

F NO. 195/1009-1010/13-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  
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Mumbai- 400 005**

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F NO. 195/1009-1010/13-RA /2939

Date of Issue: 02/06/21

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ORDER NO. 197 /2021-CX (WZ) /ASRA/MUMBAI(2-05-2021) DATED 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 Meghmani Industrial Ltd.

Respondent : Commissioner of Central Excise, Ahmedabad

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 52-53/2013 (Ahd-I) CE/AK/Commr(A)/Ahd dated 10.10.2013 passed by the Commissioner(Appeal-V), Central Excise, Ahmedabad.

**ORDER**

The two Revision Applications are filed by M/s Meghmani Industrial Ltd., Unit-II, Plot No. 27, Vatva GIDC Industrial Estate, Vatva, Phase-I, Ahmedabad – 382 445 (hereinafter referred to as “the Applicant”) against the Orders-in-Appeal Nos. 52-53/2013 (Ahd-I) CE/AK/Commr(A)/Ahd dated 10.10.2013 passed by the Commissioner(Appeal-V), Central Excise, Ahmedabad.

2. The brief facts of the case are that the Applicant, manufacturer had filed the rebate claims of Rs. 1,44,200/- and Rs. 5,33,025/- both dated 14.03.2013 under Rule 18 of Central Excise Rules, 2002. On scrutiny of the documents, it was observed that the goods had entered the SEZ unit on 25.02.2012 as per the endorsement made by the Preventive Officer, Dahej, SEZ, Customs on the original and duplicate copies of the ARE-1s. The inward register entry of Applicant’s SEZ unit also showed that the goods deemed to have been exported under the respective ARE-1s was received in their factory premises on 25.02.2012. Thus the rebate claims should have been filed within one year from the date of payment of duty, which was 24.02.2012 in both the cases. Hence the Applicant was issued Show Cause Notices for rejection of the rebate claims as the claims had been filed after the prescribed time limit of one year from the date of the goods leaving the Applicant’s factory premises, as per Section 11B of the Central Excise Act, 1944. The Deputy Commissioner, Central Excise, Division-III, Ahmedabad-I vide Order-in-Original Nos. MP/1486/DC/2013-Reb and MP/1486/DC/2013-Reb both dated 04.06.2013 rejected the two rebate claims on the grounds of limitation. Being aggrieved against the said two Order-in-Original, the Applicant then filed appeal with the Commissioner(Appeal-V), Central Excise, Ahmedabad. The Commissioner(Appeals) vide Orders-in-Appeal Nos. 52-53/2013 (Ahd-I) CE/AK/Commr(A)/Ahd dated 10.10.2013 rejected their appeals. The details are given below:

Sr. No.	Date of filing rebate claim	ARE-1 No. & dt	Total Amount (Rs)	Order-in-Original No & date	Order-in-Appeal No. & date
1	5998 dt 14.03.13	115 dt 24.05.12	1,44,200	MP/1486/DC/2013-Reb dt. 04.06.4013	52-53/2013 (Ahd- l) CE/AK/Commr(A) /Ahd dated 10.10.2013
2	5999 dt 14.03.13	116 dt 24.05.12	5,33,025	MP/1487/DC/2013-Reb dt. 04.06.4013	

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

- (i) The Commissioner (Appeals) had grossly erred in rejecting the rebate application on the ground of limitation. They had filed the rebate applications within prescribed time limit of one year from the relevant date as prescribed under law. It is undisputed fact that the claims were rejected merely on the ground of limitation and no any other discrepancies were found in the applications. Further, it is not disputed that they had filed their first rebate applications for rebate of an amount of Rs. 1,44,200/- and Rs. 5,33,025/- both dated 09.04.2012 with the Range officer which was within time limit. The rebate application dated 09.04.2012 was accepted also by the department and forwarded to the Divisional authority for verification. Therefore, the Applicant was under a bonafide belief that their accepted by the department and rebate would be granted to it as this application was not rejected or returned back from the department. On the basis of foregoing facts, the applicant submits that rebate application filed on 09.04.2012 within time limit of one year as prescribed under the law.
- (ii) The rebate in pursuance of the two applications both dated 09.04.2012 was not granted for a long period nor any intimation or status with regard to these applications were communicated to the Applicant, and therefore, they inquired with Department about the status of rebate claims, and at that time they came to know that the rebate claims had to be filed with the Divisional Officer instead of Range Officer. The Applicant

immediately rectified its mistake and filed a fresh application of rebate with the divisional officer on 14.03.2013 with all requisite documents.

