

REGISTERED SPEED POST



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. 195/700/13-RA, 195/131/14- RA,
195/158/14-RA, 195/336/13-RA,
198/120/13-RA / 12³³

Date of Issue :- 09/08/2018

ORDER NO. 241-245 /2018-CX(WZ)/ASRA/MUMBAI DATED 26/7/18
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SETION 35EE OF THE CENTRAL
EXCISE ACT,1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/700/13-RA	M/s Cipla Ltd	Commissioner, Central Excise, Mumbai-I
2	195/131/14- RA	M/s Cipla Ltd	Commissioner, Central Excise Mumbai-I
3	195/158/14-RA	M/s Cipla Ltd	Commissioner, Central Excise, Mumbai-I
4	195/336/13-RA	M/s Cipla Ltd	Commissioner, Central Excise, Mumbai-I
5	198/120/13-RA	Commissioner, Central Excise, Mumbai-I	M/s Cipla Ltd

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944 against the Order in Appeal No. BR/49/M-I/2013 dtd. 21.03.2013, PD/15-19/M-I/2014 dtd. 27.01.2014, PD/28-31/M-I/2014 dtd. 17.02.2014, PD/82-83/M-I/2014 dtd. 19.08.2014, and BPS/89-94/M-I/2013 dated 23.09.2013 passed by the Commissioner (Appeals-I), Central Excise, Mumbai Zone-I.



ORDER

The following Revision Applications (Sr. No. 1 to 4) applications are filed by M/s Cipla Ltd., Mumbai (hereinafter referred to as 'applicant') against the Orders-In-Appeal as detailed in Table below passed by Commissioner (Appeals-I), Central Excise, Mumbai Zone-I. The Revision Application at Sr. No. 5 below is filed by the Commissioner, Central Excise, Mumbai-I

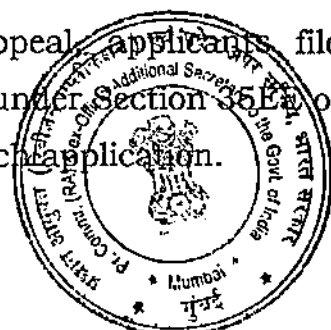
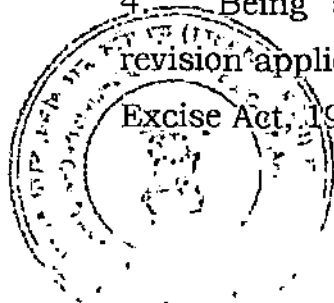
TABLE

Sl.No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date
1	195/700/13	BR/49/2013 Dt.21.03.2013	KII/103-R/2013(MTC) DT.20.02.2013
2	195/131/14	PD/15-19/M-I/2014 Dt. 27.01.2014	KII/378-R/2013(MTC) DT.21.05.2013 KII/457-R/2013(MTC) DT.12.06.2013 KII/453-R/2013(MTC) DT.12.06.2013 KII/432-R/2013(MTC) DT.12.06.2013 KII/433-R/2013(MTC) DT.12.06.2013
3	195/158/14	PD/28-31/M-I/2014 Dt.17.02.2014	KII/603-R/2013(MTC) DT.30.08.2013 KII/789-R/2013(MTC) DT.30.09.2013 KII/788-R/2013(MTC) DT.30.09.2013 KII/787-R/2013(MTC) DT.30.09.2013
4	195/336/14	PD/82-83/M-I/2014 Dt.19.08.2014	68/MTC-R/2014-15 DT.09.05.2014 65/MTC-R/2014-15 DT.09.05.2014
5	198/120/13	BPS/89-94/M-I/2013 DT:23.09.2013	KII/107-R/2013(MTC) DT:13.03.2013 KII/108-R/2013(MTC) DT:13.03.2013 KII/109-R/2013(MTC) DT:13.03.2013 KII/110-R/2013(MTC) DT:13.03.2013 KII/111-R/2013(MTC) DT:14.03.2013 KII/112-R/2013(MTC) DT:14.03.2013

2. The Brief facts of the cases (Sl. No. 1 to 4 above) are that the applicant M/s Cipla Ltd. manufacturing Pharmaceutical products 30 of the Central Excise Tariff Act, 1985 and were clearing their finished goods as well as for export on payment of duty. They opted for rebate in respect of goods cleared for export on payment of duty. The rebate sanctioning authority vide Order in Original rejected the rebate claims on the ground that the subject rebate claims were filed after the expiry of one year from the date of export and hence time barred and therefore were liable for rejection.

3. Being aggrieved by the said Orders-in-Original applicant filed appeals before Commissioner (Appeals) who after consideration of all the submissions, rejected their appeals and upheld impugned Orders-in-Original.

