

F NO. 195/689/13-RA

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**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. 195/689/13-RA / 1994

Date of Issue: 17.03.2021

ORDER NO. 130 /2021-CX (WZ) /ASRA/MUMBAI DATED 10.03.2021
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 Parveen Industries Pvt Ltd.

Respondent : Commissioner of Central Excise, Belapur Commissionerate

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal
No.BC/614/BEL/2012-13 dated 27.02.2013 passed by the
Commissioner of Central Excise(Appeals), Mumbai-III.

ORDER

This Revision Application is filed by M/s Parveen Industries Pvt Ltd., R-55, TTC Industrial Area, Rabale, Navi Mumbai 400 701 (herein after as "the Applicant") against the Order-in-Appeal No. BC/614/BEL/2012-13 dated 27.02.2013 passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

2. The brief facts of the case are that the Applicant, manufacturer had filed two rebate claims dated 14.02.2012 for Rs. 5,27,469/- and Rs. 3,11,873/- under Rule 18 of Central Excise Rules, 2002 for the goods exported under ARE-1 Nos. 162 and 161 both dated 29.10.2010. On scrutiny it was observed that as required under the provisions of Section 11B of the Central Excise Act, 1944, the said claims were not filed within one year from the date of export i.e. 10.11.2010. Hence the Applicant was issued a Show Cause Notice dated 11.05.2012. The Assistant Commissioner, Central Excise, Belapur-IV Division vide Order-in-Original No. Belapur/Bel-IV/R-III/R-18/820/Praveen/DC/12-13 dated 07.09.2012 rejected the rebate claim as time barred under the provisions of Section 11B of Central Excise Act, 1944. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise(Appeals), Mumbai-III who vide Order-in-Appeal No. BC/614/BEL/2012-13 dated 27.02.2013 rejected their appeal.

3. Aggrieved, the Applicant then filed the current Revision Application on the following grounds:

- (i) The Commissioner(Appeals) had failed to appreciate the legal and factual position for the delay in filing of the rebate claims. The delay was on account of non-receipt of Shipping Bills from the Customs. The Let export orders in respect of the subject consignments were given on 04.11.2010 and the goods were shipped on 10.11.2010. Thereafter, there was

delay in providing copies of the relevant shipping bills from the Customs, due to technical problem of delay in feeding details of the particular EGM filed by the Steamer Agents. Since, the Shipping Bill print-outs were not made available, the Applicant's CHA had approached the Steamer Agents for the details and the Steamer Agent in turn had approached the Customs for feeding the details into the Customs Computer Systems, only after which print outs of the shipping bills were taken out by the Customs on 07.12.2011 and provided to the Applicant. In this regard, a copy of letter dated 22.06.2012 issued by the CHA M/s Omkar Clearing, Mumbai, explaining the factual position was duly submitted to the adjudicating authority. Thus there was delay in generation of Shipping Bill copies at Customs, leading to delay in filing of rebate claims by the Applicant and this delay was on account of the factors beyond control of the Applicant. This is evident from the Shipping Bills, which clearly shows the Print Date as 07.12.2011 14.28 Hrs.

- (ii) The Customs attested Shipping Bill is one of the essential documents evidencing export of goods and it had been held in various decisions that in absence of the Shipping Bill rebate claim cannot be processed and it is also an established practice that in absence of proof in the form of Shipping Bill, the rebates are not allowed by the Department. Therefore, the Applicants could not have filed the rebate claims in absence of the relevant Shipping Bills. Therefore, the Applicants were constrained to file rebate claims only after receipt of the Customs Attested Shipping Bills. Under these circumstances, the time limit for filing of rebate claim was liable to be computed from the date of generation of Shipping Bills and not from the date of export. In this regard, the Applicants had specifically referred to and relied upon the decision of the Hon'ble Gujarat High Court in the case of Cosmonaut Chemicals Vs. U.O.1. [2009 (233) ELT 46 Gujarat HC].

