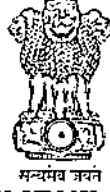


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/321/2014-RA /2949.

Date of Issue: 02/06/21

ORDER NO. 198/2021-CX (WZ)/ASRA/MUMBAI DATED 11.05.2021 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 Environ Speciality Chemicals Pvt. Ltd.

Respondent : Commissioner of Central Excise (Appeals-I), Central Excise & Service Tax Zone, Mumbai-1

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PD/44/Th-I/2014 dated 16.06.2014 passed by Commissioner of Central Excise (Appeals-I), Central Excise & Service Tax Zone, Mumbai-1.

ORDER

This Revision Application is filed by M/s Environ Specialty Chemicals Pvt. Ltd., Building No. 38, Warehousing No 12, Arihant Compound, Purma Village, Bhiwandi, Thane- 421 302 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PD/44/Th-I/2014 dated 16.06.2014 passed by Commissioner of Central Excise (Appeals-I), Central Excise & Service Tax Zone, Mumbai-1.

2. The issue in brief is that the Appellant, exporter, during the months of December, 2011 and March 2012 had exported excisable goods under Rule 19 of the Central Excise Rules, 2002 vide ARE-1 Nos 02/05.12.2011, 03/08.12.2011 and 06/01.03.2012 and then filed 03 rebate claims for Rs. 97,297/-, Rs. 63,036/- and Rs. 1,56,626/- on 03.12.2012 for the quarter ending December 2011, March 2012 and June, 2012 respectively under Rule 5 of the Cenvat Credit Rules, 2004. The said rebate claims were returned back to the Applicant vide Deficiency Memo dated 27.02.2013. The Applicant complied with the discrepancies and re-submitted vide their letter dated 18.03.2012. Since the refund claims were filed beyond the period of one year from the date of shipment as provided under Section 11B of the Central Excise Act, 1944, the Applicant was issued Show Cause Notice dated 06.06.2013 for rejection of the rebate claim. The Deputy Commissioner, Central Excise, Kalyan-I Division, Thane-I Commissionerate vide Order-in-Original No. R-1231/2013-14/1697 dated 30.12.2013 rejected rebate claims being time barred. Aggrieved, the Appellant then filed appeal with the Commissioner of Central Excise (Appeals-I), Central Excise & Service Tax Zone, Mumbai-1. The Commissioner(Appeals) vide his Order-in-Appeal No. PD/44/Th-I/2014 dated 16.06.2014 rejected their appeal and upheld the Order-in-Original dated 30.12.2013.

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

- (i) The impugned order is a non-speaking order, in as much as, the learned Commissioner (Appeals) has neither considered the contentions raised by the applicant in the appeal memorandum before him nor discussed the case laws relied upon by them. The ratio of the rulings in the case laws relied upon by them are squarely applicable to the present case.
- (ii) The Commissioner (Appeals) grossly erred in rejecting their Refund claims on the ground that they are hit by limitation under Section 11B of the Act, conveniently ignoring the fact that the claims in question were originally filed on 03.12.2012 were well within the stipulated time limit of one year from the relevant date (i.e. the date on which the ship carrying the exported goods left the country) and that the date of resubmission of the said refund claims i.e. 22.03.2013 after removal of deficiencies was not relevant for determining the time limit of one year as prescribed in Section 11 B of the Central Excise Act. 1944, therefore, the impugned order needs to be quashed and set aside on this very ground itself.
- (iii) The refund claims filed on 03.12.2012 were returned back under Deficiency Memo communicated only on 11.03.2013 i.e. after a lapse of more than three months on the grounds that there were certain discrepancies in the documents submitted in support of the claims and also for the reason that the Shipping Bills and Bills of Lading were not submitted. If the department had returned the refund claims on the same day when they were submitted or within the period prescribed under Para 3.2 of the CBEC's Manual of Supplementary instruction i.e. within 15 days from the date of receipt of the claim, the deficiencies could have been removed and the claims resubmitted within the period of one year from date of export. However, by consuming more than 3 months period to issue the deficiency memo and return the claim, the department ensured that the refund claim became barred by limitation before being returned to the Applicant.