4. Being aggrieved with these Orders-in-Appeal applicants filed these revision applications before Central Government under Section 35E of Central Excise Act, 1944 on the grounds mentioned in each application.



5. The Revision Application at Sl. No. 5 is filed by the Commissioner of Central Excise, Mumbai -I against Order in Appeal No. BPS/89-94/M-I/2013 dtd. 23.09.2013 wherein Commissioner (Appeals) held that the date of filing of the rebate claims would be the date when the claims were submitted to the department for the first time, the ground of rejection of the claims in the impugned orders cannot sustain and hence the rebate claims would be available for payment to the Appellants.

6. A Personal Hearing was held in this case on 28.06.2018 and Shri Prashant M. Mhatre, Senior Manager Indirect Taxation duly authorized by the applicant appeared for hearing. No one appeared on behalf of the Revenue. The applicant reiterated the submission filed through Revision applications and in written submissions and case law 2015(321)ELT 45 Madras (HC) filed on the date of hearing. In view of the same it was pleaded that Order in Appeal be set aside and Revision Application be allowed. In respect of Revision Application No. 198/120/13 filed by the department, Shri Prashant M. Mhatre pleaded that Order in Appeal be upheld and Revision Application be dismissed.

7. In their submissions dated 28.06.2018 wherein they mainly contended as under :-

7.1 They have correctly submitted their rebate claims within one year from the relevant date (i.e. Date of shipment) as per the provision of section 11B of central excise Act, 1944.

- The Miscellaneous Provision of Part-IV under chapter 8 of CBEC Excise Manual of Supplementary Instructions at para 1 reproduced here for your perusal

"1.1 - The rebate sanctioning authority should point out deficiency, if any, in the claim within 15 days of lodging the same and ask exporter to rectify the same within 15 days. All queries / deficiencies shall be pointed out once the collectively and piecemeal queries should be avoided. The claim of rebate of duty on export of goods should be disposed of within a period of two months."

As per this, Rebate sanctioning authority should have followed due process by issuing deficiency cum show cause notice and even after if claimant failed to comply with the requirement as noticed by deficiency cum show cause notice, rebate sanctioning authority have rights to reject rebate claim by passing order.

- Further, there is no provision for returning of rebate claim under Section, - Rule, Notification and Supplementary instruction under central excise Act, 1944. Therefore, even under dis

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power, if any rebate claim returned to claimant, and if same has re-submitted with required compliance by the claimant, then it should not be treated as fresh submission of rebate claim.

- It is accepted facts, that rebate sanctioning authority can exercises their rights to issue deficiency memo in the interest of Revenue of Government of India if they have observed any discrepancies in rebate claim. But condition of 15 days has not been waived/ relaxed to them also. Therefore, our rebate claim has been returned to us along with deficiency memo after completion of more than two months is incorrect.
- The proposal for rejection of rebate claim has been made by second deficiency memo, wherein again new deficiency has pointed. Therefore, the act of rebate sanctioning authority is not proper, because all discrepancies should have pointed out in single attempt, pointing of deficiencies in peaceful manner is not maintainable. Therefore, after removing deficiency when we have submitted our rebate claim again same has been returned with another deficiency memo. Therefore, as per provision of para 1.1 of chapter-IV of CBEC supplementary manual it is incorrect practice followed by rebate section.
- Therefore, it look likes that most of our rebate claims were returned to us merely to avoid the limitation period of sanctioning rebate claim. Because as per the supplementary instructions at Part-IV of chapter 8 rebate claim must be disposed of within a period of two months.
- Further, most of the rebate claims have been returned us with very technical issues, namely, 'Net weight not tallying, Chapter heading mentioned on excise invoice is different on shipping bill, Consigner name mention on ARE.1 is wrong, The wrong rate of assessment of duty'
- Therefore, the deficiencies pointed in rebate claims were neither on account of omission of statutory provision nor because of dispute in export. Some of objections have been summarized here for your perusal.
 - ❖ Triplicate copy of ARE.1 are not submitted along with claim
 - ❖ Shipping Bill does not tally in ARE.1
 - ❖ Air Way Bill number does not tallying
 - ❖ Quantity does not tally with excise invoice and ARE.1
 - ❖ Consigner name wrongly mentioned in ARE.1
 - ❖ Air Way Bill Not Submitted
 - ❖ Net weight not tallying
 - ❖ Chapter heading mentioned on excise invoice is different on shipping bill



