact on the applicant's present activities of export and would also disturb the

entire mechanism of export movements being involvement of rebate amount is not a meagre one but involving to Rs. 58.89 Lakh.

- iv. the applicant with due respect submits that in the present case the core issue is delay in filing the rebate claim by the applicant in terms of the provision of the Section 11-B of the Act, (particularly sub-section (5)(B)(a) of the said Section). As mainly observed by the department, Sir, first of all it is the basic duty to bring to your kind notice the principal reason of delay in submission of the rebate claim. In this context, it is to submit that as earlier stated that the applicant had in fact received the set of various and relevant vital export documents duly endorsed by the proper officer of Customs from the port of shipment very late say at the 11th hours which has resulted in preparation and submission of rebate claim late. Sir, it is aware that without proper endorsement of export documents by the competent authority of Customs the appellant cannot file the rebate claim otherwise such rebate claim is always considered as incomplete one or filed without statutory documents. Sir, in this case the applicant had right from completion of shipment of the export consignments sincerely tried through their nominated CHA to obtain or to collect the documents timely duly endorsed by the Customs. But unfortunately, the applicant could not success for the said task being the in-charge Customs staff of Port of shipment failed to deliver and hand over the vital export documents to our nominated CHA which ultimately resulted in late filing of subject rebate claim. The applicant also ascertained the cause of delay in collecting the documents by their nominated CHA and it was informed by the CHA that delay in release of export documents occurred only due to heavy congestion and work load with the Customs export branch. Moreover, frequent transfer and rotation of Customs staff and also due to introduction and fast implementation of restructuring formula in administration wing which had also disturbed the whole working mechanism in Customs House's

day to day work. Sir, however, nominated Customs House Agent (CHA) of the appellant has after a great and sincere efforts could trace out the bunch of export documents and collect the export documents but unfortunately meantime the last date of filing rebate claim was approaching very fast which resulted in delay in preparing the rebate claim and ultimately its filing with the respondent authority.

- v. the applicant submits that it is undisputed fact that Rebate being related strictly to export of duty paid excisable goods, thereby actual export would be a pre-and vital condition for claiming rebate. Therefore, the applicant strongly believes that claim for rebate filed under Notification No. 19/2004-CE (NT) would accrue upon actual export of excise duty paid goods and mere time barring element would not be a sufficient or sole reason for rejecting the legitimate right of the exporter.
- vi. Further, the applicant very confidently declares that their export was not anywhere declared a fake or bogus one; therefore, it would be rather appreciable step on the department side if the department forgo the simple and only a venial issue of time barring.
- vii. The lower authority has erred by not considering the long view of the entire issue and its impact on the applicant as well as growth of the nation but has simply viewed the issue with narrow mind and disposed off the issue in casual and slip sod manner.
- viii. in present case, it apparently comes out from bare verification of the original/duplicate and triplicate copies of relevant export Application "ARE.I" that it contains due endorsement of Customs and C. Ex. authority for verification with regard to export of goods/shipment as well as valid proof of the shipment effected was of excise duty paid nature respectively. Sir, the applicant therefore empathetically believes that it is quite sufficient to prove the veracity with regard to export goods were shipped with the character of excise duty paid. Sir, therefore the prime condition to claim rebate of excise duty is quite justified from the perusal

of relevant export documents and also the applicant has successfully complied the requirement of the statute, therefore no question is to be raised for rejection of our legitimate rebate claim simply with a sole reason that the claim was filed late. Therefore, the issue involved and as raised by the department in the impugned order is appears quite of condonable nature being of a procedural infraction or technical nature and thereby the applicant prays that the subject rebate claim is required to be sanctioned at your kind level for the best interest of maintaining sanctity of the statutory provision and aim behind the issue of providing boost to the exporters. The applicant therefore in such clear situation requests the revision authority to kindly examine all other aspects and vindicate the issue and do not debarred us from enjoyment of award of rebate of excise duty in export cases as extended under the statute.

- ix. Applicant placed reliance on various case laws.
- x. In view of above, Applicant requested to set aside the OIA and to allow their refund claim.

4. Personal hearing in this case was fixed for 29.06.2022, Shri P.N. Shah, General Manager appeared and reiterated their earlier submission. He submitted that time limit under section 11 B is not applicable in rebate cases. He requested to allow the claim.

5. 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.

6. 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.

7. 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 exported their goods 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. It is seen that in all cases the Applicant had filed their rebate claims beyond one year from the date of export. Applicant argued that some export documents had not been given to them by custom authorities 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 export documents, the Applicant has not submitted any proof to show that they had difficulty in obtaining these documents. 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.

8. Government notes that the Applicant themselves have admitted that there had been a delay in filing of the claims. The reasons however are that the delay was at the end of customs authority in providing some of export documents. 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.

9. The Government finds that the 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."

10. 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.

11. 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.

12. 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 rebate claims filed by the Applicant have correctly been held to be hit by bar of limitation by the Commissioner (Appeals) in the impugned order.

13. In view of above, Government finds no infirmity in the impugned Order-in-Appeal No. Bhv-Excus-000-App-042-15-16 dated 26.11.2015 and upholds the same.


(SHRAWAN KUMAR)

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

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ORDER No. /2022-CEX (WZ) /ASRA/Mumbai Dated 21.11.2022

To,

1. M/s. Steel Cast Ltd., Ruvapari Road, Bhavnagar, Gujrat- 364001.
2. Shri. A.H. OZA(Consultant), Plot No. 2171-72/B, Nandigram, Near Atabhai Circle, Aavedavali Gali, Bhavnagar, Gujrat-364002.

Copy to:

1. The Commissioner of CGST & CX, Central Excise Bhavan, Race Course, Ring Road, Rajkot- 360001.
2. The Commissioner (Appeals-III), Central Excise, 2nd Floor, Central Excise Bhavan, Race Course, Ring Road, Rajkot- 360001.
3. Sr. P.S. to AS(RA), Mumbai.
4. Guard File