- (iii) The Commissioner(Appeals) ought to have and was bound to follow the ratio of the above judgment and ought to have appreciated that the said judgment prevailed over the instructions at Para 2.4 of Chapter IX of CBEC Manual.
- (iv) As far as the time limit specified under Section 11B of the Central Excise Act, 1944 is concerned, the Commissioner(Appeals) had failed to appreciate the legal position that condition of applicability of time limit under Section 11B of the Act has been consciously removed by the Government under Notification No.19/2004-CE (NT), while retaining all other conditions of the earlier Notification No.41/94-CE (NT), therefore, the time limit stipulated under Section 11B is not applicable to claims for rebate filed under Notification No.19/2004-CE (NT). The Applicant rely upon the Hon'ble High Courts judgment in the case of Dorcles Market Makes Pvt. Ltd. Vs. C.C.E. [2012 (281) ELT 227 MAD and Uttam Steel Ltd. Vs UOI [2003 (158) ELT 274 Bom].
- (v) The Applicant prayed that the Order-in-Appeal be set aside and the rebate claimed by the Applicant be granted along with interest under Section 11BB and other consequential relief.

4. A Personal hearing in this case was fixed on 16.03.2018, 09.10.2019 and 21.11.2019 but none appeared. In view of change in Revisionary Authority, final hearing was fixed on 04.02.2021 and 18.02.2021. On 18.02.2021, Shri Nitin Mehta, Consultant appeared online on behalf of the Applicant. He reiterated the earlier submissions and submitted that delay in filing rebate claim was due to late receipt of EP Copy of Shipping Bill. He stated that Gujarat High Court has covered such issues in Cosmount Chemicals [2009 (233) ELT 46]. He had nothing more to submit.

5. The Applicant in their written submission dated 22.02.2021 submitted the following:

- (i) The sequence concerning filing of the rebate claim is as given below:

Sr.No.	Particulars	Date
1	Clearance of goods for export, under ARE-1 No. 161/10-11 and 162/10-11 and Excise Invoice No 161 & 162	19.10.2010
2	Shipping Bills Nos. 9004761 & 9004757	01.11.2010
3	Ship containing cargo sailing	10.11.2010
4	Date of generation of Shipping Bill by the Customs	07.12.2011 @14.28 hrs
5	Date of filing of rebate claim	14.02.2012

- (ii) There was a delay in providing EP copies of the Shipping Bills by the Customs due to technical problem of delay in feeding details of EGM filed by the Steamer Agents at the Customs Shed in the Customs computer system.
- (iii) The Shipping Bill are dated 01.11.2010 and the same was printed out by the Customs only on 07.12.2011, which is clearly evident from the Shipping Bills itself, which shows the date of printing of Shipping Bills as on 07.12.2011 at 14.28 hours.
- (iv) After receipt of the Shipping Bills, the Applicant had filed the rebate claim with the Assistant Commissioner on 14.02.2012 i.e. within stipulated time limit from the date of EP copies of shipping bills being made available to them by the Customs.
- (v) In the absence of the Shipping bills, evidencing export of the goods neither they could have filed the rebate claim, nor the same would have been processed for grant of rebate by the Assistant Commissioner. Therefore, the relevant date for the purpose of computing the time limit under Section 11B shall be computed from the date when the EP copies of Shipping Bills were made available to the Applicant.
- (vi) The Applicant placed reliance on the judgment of the Hon'ble High Court of Gujarat in the case of Cosmonaut Chemicals Vs Union of India [2009

(233) ELT 46 (Guj.)) and Hon'ble High Court of Rajasthan in the case Gravita India Ltd. Vs UOI [2016 (334) ELT 321 (Raj.)].

(vii) The Applicant prayed that their application be allowed with consequential relief and the impugned Order-in-Appeal be set aside.

6. 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.

7. Government observes that 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 under Section 11B of the Act.

8. Government observes that the Applicant's main argument is that the limitation period of one year is not specified under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 and Section 11B of the Central Excise Act is not relevant for the rebate of duty. This contention is not found legally tenable as for refunds and rebate of duty, Section 11B of the CEA is the relevant statutory provision. In addition to time limitation, other substantive and permanent provisions like the authority who has to deal with the refund or rebate claim, the application of principle of undue enrichment and the method of payment of the rebate of duty, etc. are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation to rebate need not be repeated in Rule 18 and the areas over and above already covered in Section 11B have been left to the Central Government for regulation from time to time. Hence, Government finds that by combined

reading of both Section 11B and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that Rule 18 is independent from Section 11B of the Act. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of filing the rebate claim within 1 year is squarely applicable to the rebate of duty when dealt under Rule 18. Rule 18 is not independent from Section 11B. Further there is no provision under Section 11B, to condone any delay.

9. Government relies on the judgment of the Hon'ble Supreme Court dated 09.02.2016 in the case of UOI Vs Concord Fortune Minerals (I) P. Ltd. [2017 (349) ELT 3 (S.C.)]