- ❖ The wrong rate of assessment of duty
- ❖ Shipping Bill date is wrong in Air way Bill.
- ❖ Change of address in ARE-1 . Duty payment certificate not submitted
- ❖ Visible copy of custom invoice number not submitted and destination name is different in packing list. And many more...
- But Facts remains, the word “resubmission” is not defined under the provision of section 11B of central excise Act, 1944. The word “resubmission” included “submission” and we have correctly submitted our rebate claim as per the provision of section 11B of Central Excise Act, 1944.
- Therefore, rebate claim resubmitted after removing deficiency pointed out by original authority cannot alters its status/ nature / originality, it remains the same. Therefore, condition of limitation as per the provision of section 11B of central excise Act, 1944 is not applicable as it is not fresh claim.
- Further, we have correctly followed the procedure and conditions laid down under the Notification No. 19/2004-CE (NT) dt. 6.9.2004 issued under Rule 18 of central excise Rule 2002, we have not contravened the provisions of said Act.
- However, procedural instruction given under chapter 8 of manual are of guiding in nature and it is also silent on resubmission issue, rather there is no as such any instruction about returning of rebate claim to the claimant along with deficiency memo, Further, if any provision / procedure given under supplementary instruction is of contradictory to the provision of section of Act then the provision of section will prevail over, as in the present case section 11B of Central Excise Act, 1944 does not direct / instruct on resubmission issue.
- In fact, as per chapter 8, part IV of supplementary instruction, there is no any specific guidelines / provision for returned of rebate claim, it has explained procedural part for if any discrepancies observed in rebate claim. Therefore, they would like to submit that an issuance of a deficiency memo and returning of rebate claim with deficiency memo are both the separate issue, and as per the provisions of Notification 19/2004-CE (NT) dt. 6.9.2004 issued under Rule 18 of central excise Rule 2002 there is no provision or direction for the returning of rebate claim. Therefore, the act of sanctioning authority is “void ab initio and ultra-virus.

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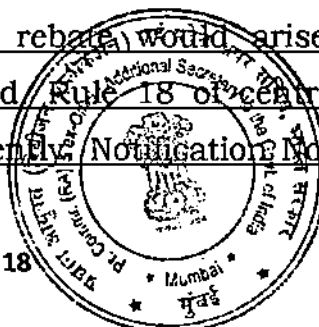


- To support their contention, they would like to rely on following citations. In similar matter vide **GOI Order No.938/13-Cx Dated 16.07.2013. Government of India -**

Held that "Rebate limitation -Relevant date-time to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944".

❖ **2015 (321) E.L.T.45 (Mad.) H.C. - Dy. Comm. of C. Ex., Chennai Vs Dorcas Market Makers Pvt. Ltd.**

- **Export-Rebate/Refund-Limitation -Relevant Date-Question of rebate of duty is governed separately by section 12 of Central Excise Act,1944 and the entitlement to rebate would arise only out of notification under section 12(1) ibidi-Rule 18 of central excise rules,2002 is to be construed independently- Rebate of duty under rule 18 ibidi should be as per the notification issued by Central Government - Notification 19/2004-C.E. dated 06.09.2004 which supersede the previous Notification No.41/94-C.E. did not contain the prescription regarding limitation, a conscious decision taken by Central Government- Assesse actually exported the goods - Their entitlement to refund is not at all in doubt - In absence of any prescription in the scheme, the rejection of application for refund as time-barred is unjustified - section 11B ibid.**
- ❖ Further, **The Hon'ble Supreme Court Bench** comprising Hon'ble Justice Mr. H. L. Dattu and Hon'ble Justice Mr.Amitava Roy on 28th September 2015,
- Dismissed Petition for Special Leave to Appeal (Civil) CC No.17561 of 2015 filed by the Deputy Commissioner of central excise, Chennai against the Judgement and order dated 26th March 2015 of Madaras High Court in Writ Appeal No.821 of 2012, as reported in 2015(321)E.L.T.45(Mad.) (Dy Commissioner V Dorcas Market Pvt.Ltd.). While dismissing the petition , The Hon'ble Supreme Court passed the following order :
"Delayed Condoned.
Dismissed."
- The Madras High Court in its impugned order has held that question of rebate of duty is governed separately by section 12 of Central Excise Act,1944 and the entitlement to rebate would arise only out of a notification under section12(1) ibid/ Rule 18 of Central Excise Rules, 2002 is to be construed independently/ Notification No 19/20014-C.E.,



dated 6.9.2004 does not contain the prescription regarding limitation. Assessee having exported the goods and in absence of any prescription in the scheme, the rejection of application for refund as time-barred is unjustified.

[Deputy Commissioner V Dorcas Makers Pvt.Ltd.- 2015 (325) E.L.T. A104 (S.C.)]

Also enclosed relevant page of section 12 of Central Excise Act, 1944.

