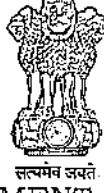


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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.198/110/15 -RA/S 265

Date of Issue: 01.07.2021

ORDER NO. 225 /2021-CX(WZ)/ASRA/MUMBAI DATED 18.06.2021
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 : The Commissioner of Central Excise, Belapur.

Respondent : M/s Standard Greases & Specialities Pvt. Ltd.,
Plot No. C-60, TTC MID Area, Turbhe,
Navi Mumbai - 400 614.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
CD/445/BEL/2014-15 dated 09.06.2015 passed by the
Commissioner of Central Excise (Appeals), Mumbai Zone-II.

ORDER

This Revision Application has been filed by the Commissioner of Central Excise, Belapur Commissionerate (hereinafter referred to as "the department") against the Order-in-Appeal No. CD/445/BEL/2014-15 dated 09.06.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II.

2. Brief facts of the case are that M/s Standard Greases & Specialities Pvt. Ltd., Plot No. C-60, TTC MID Area, Turbhe, Navi Mumbai - 400 614 (hereinafter referred to as "the respondents") had filed claims for rebate of duties paid on finished excisable goods exported by M/s Shell India Markets under Rule 18 of the Central Excise Rules, 2002 along with relevant documents. The details are as under :-

Sr. No.	Rebate Claim No. / Date	ARE-1 No./Date	Date of shipment	Amount of rebate claimed
1	438/16.06.2014	07/10.06.2013	14.06.2013	3,90,394/-
2.	439/16.06.2014	08/12.06.2013	15.06.2013	1,95,197/-

On scrutiny of the rebate claims it was observed that the claims were filed on 16.06.2014 to the department wherein the date by which the claims should have been filed was 13.06.2014 i.r.o. Rebate Claim No. 438 and 14.06.2014 i.r.o. Rebate Claim No. 439 respectively. The rebate sanctioning authority issued SCN No. V/Rule 18/SGSPL/438-439/14-15 dated 14.08.2014 for late filing of the claims i.e. after a period of one year from the date of export i.e. shipment for violation of provision of Section 11B(1) of the Central Excise Act, 1944. The adjudicating authority vide Order in Original No. Belapur/Dn-II/Range-I/199/DC/12-13 dated 15.09.2014 rejected the impugned rebate claims on the ground that the same were hit by the limitation of time under the provisions of Section 11B of Central Excise Act, 1944 readwith Rule 18 of the Central Excise Rules, 2002.

3. Aggrieved by the Order in Original, the respondents filed an appeal before the Commissioner of Central Excise (Appeals), Mumbai Zone – II. The Appellate Authority vide Order in Appeal No. CD/445/BEL/2014-15 dated 09.06.2015 set aside the impugned order in original and allowed the appeal filed by the respondents. The appellate authority while passing the impugned order in appeal observed that :-

3.1 The respondent had filed the claim electronically on 14.06.2014 and this fact was informed to the Deputy Commissioner on 16.06.2014 by way of a letter.

3.2 The goods covered under ARE-1 No. 07 dated 10.06.2013 had been exported under Shipping Bill No. 5854710 dated 10.06.2013 and Mater Receipt No. 105789 dated 14.06.2013 and the date of shipment was 14.06.2013 whereas the respondent had filed rebate claim electronically on 14.06.2014 and hard copy of the claims was filed on 16.06.2014. The CBEC vide Circular No. 956/17/2011-CX dated 28.09.2011 facilitated the assesses to file refund request electronically and apparently the respondent had filed the refund request on 14.06.2014.

3.3 In respect of the goods covered under ARE-1 No. 08/12.06.2013 had been exported under Shipping Bill No. 5899909 dated 12.06.2013 and Mater Receipt No. 105928 dated 15.06.2013 and the date of shipment was 15.06.2013. as such the said rebate claim had been filed within the stipulated period of one year from the relevant date as per Section 11B of the Central Excise Act, 1944.

4. Being aggrieved with the above Order-in-Appeal, the department has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds :-

4.1 With respect to Claim at Sr.No.1, the claimant has submitted that the mail letter from the Shipping Company mentions that the ship sailed from JNPT to Mundra Port before finally leaving Indian Territorial water. However, this does not seem to be relevant as the date of shipment was shown on the

Mate Receipt and was also endorsed by Customs authorities on the reverse ARE-1 and further no documents were submitted to counter that the relevant date be not taken from the endorsement of Customs authorities on the Shipping documents.

4.2 With respect to Claim at Sr.No.2, the claimant had stated they had submitted their online application on 14.06.2014, i.e. within one year from the date of shipment and that the provisions of Para 2.4 of Chapter 9 of CBEC Supplementary Manual deals with Refund and not Rebate claims. However, as is seen from the Explanation (A) under Section 11B, "refund" includes rebate of duty and as such the prescribed instructions are to be taken as applicable for rebate claims also.