- (iii) On the basis of foregoing facts and circumstances of the case, their rebate applications have to be treated as filed within the prescribed limitation period, and filing of another application on 14.03.2013 was merely a formality to rectify the procedural aspects. Since the first rebate application was filed on 09.04.2012 and same was accepted by the concerned authority and forwarded for verification, the rebate applications have to be treated as filed within the time limit since it was never rejected by the Department.
- (iv) The order of Commissioner (Appeals) is wholly illegal and unreasonable because rebate claims were denied even though the rebate applications were filed within prescribed time limit under Rule 18 of the Central Excise Rules read with Section 11 B of the Central Excise Act. The rebate applications cannot be treated as filed beyond the period of limitation because it is settled law that if refund/rebate claim is filed before wrong forum under bona fide belief, the period spent therein would be excluded for reckoning the period of limitation. In this they placed reliance on the following case laws:
- (a) CCE, Pune Vs Rajdhani Impex Pvt. Ltd. [2007 (214) ELT 64 (Tri - Mum)];
- (b) CCE Vs ALA Engineering Ltd. [2011 (21) STR 367 (Guj)];
- (c) CCE, Vadodara Vs Shankar Packaging Ltd. [2013 (291) ELT (Tri - Ahmd)];
- (d) Tafe Ltd. Vs CCE, Chennai [2008 (227) ELT 80 (Tri - Chennai)];
- (e) Bhansali & Company [2012 (284) ELT 299 (GOI)].
- (v) In the aforesaid cases, it is held that if delay occurred as the appellants/applicants had filed their appeals/applications before a

wrong forum under the bona fide belief, then in that case, the period spent before wrong forum was to be excluded while deciding the issue of time bar. It is also held that rebate/refund claim is not hit by time bar, if the original application has been filed within time limit though before wrong authority. The time spent in prosecution before wrong authority is to be excluded and this is settled principle in respect of law of limitation.

- (vi) On the basis of foregoing decisions, the Applicant submitted that they had filed their original rebate applications within the time limit and the same were not returned by the Department undisputedly, and therefore, they were under the bona fide impression that their applications which were filed before the concerned authorized authority was duly accepted by the Department.
- (vii) The Commissioner (Appeal) has also erred in relying upon the decision of Bombay High Court in the matter of Everest Flavours Ltd. 2012 (282) ELT 481 (Born.) and various other decisions which hold that claim of rebate has to be filed as per the limitation provided under the statute and the rebate claim filed beyond the time limit prescribed under the statute cannot be entertained. The Applicant reiterates that the rebate claims were filed within the time limit prescribed under section 11 B and there was no delay in filing the rebate claims. Therefore, the case law cited by the Commissioner (Appeals) was not applicable to their present facts. The above referred case law cited by the Applicant in identical facts has to be considered while deciding the issues arising in their present appeal.
- (viii) The applicant submits that the Commissioner (Appeals) while rejecting the rebate claim of the applicant has failed to consider the settled legal position that when substantive part of the law is complied with, then the benefit of rebate cannot be denied merely on technicalities. It is an admitted position of fact that the goods had been exported to SEZ Unit under officer under prescribed documents and were duly received by the

SEZ as per endorsement of the proper Officer of Customs on the ARE - I document. Thus the export of goods and the payment of duty thereon are undisputed facts. It is also an undisputed fact that the documents pertaining to the exports were filed with the Department, though with the wrong officer at the initial stage. The concerned Department which had wrongly received the documents filed by the Applicant had forwarded documents to the Divisional Office-in-charge and from 10.04.2012 to 13.03.2013 the documents remained with the rebate sanctioning office.