❖ **2016 (333) E.L.T.246 (Guj.) (High Court of Gujarat)-**

APAR Industries (Polymer Division) V. Union of India -

- Refund/**Rebate** - Limitation - Resubmission of rebate claim after removing defects - Petitioner originally submitting claim in time albeit in wrong format of Annexure-19 by oversight - In any case, no specific format prescribed either in Rule 18 of Central Excise Rules 2002 or in notification issued thereunder - Time limit provided under section 27 of Customs Act, 1962/section 11B of Central Excise Act,1944 must be computed from date of original filing of rebate claim and not from the date of resubmission of claim after rectification mistakes/defect- section 27 of Customs Act, 1962 - Section 11B of Central Excise Act,1944 - Article 226 of Constitution of India.

❖ **2017 (355) E.L.T. 342 (Mad) (High Court of Madras) - Hyundai Motors India Ltd. V. Dept. of Revenue, Ministry of Finance. -**

- Export rebate - Limitation - relevant date - claim under notification No. 19/2004-C.E.(N.T.) - contention that no specific relevant date prescribed in notification not acceptable in view of proviso (a) to sub-section (2) of section 11B of Central Excise Act,1944 - Relevant date not date of payment of additional duty paid subsequent to export of goods but date of export - Goods exported on 10-11-2008 and 15-11-2008 and assessee paying additional duty on 15-12-2008- Claim of rebate of duty made on 27-11-2009 - Rejection of claim filed beyond one year of export upheld -Rule 18 of Central Excise Rule, 2002 - section11B of Central Excise Act,1944

- In view of aforesaid submission they requested to take all these facts on records and allow their revision application with consequential relief.

8. Government observes that in respect of rebate claims rejected vide six Orders in Originals mentioned in Revision Application No.198/120/13-RA at Sl. No. 5 of the Table at para 1 on the ground of non submission within a period of one year as contemplated under Section 11 B of the Central Excise Act, 1944, the applicant filed appeal before the Commissioner (Appeals) Commissioner (Appeals) vide Order in Appeal) No. BPS/89 to 94

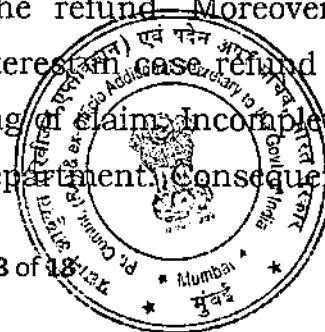


dated 23.09.2013 set aside the orders in original and allowed the appeal filed by the applicant. Aggrieved by the said Order in Appeal, the Department filed the Revision Application No. 198/120/13 on the following grounds:-

8.1 Order-In-Appeal No. BPS/89 to 94/M1/2013 dated 23/09/2013 passed by Commissioner (Appeals)--1, Central Excise and Service Tax, Mumbai Zone-I, in respect of appeal filed by M/s Cipla Ltd., Mumbai-400001, has erred in setting aside the Order- In -Original Nos. i) K-11/107-R/2013 (MTC) ii) K-II/108-R/2013 (MTC) iii) K-11/109-R/2013 (MTC) iv) 1(-11/110-R/2013 (MTC) all dated 13.03.2013 and v) K-11/111-R/2013 (MTC) vi) K-II/112- R/2013 (MTC) both dated 14.03.2013 passed by the Deputy Commissioner, Rebate Section, Central Excise, Mumbai-I, and is not proper and legal on the following grounds:

i) The exporter has filed rebate claim under Section 11B of the Central Excise Act, 1944, for claiming rebate. The exporter is required to submit his claim in the prescribed format and procedure as laid down in Para 2 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions, which states as under; "

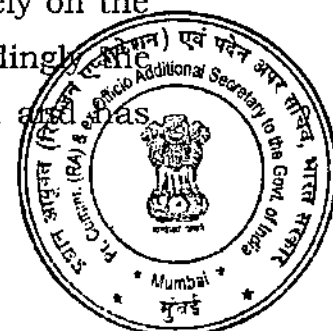
- Any person, who deems himself entitled to a refund of any duties of excise or other dues, or as been informed by the department that a refund is due to him shall present a claim in proper Form, along with all the relevant documents supporting his claim and also the copies of documents/records supporting his declaration that he has not passed on the duty incidence.
- The claim will be filed with the Deputy/Assistant Commissioner of Central Excise with a copy to the Range Officer.
- The claim shall be presented in duplicate and shall be duly signed by the claimant or by a duly authorised person on his behalf and shall be pre-receipted (with revenue stamp on original copy, where necessary).
- It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest on case refund is not given within three months of the filing of claims. Incomplete claim will not be in the interest of the Department. Consequently, submission of



refund claim without supporting documents will not be allowed. Even if post or similar mode files the same, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case of non-availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted that the claimant in not in disadvantageous position with respect to limitation period,"