4.3 Relying on the decision of the Bombay High Court in the case of M/s. Everest Flavours Ltd., Vs. Union of India- 2012(282) E.L.T 481(Bom) wherein it has been held that "Section 11B of Central Excise Act, 1944 specially comprehends a rebate of Excise duty on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. Since the statutory provision for refund in Section 11EB *ibid*-brings within its preview, a rebate of excise duty on goods exported out of India or on materials used in the manufacture of such goods, Rule 18 of Central Excise Rules, 2002 cannot be read independent of the requirement of limitation prescribed in Section 11B *ibid*....An application for refund has to be filed, together with documentary material as required. ..Where the statute provides a period of limitation, in the present case in Section 11B for a claim of rebate, the provision has to be complied with as a mandatory requirement of law.

4.4 The Notification No.19/2004 refers to the electronic filing of declaration, the procedures of presentation of the claim for rebate of Central Excise Office applies even for the claims filed electronically. Hence, the date of filing of the rebate electronically within a period of one year, shall not be the date relevant for the of Section 11B read with Rule 18 of Central Excise

Rules, 2002 as the same was without mandatory duty payment details, and the export documents are not uploaded electronically along with the claim.

4.5 Thus, as the documents which are to be filed mandatorily along with the rebate claims as per Notification No.19/2004 are not submitted along with the rebate claim filed online, the claim cannot be taken as filed on time as without any document, verification of the claim is not possible. Therefore, as per Notification No.19/2004, both the application and the documents have to be mandatorily submitted within the prescribed time limit.

4.6 For filing refunds/rebate claims under Central Excise Act, 1944, limitation period has been provided under section 11B of the said Act which is "Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty to the Assistant Commissioner/ Deputy Commissioner of Central Excise before the expiry on one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence as the applicant may furnish establish that the amount of duty of excise and interest, if any, on such duty in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person."

Explanation (A) & (13) to the said section defines the words 'refund and relevant date' in respect of refund and rebate claims and the same is reproduced verbatim, as under: -

(A) "refund includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India.

(B) Section 116 (a) 0) of the Act "relevant date" means: - if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded leave India.

4.7 In the present case Commissioner (Appeals) has quoted the Section 12(1) of Limitation Act, 1963 which provides that " In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded",

However, the Hon'ble Supreme Court decision 1997(90) E.L.T.2643(5.C) in the case of Assistant Collector of Customs Vs. Aram Electrical manufacturing Co in Civil Appeal Nos. 1811-26 of 197 and Civil Appeal Nos. 1503-1519 of 197 decided on 28.01.1997 regarding Refund - Limitation - Unjust Enrichment Supreme Court lays down guidelines for disposal of appeals and special leave petitions - Section 11B of Central Excise Act, 1944 Section 27 of Customs Act, 1962 Section 72 of Contract Act - Articles 321 136, and 226 of Constitution of India.

5. The respondent had filed their submissions vide letter dated 22.04.2016 as follows :-

5.1 The department had reproduced provisions of Explanation A & B of the Section 11B thereto. However, the department had avoided to read and interpreted the Explanation B same to avoid the Revision Application being held as "Infructuous" and Non Maintainable in the eyes of Law.

5.2 The main issue as argued and correctly upheld in findings in the Order in Appeal —refer Para 6- is How to Calculate period of Limitation of One Year in case of Goods Exported by Sea, is it the One Year as mentioned in the beginning and prior to Explanation (B) or as mentioned in Explanation (B) to the said Section 11B of the Act. This has been reproduced by the Commissioner in his Revision Application also.

5.3 It is the common understanding of Interpretation of Law that the Section or Rules have to be read together and cannot be read and interpreted and applied in isolation. In the instant case, the Goods had been Exported by Ship through Sea Route and this fact had been confirmed in the Order In Original in Findings as well. In view of this, the Time Limit of One year will

start from the Date the Ship Left India (And Not the Date on which the Ship Left the Nhava sheva as wrongly ascertained in the Order in original).

5.4 The department had tried to show that the Order in Original dealt with only On-Line Filing of 2 Rebate Claims and how it was wrong in not considering provisions of Notification 19/2004 and thereby completely ignoring the Findings of the Commissioner (Appeals) Mumbai II at Sr 6 of the Oder in Appeal.

6. A Personal hearing in this case was fixed on 03.03.2021 and 10.03.2021. No one appeared for the personal hearing on behalf of the department. Shri Kabir and Shri Santosh Pawar appeared on behalf of the respondent on line and reiterated their submissions. They submitted that the electronic filing of claims cannot be disregarded. They stated that a written submission would be filed in two days through email.

7. 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.