- (iv) The Commissioner(Appeals) failed to appreciate in proper perspective the true spirit of Para 2.4 & 3.2 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions. A combined reading of these two Paras in the CBEC's Excise Manual indicates the following: -
- (a) The refund/rebate claim should be returned back with Query Memo if not found to be attached with the requisite documents, at the time of submission itself. However, this option was not available when the refund/rebate claim was received and was at a later date found to be bereft of the requisite document(s).
 - (b) Where the refund/rebate claim is accepted in the Divisional Office and is found not to be attached with the requisite documents during scrutiny at a later date, the option available to the department is to raise a Deficiency Memo. In such situations the refund/rebate claim itself cannot be returned back and hence would be considered to have been received in the Divisional Office on the date when it was actually filed.
 - (c) If any document is not available with the Applicant for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period,
 - (d) The claim cannot be returned back for having certain discrepancies therein or in the documents attached therewith. Such discrepancies should be pointed out to the Applicant through a Deficiency Memo.
- (v) In the present case the claim was filed on 03.12.2012 and returned back under Deficiency Memo only on 11.03.2013 i.e. after a lapse of more than three months, on the grounds that one single refund claim was filed for three quarters, copies of relevant shipping bills and bill of lading was not attached with the refund claim, the amount claimed as

refund was not debited in the Cenvat account and that the refund claim was not filed in duplicate.

- (vi) As per Para 3.2. of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions, it required that for the Divisional Office to check the completeness of the claim at the time of receipt of the rebate/refund claim itself. This para does not permit return back of the claim itself for deficiency therein or for not being accompanied by the requisite documents. It states that in case of deficiency observed after receipt of the claim, the Divisional Office within 15 days of such receipt is required to point out deficiency in the claim to the Applicant. In such situation, the provision does not state that the date on which the deficiency is removed would be considered as the date of filing of the claim, which implies that inspite of the deficiency the rebate claim would be considered to have been filed on the date when it was initially submitted in the Divisional Office.
- (vii) The instructions contained in Chapter 1, Para 1.1 of the CBEC's Manual of Supplementary instruction wherein it is stated that the instructions are supplemental to and must be read in conjunction with the Act and the Rules. On a conjoint reading of Paras 1.1 and 1.2 of Chapter 1 of the manual, it is also apparent that instructions therein are applicable throughout India and officers are not entitled to depart there from, without previous approval of the Commissioner, who in turn is required to obtain sanction from CBEC for such deviation. This ground of appeal was raised even before the learned Commissioner (Appeals), however no findings was recorded in this regard in the impugned order. The Commissioner (Appeals) had simply relied on Para 2.4. of Chapter 9 of the CBEC's Manual of Supplementary instruction without referring to Para 3.4. of Chapter 9 of the CBEC's Manual of Supplementary instruction.
- (viii) The refund claims initially filed well within the limitation prescribed under Section 11B of the Central Excise Act, 1944, cannot be rejected

as time barred if it was resubmitted after rectification of mistakes and removal of deficiencies as pointed out to them. Even if the date of removal of deficiency is considered as the relevant date of submission of the claim, the period availed by the department to issue the deficiency memo from the date of filing of refund claim, needs to be excluded while calculating the limitation period of one year.

- (ix) In the present case the refund claim was initially submitted on 03.11.2012 returned back under Deficiency Memo dated 27.02.2013 and received by the applicant on 11.03.2013 i.e. after a lapse of more than three months. The deficiencies were removed and the refund claim resubmitted on 22.03.2013 i.e. within a period of 10 days from the date of receipt of deficiency memo. The exports for which the refund claims were filed were made on 16.12.2011, 14.12.2011 and 05.03.2013. If the period of three months taken by the department for issuing the deficiency memo are excluded for calculating the limitation period of one year, all the claims filed by the applicant would be within the said period of limitation set out in Section 11 B of the Central Excise Act, 1944.
- (x) Further, if the department would have returned the refund claims on the same day when they were submitted or within the period prescribed under Para 3.2. of the CBEC Manual of Supplementary Instruction i.e. within 15 days from the date of receipt of the claim, the deficiencies could have been removed and the claims resubmitted within the period of one year from date of export. However, by consuming more than 3 months period to issue the deficiency memo and return the claim, the department ensured that the refund claim became barred by limitation before being returned to the Applicant. The applicant cannot be penalized for the failure of the department in performing the assigned duty in time. In this they placed reliance on the following few case laws:

- (a) GOI Order No. 1749/12-CX dated 10.12 2012 in the case of Ids Nicholas Piramal (I) Ltd which has been accepted by the department. In this case it was held that the date of filing of initial claim is relevant for deciding the period of limitation;
 - (b) GOI Order No. 938/13-CX dated 16.07.2013 in the case of M/s De-Print Export decision In this case also it was held that the initial date of filing of rebate claim is rightly the date of filing of claim;
 - (c) GOI Order No 226/2014-CX dated 01.05 2014 in the case of M/s. Oleofine Organics India (P) Ltd, Thane;
 - (d) M/s IOC Ltd [2007 (220) ELT 609 (GOI)];
 - (e) CCE Delhi Vs M/s Aryan Export and Industries [2005 (192) ELT 89 (Del.)];
- (xi) Without prejudice to the submission contained herein above, without admitting but assuming, the Applicant submitted that the learned authority failed to consider that if the application for refund of accumulated Cenvat credit is not made within the period of limitation prescribed under Section 11 B, only the remedy is barred and not the substantive right to claim refund of Cenvat Credit on inputs used for manufacture of goods which are exported as per Rule 5 of the Cenvat Credit Rules, 2004. To put it differently, the limitation prescribed under Section 11B ibid only deals with the procedural law and not the substantive law.
- (xii) The scheme of providing refund of duty paid on inputs used for manufacture of export goods is a reward to the exporters by the Government of India for the foreign currency which these exporters bring into the Country. Besides, the incentive scheme is extended to the exporters with a view to ensure that taxes/duties are not exported along with the goods. Such incentives also help the exporters in selling their goods at competitive prices and thus withstand the competition in the international market. If the exporters are denied such benefits on procedural grounds it will lead to a situation where the Central Excise duty paid on such inputs used in manufacture of export goods

by the manufacturer/exporter are retained by the Government with consequential export of goods along with taxes. There are no provisions under Section 11 of the Central Excise Act, 1944 which empowers or permits the Central Government to retain the amount of refund. Even the provisions of unjust enrichment do not find applicability to exports under claim of rebate.

(xiii) As per inbuilt provisions of Section 11B of the Act, and allegation made in the impugned show cause notice and upheld in the Order in Original, the delay in filing of refund claim can only be classified as a contravention in relation to period of limitation attracting penal provisions, but denial of the refund claim on the ground of limitation is certainly out of scope and jurisdiction of the said statute. Although this ground was raised before the learned Commissioner (Appeals), no findings are recorded in this regard in the impugned order. In this regard they place reliance on the following case laws:

(a) On para 30 and 38 of the judgment of the Hon'ble Madras High Court in the case of M/s Ford India Pvt Ltd [2011 (272) ELT 353 (Mad)];

(b) M/s Coftah Exports [2006 (205) ELT 1027 (GOI)];

(c) Union of India vs. Suksha International & Nutan Gems & Anr [1989 (39) ELT 503 (SC)];

(d) Union of India vs. A.S. Narasimhalu [1983 (13) ELT 1534 (SC)];

(e) Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)].

(xiv) The Commissioner (Appeals) in para 12 and 13 of the impugned order had observed that as per Notification No. 27/2012-CE (NT) dated 18.06.2012 and Section 11B (2) of Central Excise Act, 1944, filing of refund claim by following the necessary procedure within one year from the relevant date is mandatory and hence the claim is correctly rejected by the lower authority. In this regard, the Applicant submits that the learned authority failed to realize that the refund claim was initially filed well within the prescribed period of one year from the

relevant date. The period of one year from the date of export as contemplated in the Notification No. 27/2012-CE (NT) dated 18.06.2012 and Section 11B of Central Excise Act, 1944, expired when the department sat over the refund claim for more than three months and thereafter returned the claim under deficiency memo. Further, no procedure mentioned in the Notification No. 27/2012-CE (NT) dated 18.06.2012 or Section 11B (2) of Central Excise Act, 1944 was violated by them when the initial claim of refund was filed well within the period of limitation. The rulings relied upon by the Commissioner(Appeals) in Para 14 to 19 are not application to the present case and hence cannot be relied upon to deny the refund claims to the Applicant.