From the above it is evident that, the submission of refund / rebate claim without supporting documents is not allowed and that such claim should be rejected or returned with Query Memo. It further states that the claim shall be taken as filed only when all relevant documents are available. The claim may be received so that the claimant was not hit by limitation period. Here, the exporter had failed to append the requisite documents required for the rebate claim, as aforesaid, that is at the time of initially filing the rebate claim on dates mentioned in the table above. Therefore, on scrutiny, the claim was found to be inadmissible. The applications filed on the earlier dates cannot be said to be proper Rebate / refund application within the meaning of Section 11B CEA, 1944. The rebate claim was correctly returned back in view of Para 2.4. An opportunity was provided to the exporter to rectify the documents and present the rebate claim within a period of 1 year. However, the exporter after removing the deficiency on his own delayed the said rebate claims and again filed only on later dates as mentioned in the table above. Such claims cannot be construed as resubmitted claim and the dates mentioned the table above cannot be made applicable to freshly submitted claim. Had the exporter filed the rebate claim within the period of 1 year from the date of export this claim would have been treated as correctly filed and the benefit or rebate would have been passed on to the exporter but in the instant case the exporter failed to submit the same timely. Therefore the rebate claim was rejected solely on the ground that it is hit by bar of limitation of time. Accordingly, the rebate claim filed on latest dates is to be treated afresh and has been correctly rejected by the Adjudicating Authority.

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ii) The Relevant date to be considered for Refund / rebate claim is well defined and prescribed in the Section 11 B of the Central Excise Act, 1944 the explanation provided therein

8.2 There is no provision in Law where quasi-judicial or judiciary is empowered to amend / rewrite the statute rather they have to decide the issue within the frame work of the statute. In the instant case Commissioner (Appeal)-I by allowing the extended period beyond 1 year and allowing the violation of Section 11B provision by the exporter as discussed above. In the instance case the Commissioner (Appeal) in passing on the benefit to the exporter has forgot that he is not empowered to change the status of Section 11B by extending the period of filing the Rebate claim beyond the period of one year. If such extension of relaxation is deliberated by quasi-judicial authority then there is no need for keeping any time limit in the statute.

8.3 Further in respect to the instant case, the decision of Hon'ble High Court of Gujarat at Ahmedabad in the case of Exclusive Steels Pvt. Ltd. Vs Union of India and the Hon'ble High Court of Judicature at 'Bombay in the case of Everest Flavours Ltd, is squarely applicable. Similarly, as reported in 2012 (280) E L T 581 (GOI) in case of B.A. CHEMICALS vide Order No. 1170/2011-CX, dated 5-9-2011 in F. No. 198/106/2009-RA the Revisionary Authority, Joint Secretary, held same view.

8.4 Therefore, Commissioner (Appeals) - 1 has erred by setting aside the impugned Orders in Original passed by the Adjudicating Authority and accepting the contention of the exporter in their appeal.

9. In view of the aforesaid background and also as the issues involved in all these Revision Applications being similar, Government now takes up the these Revision Applications for decision vide common order.

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

11. Government observes that in all the aforesaid cases, the Rebate claims filed by the applicant were found to be defective either due to lack of documents that were required to be submitted or otherwise and such claims were returned back to the applicant under deficiency memo. However, the said



claims were re-submitted by the applicant after the period of one year stipulated under Section 11B of the Central Excise Act, 1944 and accordingly the said rebate claims were rejected as time barred.

12. While allowing the appeal of the applicant and setting aside the Orders in Original, the Commissioner (Appeals) in his impugned Order No. BPS/89 to 94/MI/2013 dated 23.09.2013 has observed that

8. *The Appellants' contention is that the date of initial submission of the rebate claims should be considered as the date of filing the claims and not the date of its re-submission after removing the said discrepancies. In this regard I find that as per Para 2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions, submission of refund claim without supporting documents is not allowed and that such claim should be rejected or returned with Query Memo. This para lays down the process to be followed at the time of receipt of the refund/rebate claim, when such claim is received without supporting documents. It further states that the claim shall be taken as filed only when all relevant documents are available, but states that if any document is not available 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. The Para.3.2 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions states that at the time of receipt of the refund/rebate claim the Divisional Office should check as to whether the claim is complete and covered by all the requisite documents. 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. The above provisions of CBEC's Excise Manual, which is binding on the departmental officers, only allows returning back of the claim at the time of receipt itself on the ground that supporting documents are not submitted, but does not permit such an action at a later date or solely for certain discrepancies in the claim or in the supporting documents. In the Manual of Supplementary Instructions in Chapter 1, para 1.1 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 para 1.1 and 1.2 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. A combined reading of these two paraes 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 is not available when the refund/rebate claim is received and was at a later date found to be bereft of requisite document(s).*

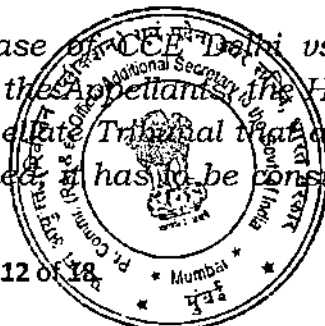
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- (b) Where the refund/rebate claim is accepted in the Divisional Office and is found not to be attached with the requisite documents during scrutiny at a later date, the option available to the department is to raise a Deficiency Memo. In such situations 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.