8. On perusal of records, Government observes that the respondent M/s Standard Greases & Specialities Pvt. Ltd., Navi Mumbai had filed 2 rebate claims totally amounting to Rs.5,85,591/- under Notification No. 19/2004 C. Ex. (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules 2002 read with Section 11 B of Central Excise Act, 1944, for the goods exported by them. The impugned rebate claims were rejected vide Order in Original No. Belapur/Dn-II/Range-I/199/DC/12-13 dated 15.09.2014 on the ground that the same were hit by the limitation of time under the provisions of Section 11B of Central Excise Act, 1944 readwith Rule 18 of the Central Excise Rules, 2002. The appellate authority had allowed the appeal filed by the respondent. The department has filed the instant Revision Application on the grounds as mentioned in forgoing paras.

9. The Government finds that the impugned goods were exported by the respondent under ARE -1 No. 07/10.06.2013 and ARE-1 No. 08/12.06.2013.

9.1 It is found that the date of shipment of goods in respect of ARE-1 No. 07/10.06.2013 is 14.06.2013. The adjudicating authority has recorded the findings in respect of the rebate claim under ARE-1 No. 07/10.06.2013 as under –

“With respect to Claim at Sr. No.1, the claimant has submitted the mail letter from the Shipping Company mentions that the ship sailed from JNPT to Mundra Port before finally leaving India, Territorial waters. However, this does not seem to be relevant as the date of shipment is shown on the Mate Receipt and is also endorsed by Customs authorities on the reverse of the relevant ARE-1s and further no documents were submitted to counter that the relevant date be not taken from the endorsement of Customs authorities on the shipping documents.”

9.2 The Government finds that that adjudicating authority had not mentioned any details other than above observations to reject the impugned rebate claims. In the absence of the relevant details i.e. dates as per the Shipping Bills, date as per Mate Receipts, the discrepancy noticed thereon by the rebate sanctioning authority and the reply from the shipping company etc., it is impracticable to ascertain the reasons for rejection of impugned rebate claim by the adjudicating authority. As such, the Government finds that the order passed by the lower authorities is cryptic and vague. However, from perusal of the Order in Appeal the date of shipment in respect of goods exported under ARE-1 No. 07/10.06.2013 is taken as 14.06.2013.

9.3 It is also noted that the date of shipment in respect of goods exported under ARE-1 No. 08/12.06.2013 is 15.06.2013.

10. Now, the Government observes that the respondent had filed the rebate claims electronically on 14.06.2014 in respect of duty paid on goods exported

under impugned ARE-1s. These facts have not been refuted by the department. The Government finds that the department has rejected the impugned rebate claims on the ground that the same were filed on 14.06.2014 without enclosing relevant documents. And, being incomplete claims, the department deduced that the date of filing the rebate claims cannot be taken as 14.06.2014 as per the provisions of Notification No. 19/2004-CE(NT) dated 06.09.2004. Further, the adjudicating authority observed that the respondent filed the rebate claims physically together with relevant documents on 16.06.2014 i.e. beyond stipulated period of one year from the date of shipment as envisaged under Section 11B of the Central Excise Act, 1944 and as such the same were hit by time limitation.

11. In this regard, 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 11 B 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.

(a) In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

“Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944.”

(b) Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

“claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed

from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962.”

(c) In a case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}], wherein the petitioner had submitted the rebate claim in time although, in wrong format and the said claim was returned to the petitioner upon which the petitioner represented the same claims along with necessary supporting documents later on and these applications were treated by the Department as time barred and claims were rejected. 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.....”

—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.

12. Hon'ble High Court of Delhi in the case of C.C.E. Vs Arya Exports and Industries [2005(192) ELT 89] has also held that date of filing claim is the date on which claim was filed initially in form not prescribed or without documents.

13. It is found that in the instant case the respondent had filed the rebate claims electronically on 14.06.2014, as facilitated under CBEC Circular No. 956/17/2011-CX dated 28.09.2011. The Government, therefore, holds that the date of filing of the impugned rebate claims, though incomplete, was 14.06.2014.

14. In view of foregoing discussions, Government is of the considered view that the rebate claims filed by the respondent are to be treated as filed within stipulated time limit since they were initially filed within stipulated time limit i.e. electronically on 14.06.2014.

15. In view of the above discussion, Government holds that the appellate authority has rightly allowed the appeal filed by the respondent. Thus, Government does not find any infirmity in the Order-in-Appeal No. CD/445/BEL/2014-15 dated 09.06.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II and, therefore, upholds the impugned order in appeal.

16. The Revision Application is dismissed being devoid of merit.


18/6/21
(SHRAWAN KUMAR)

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

ORDER No. 225/2021-CX(WZ) /ASRA/Mumbai DATED 18.06.2021

To,
The Commissioner of CGST,
Belapur Commissionerate,
C.G.O. Complex, 10, C.B.D.
Belapur, Navi Mumbai – 400 614.

Copy to:

1. M/s Standard Greases & Specialities Pvt. Ltd., Plot No. C-60, TTC MIDC Area, Turbhe, Navi Mumbai - 400 614.
2. The Commissioner of GST & CX, Appeals Raigad, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai - 400 614.
3. The Deputy Commissioner (Rebate), GST & CX Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai
- ~~5. Guard file.~~
6. Spare Copy.