Writ jurisdiction not to be invoked to act contrary to law – Appeal against judgment of Single Judge disposed of by making stray observation relating to letter which was not on record before Division Bench – Neither merits of case gone into nor adjudication done on views of Single Judge – Also, liberty granted to writ-petitioner to prefer appeal and if within time as indicated, to be heard on merit – HELD : In respect of statutory provisions governing limitation, even while acting under Article 226 of Constitution of India High Court has to enforce rule of law and ensure that authorities/ organs of States act in accordance in accordance with law – Writ jurisdiction cannot be invoked for directing authorities to act contrary to law – Matter remanded to Division Bench for re-hearing appeal on merits [paras 3,4,5,6]

Appeals allowed.

10. The Government notes that the Hon'ble High Court Madras who 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:*

The 5. claim for refund made by the appellant 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, -

in the case of goods exported out of India where a (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 despatch 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. Further, the Hon'ble Supreme Court has also held in the case of *UOI Vs Kirloskar Pneumatics Company [1996 (84) ELT 401(SC)* that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time-limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may be bound by the time-limit of the said Section. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. Government finds that the ratio of this Apex Court judgment is squarely applicable to this

case. As Section 11B of the Central Excise Act, 1944 provides for the time-limit and there is no provision to extend this time limit. As such the rebate claim is clearly time-barred as it was filed after the time-limit specified under Section 11B of CEA.

13.1 The Applicant has also contended that since E.P. copy of the Shipping Bill was received on 07.12.2011, the time limit of one year should be counted from this date. The Applicant did not mention date of request made for printing of E.P. copy of Shipping Bill. Therefore, delay was in applying by the Applicant or in issuing by concerned customs authority cannot be ascertained. That is why ratio of decision in the case of Cosmonaut Chemicals Vs Union of India [2009 (233) ELT 46 (Guj.)] is not relevant here. Further they had a copy of shipping Bill, rebate claim should have been filed with that copy of shipping bill within the time limit of Section 11B of the Act.

13.2 The adjudicating authority has discussed this point under para 10 of this order. The same is reproduced here –

"10. Delay in getting E.P Copy of Shipping Bill may be due various reasons. It is pertinent to discuss how Shipping Bill is generated in EDI system adopted by Customs. After assessment and examination conducted on the basis of check list, invoice, packing list and other required documents, let export order is given by the authorized Customs Officer in the system. This leads to generation of three copies of shipping bill out of which one is for the exporter. After 'allowed for shipment' endorsement on shipping bill by Customs Officer, goods are shipped. E.P. Copy of Shipping Bill is generated thereafter only when E.G.M. is filed and everything is in order. In case of any error like - 'R' error, 'L' error, 'C' error, 'N' error, 'NC error etc E.D.I. System does not generate E.P. copy. In this situation, exporter makes request for rectification of error with required documents. Only after verification of such documents error rectified & E.P. Copy is generated. Sometimes E.P copy is lost by the exporter. In this case, again on verification of certain documents and being satisfied with the reasons explained by the exporter authorized Customs Officer permits reprint of E.P. copy. Hence onus is on the exporter also to get E.P. copy generated and blaming the E.D.I. system and Customs is not justified. In the instant case, I find that even after getting E.P. copy of shipping bills they delayed further 2 months 7 days in filing rebate claims. Also by any reason if they could not get E.P. copy they should have filed the rebate claims along with the copy of

shipping bills retained by them after shipment and an application explaining the reasons for delay and to submit the E.P. copy in due course to avoid the limitation of time. Only by showing print date of E.P. copy and blaming Customs for delay in providing the same is not proper. Clearly there is negligence on part of the claimant because of which the time limit prescribed in Section 11B cannot be compromised."

14. Government notes that the statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim has to be treated as time barred.

15. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. BC/614/BEL/2012-13 dated 27.02.2013 passed by the Commissioner of Central Excise(Appeals), Mumbai-III and therefore, upholds the same.

16. The Revision Application filed by the Applicant is rejected being devoid of merits.

Shrawan
10/3/2021
(SHRAWAN KUMAR)

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

ORDER No. 30/2021-CX (WZ) /ASRA/Mumbai Dated 10.03.2021

To,
M/s Parveen Industries Pvt Ltd.,
R-55, TTC Industrial Area,
Rabale,
Navi Mumbai 400 701.

Copy to:

1. The Commissioner of GST& Central Excise , Belapur Commissionerte, 1st floor, CGO Complex, Sector 10, CBE Belapur, Navi Mumbai 400 614.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.