4. A personal hearing in the case was held on 07.08.2018 which was attended by Shri P.S. Namboodiri, Advocate on behalf of the Applicant and Shri Rakesh Kumar, Asstt. Commissioner, Div-IV, CGST Bhiwandi on behalf of the Respondent. The Applicant reiterated the submission made in the revision application and pleaded that the instant claims were filed on 03.12.2012, the department kept it with them till 27.02.2013 and then raised the objection with deficiency memo, to which they replied on 13.03.2013 and the claims were returned to them on 22.03.2013. It was pleaded that, had the department raised the objections, they would have replied. Hence it was pleaded that the Revision Application be allowed and the Order-in-Appeal be set aside in view of the case laws and provisions given in supplementary manual. The Respondent Department reiterated the order of the Commissioner(Appeals) and written brief filed today. It was pleaded that the Revision Application be dismissed and the Order-in-Appeal be upheld. However there was a change in the Revisionary Authority, hence personal hearing was fixed 02.12.2020, 07.12.2020, 10.12.2020 and 29.02.2021. On 29.02.2021, Shri Prasannan Namboodiri, Advocate appeared online on behalf of the Applicant. He reiterated his written submission made in the application as well as before earlier Revisionary Authority during PH. He submitted that refund claim was submitted in time

combined for three quarters. When it was returned by the department for filing separately for each quarter, the time limit prescribed under Section 11B was already over. Therefore original filing of claim should be taken as relevant date.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-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 or not.

7. On perusal of the records, Government finds that the Applicant's initial claims dated 03.12.2012 addressed to the Dy. Commisisoner of Central Excise, Range-I, Division-Kalyan-I were received by the department on 03.12.2012 which were well within the time i.e. one year from the date of export.

"Please find here with the application for Refund of Cenvat Credit for the following Quarter.

1. December-2011
2. March -2012
3. June - 2012."

The Superintendent (Tech-I), Central Excise, Kalyan-I vide letter dated 27.02.2013 returned the entire original refund claim papers with a request to comply with the discrepancies and submit the claim papers afresh and that the date of filing will be considered as the date on which the Applicant will re-submit the refund claim as per Para 2.4 of Chapter 9 of CBEC's Central Excise Manual. The Applicant then vide their letter dated 18.03.2013 addressed to the Dy. Commissioner of Central Excise, Range-I, Division-Kalyan-I received by the department on 22.03.2013 resubmitted the refund claims:

Sub : Applicant for Refund of Cenvat Credit for June-2012 for Rs. 1,56,626.00, December 2011-Rs. 97,297 & March 2012 - Rs. 63,036.00

Ref : Excise Registration No. AAACE8977HXM001

Ref : F.No. V/Refund/Environ/871/KI/2013 – Kalyan, 27.02.2013

We are in receipt of your letter dtd 27.02.2012, on 11.03.2013 from your Range Office, stating that all the requirement, in this regard, we are resubmitting the refund claim again and making separate claim for each quarter and enclosing the following document

- 1. Form A –Separate Claim for Each Quarter*
- 2. Shipping Bills & Bill of Lading & ARE-1 copies attested by customs*
- 3. Self attested copies of RG 23 Part II & ER 1 for the month of November 2012*
- 4. The claims are in duplicate.*

We therefore request to your good self that, please consider our cenvat Refund claim.”

On receipt of the resubmitted refund claims, on scrutiny, the Applicant was issued Show Cause Notice dated 06.06.2013 for rejection of the rebate claim since the refund claims were filed beyond the period of one year from the date of shipment as provided under Section 11B of the Central Excise Act, 1944.

8. Government observes that there is 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.

9. 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 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.

10. 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 are as given below:

Sr. No	Quarter ending	ARE-1 No. & dt	S/B No. & dt	B/L dt	Amt refund claim (Rs)	Refund initially filed on	Resubmitted on
1	Dec. 2011	02 dt. 5.12.11	6537223 dt. 5.12.11	8.12.11	97,297	03.12.12	22.03.13
2	Mar.2012	03 dt. 8.12.11	6587707 dt. 8.12.12	16.12.11	63,036		
3	Jun. 2012	06 dt. 1.3.12	7797062 dt 29.2.12	5.3.12	1,56,626		

Government holds that, since the said applications were initially filed within stipulated time limit i.e. on 03.12.2012, 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.

11. In view of the above, Government, sets aside the impugned Order-in-Appeal No. PD/44/Th-I/2014 dated 16.06.2014 passed by Commissioner of Central Excise (Appeals-I), Central Excise & Service Tax Zone, Mumbai-1 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.

12. The Revision Application is allowed with consequential relief.

Shrawan
11/05/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 198/2021-CX (WZ)/ASRA/Mumbai DATED 11.05.2021.

To,
M/s Environ Speciality Chemicals Pvt. Ltd.,
Building No. 38, Warehousing No 12,
Arihant Compound, Purma Village,
Bhiwandi,
Thane- 421 302.

Copy to:

1. The Commissioner of GST & Central Excise, Thane Commissionerte, 3rd and 5th floor, ACCEL House, Wagle Industrial Estate, Thane0400 604
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.