(ix) Considering all these facts and mainly considering the fact that there is an export of goods and payment of duty for which the Applicant had filed the rebate claims, the denial of the substantive benefit of the rebate merely on the ground that it was filed with the wrong jurisdictional office is an action without jurisdiction. The Commissioner (Appeals) therefore ought to have sanctioned the rebate claims as rejecting the same was against the very concept and intention of the legislature to promote exports. There is a substantive compliance of law in the present facts and therefore the benefit of rebate cannot be denied merely on technicalities. The Applicant refers to and relies upon the following decisions where in a categorical view has been taken while sanctioning rebate claim that non-compliance of procedural conditions is a condonable lapse of the export of goods is not under dispute. The order of the Commissioner (Appeals) therefore deserves to be set aside at once in the interest of justice.

(a) Krishna Filament Ltd., Gujarat [2001 (131) ELT 726];

(b) IN RE Modera Process Printers (G01) [2006 (204) ELT 632].

(x) By a number of decisions rendered by the Appellate Tribunal as well as the Government of India in its revisionary jurisdiction in cases of Allansons Ltd. [1999(111) ELT 295 (G01)], Indo Euro Textiles Pvt. Ltd. [1998 (97) ELT 550 (G01)], Birla VXL Ltd.[1998 (99) ELT 387 (Trib.)] and Simplex Global Impex Vs Commissioner [2002 (145) ELT 470 (Trib.)], it is

decided that a benefit given by the Government for enhancing exports could not be denied for any technical reasons or venial infractions. Thus, it is a settled legal position by virtue of the decisions of the Tribunal as well as the Government of India that substantive right of any benefits on exported goods cannot be denied if there is a substantial compliance of the provisions of law. A pragmatic view has to be taken for augmenting export or the country so that the country may earn more foreign exchange; and therefore export benefit like rebate ought not to be rejected on the grounds like those raised by the Department.

- (xi) Therefore, the action of the Commissioner(Appeals) in rejecting the Applicant's claims even though there were no dispute about the export of the goods defeats a legitimate right of the appellant for export made and therefore, it deserves to be set aside in the interest of justice.
- (xii) The Applicant prayed that the Orders-in-Original be set aside with consequential relief of sanctioning rebate with interest on delayed rebate.

4. Personal hearing in this case was fixed on 21.02.2018, 23.08.2019 and 17.09.2019, however no one appeared. Since, there was a change in the Revisionary Authority, hence a final hearing was fixed for 07.01.2021, 14.01.2021 and 21.02.2021. On 21.02.2021, Shri Manohar, Sr, General Manager Commercial appeared online on behalf of the Applicant. He reiterated his written submission and claimed that they had filed rebate claims with jurisdictional Range and the same was forwarded to Division Office. Therefore, the claim was not time barred.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Orders-in-Original and Orders-in-Appeal.

6. Government observes that the issue involved in the instant Revision Application is whether Appellant is entitled for the rebate claim which was rejected on the grounds of limitation.

7. On perusal of the records, Government observes that the Applicant had filed two rebate claims for Rs. 1,44,200/- and Rs. 5,33,025/- both dated 14.03.2013 under Rule 18 of Central Excise Rules, 2002. The Applicant was issued Show Cause Notices for rejection of the rebate claims as the claims had been filed after the prescribed time limit of one year from the date of the goods leaving the Applicant's factory premises i.e. the date of payment of duty, which was 24.02.2012 in both the cases. The Deputy Commissioner, Central Excise, Division-III, Ahmedabad-I vide Order-in-Original Nos. MP/1486/DC/2013-Reb and MP/1486/DC/2013-Reb both dated 04.06.2013 rejected the two rebate claims on the grounds of limitation and the same was upheld by the Commissioner(Appeals).