9. In the present case, it is to be conceded that the claims initially filed were within the time period specified under Section 11B *ibid* from the relevant date, but the same were returned back to the claimant under Deficiency Memo for removal of certain discrepancies therein, I find that the present case of the Appellants where the rebate claims were returned back at the later date than the date of initial submission; under Deficiency Memo would be more aptly covered by Para 3.2 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions, This para states that at the time of receipt of the refund/rebate claim the Divisional Office should check as to whether the claim is complete and covered by all the requisite documents, does not permit return back of the claim itself for deficiency therein or for not being accompanied by the requisite documents. It further states that in case of deficiency observed after receipt the Divisional Office within 15 days of such receipt is require to point out deficiency in the claim to the applicant. It would be worthwhile to point out that sanction or rejection of a refund/rebate claim under Section 11B of the Central Excise Act, 1944 is a quasi-judicial function and principles of natural justice are required to be observed while passing any adjudication order for sanctioning or rejecting a refund or rebate claim under Section 11B *ibid*. Mere return of a refund/rebate claim under the cover of a Deficiency Memo does not tantamount to adjudication order under Section 11B *ibid*. and as such has to be treated as an interim letter or Memo to the claimant to re-submit the claim after removing the deficiency, if any, as set out therein. In such a situation, the provision does not state that the date of resubmission of the claim on which the deficiency is removed would be considered as the date of filing of the claim, which implies that in spite 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. Hence, I am of the considered view that the Respondent has grossly erred in rejecting the claims of rebate of the Appellants on the ground of limitation to time.

10. I also find that in the case of *CEC Delhi vs. Arya Export and Industries (supra)* relied upon by the Appellants, the Hon'ble High Court of Delhi upheld the view of the Appellate Tribunal that as far as the time for filing the refund claim is concerned, it has to be considered from the date



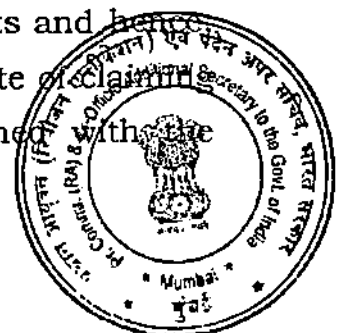
the refund claim was filed initially in the form not prescribed or without documents. This view was also upheld by the Appellate Tribunal at Mumbai in the cases of Duraline India Pvt. Ltd. vs. CCE Goa (supra) and CCE Pune-I Vs. Motherson Sumi Systems Ltd (supra), again relied upon by the Appellants. These rulings of the Appellate Tribunal being binding precedents needs to be strictly followed by all quasi-judicial authorities inferior to it. The principles of judicial discipline also require me to follow this ruling of the Tribunal and extent necessary relief to the Appellants.

11. *I also find that it is not disputed by the Respondent in the impugned orders that the discrepancies mentioned in the Deficiency Memos had been removed by the Appellants when the rebate claims were submitted for the second time and that the claims have been rejected solely on the ground that it were hit by bar of limitation of time. Since, I have come to the conclusion that the date of filing of the rebate claims would be the date when the claims were submitted to the department for the first time, the ground of rejection of the claims in the impugned orders cannot sustain and hence the rebate claims would be available for payment to the Appellants.*

12. *In view of the foregoing, I hold that the impugned orders are not sustainable in law and therefore they deserve to be set aside. I, therefore, set aside the impugned orders and allow the subject appeals filed by the Appellants with all the consequential reliefs available to them as per law.*

13. Government also notes that in these cases the Applicant had filed the refund claim initially within the time limit period of one year stipulated under Section 11B of the Central Excise Act, 1944. The said refund claims were subsequently returned to the applicant for removal of defects by the rebate sanctioning authority. Accordingly, the defects were removed and the refund claim was again submitted at a subsequent date. It is the contention of the applicant that the date of refund claim be considered when it was filed initially, whereas the Revenue contends that it was the later date when claim complete in all respects was filed, hence that should be taken as the filing date. In rejecting the refund claim as time-barred, the original authorities had observed that the date on which refund claim was filed only after removal of defects, be considered as the date of filing of the refund claim. The mandate of sub-section (2) of Section 11B of CEA, 1944 is that the Assistant Commissioner should accept it in full or in part or may reject it. However, instead of rejection of the claim, it was directed by the Department to file more documents/removal of defects, which the applicant had carried out the said direction by removing the defects. In such circumstances, it cannot be said that the refund claim was filed for the first time when it was filed after removing the defects and hence barred by limitation. Government therefore, observes that the date of claim for the rebate of duty be the date when the claim was launched with the department initially.

