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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  
8<sup>th</sup> Floor, Centre-I, World Trade Centre, Cuff Parade,  
Mumbai- 400 005**

F NO. 195/115/14-RA  
389

Date of Issue: 04 DECEMBER 2017

**ORDER NO. 15 /2017- CX (SZ ) /ASRA/Mumbai Dated - 4th December, 2017  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.**

**Applicant: M/s Blue Mount Textiles Bhadrakalliamman Koil Road, Nellithurai (Post),  
Mettupalayam – 641 305.**

**Respondent: The Commissioner of Central Excise (Appeals ), Salem.**

**Subject: Revision Application filed, by M/s Blue Mount Textiles, Bhadrakalliamman  
Koil Road, Nellithurai (Post), Mettupalayam – 641 305, against the  
Order-in-Appeal\_No. 26/2014 SLM-CEX dated 22.01.2014 passed by The  
Commissioner (Appeals) Central Excise, Salem.**

Facts of the case in brief are that appellants have exported 100% Cotton Terry Towels and claimed for rebate of duty under Rule 18 of the Central Excise Rules, 2002. They have filed rebate claim for export of the above goods in respect of A.R.E.1 No.142/ 27.08.2011, 145/30.08.2011, 147/27.08.2011 and 148/31.08.2011 for Rs.7,15,933/-, Rs 4,99,238/-, Rs.5,19,475/- and Rs.18,83,110/- respectively. The rebate claims have been filed, withdrawn by the Applicant and also returned by the department on various dates as detailed below;

Sl. No.	ARE-1 Nos. & Amount (in Rs.)	Date of Export	Original dt. Of filing	Date withdrawn by the applicant	Date of re-submission by the applicant	Date returned to the applicant for want of original documents ssssee	Date of re-submission by the applicant.	Date withdraw n by the applicant	Date re-filed by the assessee
1.	142/ 27.08.11, Rs. 7,15,933/-	29.08.11	16.03.12	--	--	27.04.12	08.06.12	21.06.12	27.02.13
2.	145/ 30.08.11, Rs. 4,99,238/-	01.09.11	16.03.12	04.06.12	--	--	--	--	27.02.13
3.	147/ 27.08.11, Rs. 5,19,475/-	01.09.11	16.03.12	--	--	27.04.12	08.06.12	21.06.12	27.02.13
4.	148/ 31.08.11, Rs. 18,83,110/-	02.09.11	08.06.12	21.06.12	29.08.12	29.08.12	--	--	27.02.13

Since the rebate claims were not filed within one year from the date of export, as per Section 11B of the Central Excise Act, 1944 a Show Cause Notice dated 05.04.2013 was issued to the appellants proposing rejection of rebate claims as time barred. After due process of law, the adjudicating authority has confirmed the proposal initiated in the Show cause Notice.

2. Aggrieved against the above Order-in-Original the appellants filed an appeal with the Commissioner (Appeals) on the grounds that they have filed their rebate claim in respect of A.R.E.1 No.142 on 08.06.2012 and in respect of A.R.E.1 No.147, 148 and 145 on 16.03.2012. They had withdrawn all the four claims due to revision of certain particulars and resubmitted the claims at a later date. Hence the date of submission of claim has to be considered as 08.06.2012 and 16.03.2012 and not 27.02.2013.

3. In the Order in Appeal the Commissioner (Appeals) held that Notification No.19/2004-C.E. (N.T.) dated, 06 09 2004 as amended issued under Rule 18 of the Central Excise Rules, 2002 lays down the conditions and procedure and presentation of claim for sanction of rebate in respect of export of goods under claim for rebate of duty. As per

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Section 11B 1) of the Central Excise Act, 1944 read with Sub-section 5 of Section 110 and Explanation A and B (a) thereto of the Central Excise Act. 1944. Any person claiming rebate of any duty of excise and interest shall file the rebate claim within one year from the date of export in such form and manner as may be prescribed. It becomes very clear from the above statutory provisions that the assessee shall file the rebate claims supported with relevant documents within one year from the date of export. A statutory authority cannot traverse beyond the confines of law and cannot grant relief by bypassing the bar of limitation. The Commissioner ( Appeals) thus rejected the appeal and upheld the order of the lower authority.

4. Aggrieved by the order of the Commissioner (Appeal) the Appellants have filed this Revision Application on the grounds that

- The rebate claims were filed as early as 16.03.2012 and 08.06.2012 well before the due date.
- The rebate claims were filed with certified copies of ARE-Is, Original Bills of Lading, Shipping Bills, and Bank realisation certificates within the prescribed time limits. Such documents were sufficient for sanctioning the rebate, even then the claims were returned for want of original ARE-Is.
- Since the original copies were misplaced by the CHA, the claims were re-submitted by them on 27.02.2013.
- Substantial benefits should not be denied on account of procedural infractions.

5. The personal hearing in the case was held on 29.11.2017, Shri S. Durairaj, appeared on behalf of the Revision Applicant and he reiterated the grounds of appeal in the Revision Application and requested that the Revision Application be allowed.

6. I have gone through the facts of the case. The issue involved is whether the rebate claims are time barred and whether rebate claims that were filed with certified copies of ARE-Is, Original Bills of Lading, Shipping Bills, and Bank realisation certificates within the prescribed time limits, were sufficient for sanctioning the rebate.