8. Government observes that the Applicant in their replies dated 11.04.2013 to the Show Cause Notices had submitted

"4. *Since all the documents were received, we have also prepared the claim for Rebate of excise for subjected export and submitted the same to the department. However, at the time of submission, by mistake the same was submitted alongwith proof of exports and it had gone in the file of Annexure-19 without any separate acknowledgement there for. Since we have prepared and submitted the claim, we remained under impression of having filed properly and have left the matter to received the rebate claim in routine course of business.*

5. *However, in the month of Feb, 2013, while reconciling the pending refund claim with financial records due to year end procedure, we come to know out claim for caption ARE-1 was pending and when we inquired about Divisional rebate section for payment, it came as shock and surprise to us that their records were showing that the rebate claim was not received at their end. Then, we have started investigation and checked with our unit whether they have send the documents to us or not and searched ever where in record and place but we could not find the documents. A copy of correspondence exchanged with our SEZ unit is enclosed herewith as Annexure-B.*

*Finally, when our SEZ unit informed us that they have already send the documents with re-warehousing certificate long back, we realized that it might have been submitted with proof of exports and immediately written a letter to Divisional office for the documents and as such the same were found with POE's. A copy of the said letter is enclosed wherewith as Annexure-C, for your reference and upon receipt of the documents, we*



.. *have immediately re-submitted the same with Rebate section – Divisional Office.*

*Even the jurisdictional range officials who received the proof of exports, send the POE to divisional office on receipt of the same at there end, on regular basis, also missed the same.*

*Therefore, we have filed the rebate claim with the office in time, though, it may be treated as filing of the claim with the wrong section along with POE.”*

Government finds that the Applicant vide their letter dated 13.03.2013 addressed to the Deputy Commr. of Central Excise, Division-III, Ahmedabad-I had submitted that –

*“Sub: Submission of Annexure-19*

*With reference to above, we had filed Proof of export on 09.04.2012. In above POE by mistake we file all documents of ARE No.115/11-12 & 116/11-12 dt. 24.02.2012 which are exported under rebate claim.*

*We request you to return back above original document as we can file rebate claim.”*

And the Applicant had received back the original documents from the Department on 13.03.2013 and then filed the rebate claim on 14.03.2013.

9. Government observes that there are catena of 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. Government places reliance on the case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}] and 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.

10. Applying the ratio of the afore stated judgment, Government holds that rebate claims filed by the Applicant are made within period of one year from the date of export. In the instant case the original date of filing of these claims i.e. on 09.04.2012, shall be taken as the date of submission of the original claims and subsequent applications are in continuation of the original claims and therefore are not barred by limitation under Section 11B of the Central Excise Act, 1944.

11. In view of foregoing discussions, it is quite clear that time limitation is to be computed from the initial date of filing such applications as available in relevant office records. Government holds that, since the said applications are initially filed within stipulated time limit i.e. on 09.04.2012, the same are to be treated as filed in time. The applications are to be decided on merit in

accordance with law treating the same as filed in time. In view of above position, case is required to be remanded back for fresh consideration.

12. In view of the above, Government, sets aside the impugned Orders-in-Appeal Nos. 52-53/2013 (Ahd-I) CE/AK/Commr(A)/Ahd dated 10.10.2013 passed by the Commissioner(Appeal-V), Central Excise, Ahmedabad and remands back the case to original authority to decide the same afresh, after due verifications of documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

13. The Revision Applications are disposed off with consequential relief.

  
12/05/21  
(SHRAWAN KUMAR)

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

ORDER No. 197 /2021-CX (WZ) /ASRA/Mumbai Dated 12.05.2021

To,  
M/s Meghmani Industrial Ltd.,  
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Copy to:

1. The Commissioner of CGST & CX, Ahmedabad South, Central Excise Bhavan, Ambawadi, Ahmedabad – 380 015.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
- ✓ 4. Spare Copy.