[Signature]



14. Government further observes that the essential characteristics of the rebate/refund procedure has been elucidated by Hon'ble Supreme Court in its Order dated 25.02.2016 in the case of Union of India Vs Hamdard (Waqf) Laboratories [2016 (333) E.L.T. 193 (S.C.)], while allowing interest on delayed refund to the respondent in the following manner :

"It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months".

15. In the instant cases Government observes that the rebate sanctioning authority even after issuing of deficiency memos not taken any action to reject the claims within the time stipulated as above.

16. Government notes that the Department in its grounds of appeal (para 8.3 above) have relied upon the decision of Hon'ble High Court of Gujarat at Ahmedabad in the case of Exclusive Steels Pvt. Ltd. Vs Union of India and the Hon'ble High Court of Judicature at 'Bombay in the case of Everest Flavours Ltd, and GOI Order No. 1170/2011-CX, dated 5-9-2011 in as reported in 2012 (280) E L T 581 (GOI) in case of B.A. Chemicals as squarely applicable to the instant applications. However on perusal of these case laws Government observes that they are not applicable to the present cases for the following reasons:-

- In the case of Exclusive Steels Pvt. Ltd. Vs Union of India, the initial rebate claim itself was filed by the claimant after a period of one year from the date of export as the investigations were carried out by the Directorate of Revenue Intelligence and various documents were placed under seizure. Whereas in the instant applications the applicant had filed the Original Rebate claims within a period of one year from the date of export.
- Similarly in the case of B.A. Chemicals, the Rebate claims were filed after a period of one year from the date of export and the Adjudicating authority rejected rebate claim as time-barred on the grounds that C.B.E. & C. Central Excise Manual of Supplementary Instructions states that in case any document is not available for which Department is solely responsible, claim may be received. That the same is not hit by limitation. Hence, the reliance of the Department on this GOI order No. 1170/2011-CX, dated 5-9-2011 is misplaced.



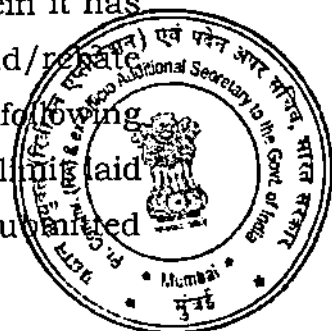
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•As regards Hon'ble Bombay High Court's Order dated 29.03.2012 in the case of Everest Flavours Ltd. in Writ Petition No. 3262 of 2011, Government notes that the same has been dissented by Hon'ble Madras High Court vide its Order dated 26.03.2015 in Writ Appeal No. 821 of 2012 and M.P. No. 1 of 2012 [reported in 2015(321)ELT 45 (Mad)] in the case of Dorcas Market Makers Pvt Ltd. holding that

21. In Everest Flavours Limited, the Division Bench of the Bombay High Court actually distinguished the decision of the Supreme Court in Raghunvar (India) Limited, and held that Section 11B stands on a different footing from Section 11A. But the Division Bench of the Bombay High Court, with great respect, did not take note of the fact that a scheme stood on its own. Moreover, the discussion before the Bombay High Court appears to have centered around the argument that even the presentation of ARE-1 form would constitute an application for refund. That argument was rightly rejected by the Bombay High Court as far-fetched. But, the Bombay High Court did not take note of the differences between the notifications issued in 1994 and 2004 to see whether the Government intended the Rules to be self-contained or not. Therefore, we are unable to agree with the conclusion reached by the Bombay High Court.

Government also observes that while deciding the issue of Limitation - Relevant date - vide its aforesaid judgement, Hon'ble High Court Madras held that question of rebate of duty is governed separately by Section 12 of Central Excise Act, 1944 and the entitlement to rebate would arise only out of a notification under Section 12(1) ibid and Rule 18 of Central Excise Rules, 2002 is to be construed independently; Rebate of duty under Rule 18 ibid should be as per the notification issued by Central Government; Notification No. 19/2004-C.E., dated 6-9-2004 which supersede the previous Notification No. 41/94-C.E. did not contain the prescription regarding limitation, a conscious decision taken by Central Government; Assessee actually exported the goods; their entitlement to refund is not at all in doubt; and in absence of any prescription in the scheme, the rejection of application for refund as time-barred is unjustified. Incidentally, this judgement of Hon'ble Madras High Court [2015 (321) E.L.T.45 (Mad.) H.C] has been relied upon by the applicant in his submissions dated 28.06.2018. Government also observes that the reliance placed by the applicant On GOI Order No. 938/13 CX dated 16.07.2013 in the case of M/s Deprint Exports (Surat) is appropriate.