7. Scrutiny of the ARE-Is has revealed that the ARE-I Nos. 142/27.08.2011, 145/30.08.2011 and 147/27.08.2011 were all originally submitted on 16.03.2012. ARE-I No. 145/30.08.2011 was withdrawn by the applicant on his own accord on 04.06.2012 and resubmitted on 27.02.2013. ARE-I 142/27.08.2011 and 147/27.08.2011 were both returned to the applicant for want of original documents on 27.04.2012, the Applicant re-submitted them on 08.06.2012, both these were withdrawn by the applicant on their own accord on

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21.06.2012. Both these ARE-Is were finally submitted on 27.03.2013. The last ARE-I No. 148/31.08.2011 was originally submitted on 08.06.2012, withdrawn on by the applicant on their own accord on 21.06.2012, resubmitted on 29.08.2012, This ARE-I was returned by the department on the same day for want of original documents. The ARE-I No. 148/31.08.2011 was finally submitted on 27.03.2013.

8. The date of the export of the ARE-I Nos. 142/27.08.2011, 145/30.08.2011, 147/27.08.2011 and 148/31.08.2011 is 29.08.2011, 01.09.2011, 01.09.2011 and 02.09.2011 respectively. All the four ARE-Is have been submitted on 27.03.2013. Hence all these claims are barred by time limitation as they have been filed clearly beyond the stipulated time of one year.

9. Notification No. 19/2004 CE (NT) dated 06.09.2004 as amended issued under Rule 18 of the Central Excise Rules, 2002 lays down the conditions and procedure and presentation of claim for sanction of rebate in respect of export of goods under claim for rebate of duty under Rule 18 of the Central Excise Rules, 2002. Para 3(b) of the above Notification states that *"claim of the rebate of duty on at excisable goods shall be lodged with the original copy of the application to the Assistant/ Deputy Commissioner having jurisdiction over the factory of manufacture or warehouse, as the case may be, the Maritime Commissioner of Central Excise and the A.C/D.C having jurisdiction over the factory of manufacture or warehouse, as the case may be, the Maritime Commissioner of Central Excise shall compare with the duplicate copy of application received from the export and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate claim either in whole or in part. As per Section 11B (1) of the Central Excise Act, 1944 read with Sub-section 5 of Section 11B and Explanation A and B (a) thereto of the Central Excise Act, 1944 any person claiming rebate of any duty of excise and interest shall file the rebate claim within one year from the date of export in such form and manner as may be prescribed."*

10. It becomes very clear from the above statutory provisions that it is mandatory that the assessee shall file the rebate claims supported with relevant documents within one year from the date of export. But in this case since the appellants have filed all the rebate claims along with the complete set of original documents only on 27.02 2013. Therefore these claims are liable to be rejected as time barred, as filing of claims with original ARE-Is within one year from the date of export is mandatory.

11. The Applicants claim that the rebate claims were filed with certified copies of ARE-Is, within the prescribed time limits, as the originals were misplaced by the CHA and that such

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documents were sufficient for sanctioning the rebate. However, a careful reading of the procedures for presentation of a claim for rebate to Central Excise as per Notification No. 19/2004 dated 06.09.2004, it is clear that the claim of rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant/ Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture. Rebate claims filed with ineligible documents are liable for rejection and hence the department was right in returning the rebate claims filed on 27.04.2012 and 29.08.2012. The claim of the Applicant that the date of submission of rebate claim filed with the attested copies of the ARE-Is should be taken as 16.03.2012 and 08.06.2012, therefore, cannot be accepted. The contentions of the applicants are not acceptable.

12. The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 held that the "Tribunal, acting under provisions of Central Excise 1944 has no equitable or discretionary jurisdiction to allow a rebate claim de hors the limitation provisions of Section 11B *ibid*. Under law laid down by Apex Court that the authorities working under Central Excise Act, 1944 and Customs Act, 1962 have no power to relax period of limitation under Section 11B *ibid* and Section 27 *ibid* and hence powers of Tribunal too, being one of the authorities acting under aforesaid Acts, are equally circumscribed in regard to belated claims, under Section 11B of Central Excise Act, 1944.

13. Further, it has been held by the Hon'ble Supreme Court in the case of *Collector Land Acquisition Anantnag & Others v. Mst. Katji & Others* reported in 1987 (28) E.L.T. 185 (S.C.) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

14. Hon'ble Supreme Court has also held in the case of *UOI v. Kirloskar Pneumatics Company* reported in 1996 (84) E.L.T. 401 (S.C.) that High Court under writ jurisdiction cannot direct the Customs Authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not 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. The ratio of this Apex Court judgment is squarely applicable to this case, as Section 11B of the Central

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Excise Act, 1944 provides for the time limit and there is no provision under Section 11B to extend this time limit or to condone any delay.

15. The Government holds that since the rebate claims were not filed with original documents within the prescribed time limits. The lower authorities have therefore rightly rejected the said rebate claim as time barred.

**ORDER**

16. The Government, accordingly upholds the Orders in Appeal dated 22.01.2014 passed by the Commissioner (Appeals) and rejects the instant Revision Application.

17. So ordered



M/s Blue Mount Textiles,  
Bhadrakalliamman Koil Road,  
Nellithurai (Post),  
Mettupalayam – 641 305.

ORDER No. 15 /2017-CX (SZ) /ASRA/ Mumbai

Copy to;

1. The Commissioner of Central Excise (Appeals) Salem.
2. The Commissioner of CGST & Central Excise, Coimbatore.
3. The Deputy/Assistant Commissioner Central Excise, Coonoor.
4. Sr. P.S. to AS(RA), Mumbai.
5. Guard File .
6. Spare Copy.

*Ashok Kumar Mehta*  
04.12.2017

(ASHOK KUMAR MEHTA)  
Principal Commissioner (RA) & Ex-Officio  
Additional Secretary to Government of India  
Mumbai

**True Copy Attested**

*Sankarsan Munda*  
SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex. (P. & R)

Dated: 4th DECEMBER, 2017