17. 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 and Tribunal, 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 resultantly



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.

- (i) CCE, Delhi-I v. Aryan Export & Ind. - 2005 (192) E.L.T. 89 (DEL.)
- (ii) A Tosh & Sons Pvt. Ltd. v. ACCE - 1992 (60) E.L.T. 220 (Cal.)
- (iii) CCE, Bolpur v. Bhandiguri Tea Estate - 2001 (134) E.L.T. 116 (T. Kol.)
- (iv) Good Year India Ltd. v. CCE, Delhi - 2002 (150) E.L.T. 331 (T.-Del.)
- (v) CCE, tune-I v. Motherson Sumi Systems Ltd. - 2009 (247) E.L.T., 541 (T. Mum.) = 2011 (22) S.T.R. 496 (Tribunal).
- (vi) GOI Order 237/2013-Cus dated 22.10.2013 in the case of M/s Famy Care Ltd. [2014(311)ELT 871 (GOI)]

Government of India has also held in a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GUI) as well as in a case of M/s Polydrug Laboratories (11 Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) 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."

18. Government in this connection also relies on Hon'ble High Court of Gujrat's Order dated 17.12.2015 in Special Civil Application No. 7815 of 2014 in the case of Apar Industries (Polymer Division) Vs Union of India 12016 (333) E.L.T. 246 (Guj.) wherein while the petitioner had submitted the rebate claim in time although, in wrong format. The said claim was returned to the petitioner upon which the petitioner represented the same claims alongwith necessary supporting documents later on. These applications were treated by the Department as time barred and claims were rejected. While disposing the petition, the Hon'ble High Court 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 firm claiming rebate and provide fbr any specific format fir 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 be 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.

19. Government also observes that the aforesaid decision of High Court Gujarat has been accepted by the department as communicated vide Board Circular No. 1063/2/2018-CX dated 16.02.2018.

20. The original authority has not passed order on merits in these cases. Therefore, the said claims are required to be examined on merit in accordance with the law by treating them filed within the stipulated time limit of one year.

21. Therefore, Government sets aside Order in Appeal No. BR/49/M-I/2013 dtd. 21.03.2013, PD/15-19/M-I/2014 dtd. 27.01.2014, PD/28-31/M-I/2014 dtd. 17.02.2014, PD/82-83/M-I/2014 dtd. 19.08.2014 passed by the Commissioner (Appeals-I), Central Excise, Mumbai Zone-I and remands these cases back to original authority for fresh consideration on merits in accordance with law after taking into account the above said observations. A reasonable opportunity of hearing will be afforded to the parties. Revision Applications viz. bearing No.195/700/13-RA, 195/131/14 -RA, 195/158/14-RA, 195/336/14- RA, 195/384/13-RA filed by the applicant, M/s Cipla Ltd. are disposed off in terms of above.

22. Government upholds Order in Appeal No. BPS/89-94/M-I/2013 dated 23.09.2013 passed by the Commissioner, Central Excise (Appeals-I), Mumbai and rejects the Revision Application No. 198/120/13-RA filed by the Commissioner, Central Excise, Mumbai-I. However, the rebate claims covered by this Revision Application would be available for payment to the claimant subject to verification by the original Authority.

23.



(ASHOK KUMAR MEHTA)

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

ORDER No. 244-245/2018-CX (WZ) /ASRA/ DATED 26.07.2018.

To,

M/s Cipla Limited,
Cipla House, Peninsula Business Park,
Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400013.

ATTESTED

S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to :

1. The Commissioner of GST & CX, Mumbai South, 13th Floor, Air India Bldg. Nariman Point, Mumbai 400 021.
2. The Commissioner, CGST, Mumbai (Appeals) -I, 9th Floor, Piramal Chambers, Jijibhoy lane Lalbaug Parel 400 012.
3. The Deputy / Assistant Commissioner (Rebate), CGST, Mumbai South, Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

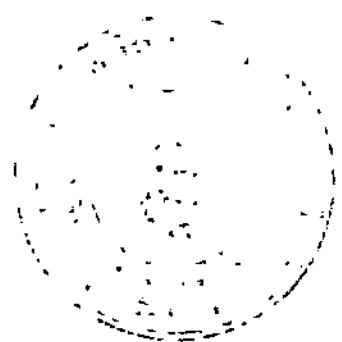
Received order copy on 3/10/2018 on
behalf of Apis Ltd.

Mhatre

Prashant M. Mhatre

9820981269

Authorized Signatory



ATTESTED