

F NO. 196/15/WZ/2019-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**
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 196/15/WZ/2019-RA | 7369

Date of Issue: 24/12/2021

ORDER NO. 24/2021-ST (WZ) /ASRA/MUMBAI DATED 22.12.2021
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. Global Exim

Respondent : Commissioner CGST Raigad

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. MKK-
122/RGD-APP/2019-20 dated 19.06.2019 passed by the
Commissioner of Central Tax, Central Excise & Service
Tax(Appeals) Raigad.



ORDER

This Revision Application is filed by the M/s Global Exim, 318, Grohitam Bldg. Plot No. 14-B, Sec-19C, Vashi, Navi Mumbai - 400705 (hereinafter referred to as "the Applicant") against the Order-in-Appeal MKK-122/RGD-APP/2019-20 dated 19.06.2019 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals) Raigad as detailed below against rejection of rebate claim as time barred.

Sr. No.	Order No. & Date	OIA No. & Date	Refund Claim No. & date	Period of claim	Amount Claimed/ rejected (in Rupees)
1	R-101-103/Refund/NS/BEL-III/2019 dated 27.03.2019	MKK/122/RGD APP/2019-20 dated 19.06.2019	R-259/21.01.2019	01.04.2014-31.03.2015	2,56,504/-
			R-260/21.01.2019	01.04.2015-31.03.2016	3,14,870/-
			R-261/21.01.2019	01.04.2016-31.03.2017	3,27,461/-
				Total	8,98,835/-

2. The brief facts of the case are that Applicant, Merchant Exporter is having Service Tax registration No. AAJPC0364LSE002, had filed three refund claims for rebate of Service Tax paid on taxable services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012. These claims were filed by the Applicant on 21.01.2019 and the latest Shipping Bill No./Let Export Order of the said claims is 30.03.2017. Thus, these rebate claims were filed beyond stipulated period of one year as required under condition No. 3(g) of the Notification No. 41/2012-ST dated 29.06.2012. The adjudicating authority vide Order-in-Original No. R-101-103/Refund/NS/Bel-III/2019 dated 28.03.2019 rejected the entire rebate amount on ground of limitation of time without going into the merits of eligibility of claims. Aggrieved, the Applicant



then filed appeal with the Commissioner of Central Tax, Central Excise & Service Tax(Appeals) Raigad who vide Order-in-Appeal No. MKK-122/RGD-APP/2019-20 dated 19.06.2019 rejected their appeal and upheld the Order-in-Original dated 28.03.2019.

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

- (i) the case was decided merely on the ground of their late submission of application for Refund without going into merits of the case.
- (ii) they regularly pays Income, GST, TDS Tax etc with honestly and in time.
- (iii) they were alerted by the officer while rejecting the claims for the earlier period of 2013-14 that previously sanctioned refund claims may also be recovered with interest by the department if they keep continue applying for the refund claims. They had preferred an appeal which was pending for almost 40 months. Thus, they were mentally confused whether to apply for refund for further next accounting years or not, and could not file rebate claim for further period of three years on time. They preferred appeal in that matter where they got the consequential relief.
- (iv) The Applicant prayed that the Order-in-Appeal dated 19.06.2019 be set aside.

4. Personal hearing in this case was fixed for 09.12.2021, Shri Girish Chandan, Proprietor with their consultant Shri. Abnish Kumar Singh, Consultant appeared and submitted that the delay occurred because their earlier claims were delayed. They requested to condone the delay and sanction their claims.

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



6. The issue, involved in the instant Revision Application is whether Applicant is entitled for the rebate claim which was rejected on the grounds of limitation or not .

7. On perusal of the records, Government observes that the Applicant, Merchant Exporter and having Service Tax registration No. AAJPC0364LSE002 had filed three refund claims on 21.01.2019 for rebate of Service Tax paid on taxable services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012 and the latest Shipping Bill No./Let Export Order of the said claims was 30.03.2017. The adjudicating authority vide Order-in-Original No. R-101-103/Refund/NS/Bel-III/2019 dated 28.03.2019 rejected the entire rebate amount on ground of limitation of time and the Commissioner(Appeals) vide Order-in-Appeal No. MKK-122/RGD-APP/2019-20 dated 19.06.2019 also rejected their appeal and upheld the Order-in-Original dated 28.03.2019.

8. Government notes that there are proper procedures Act and Rules under Central Excise and Service Tax for recovery of wrongly sanctioned rebate/refund claims and this has no connection with the filing or non filing of further claims. Thus there is no legal grounds of the Applicant's submission that they did not file the subsequent claims as their previously sanctioned refund claims may also be recovered with interest by the department.

9. Government finds that there is no dispute that Applicant had filed all three rebate claims beyond one year from the date of shipment of the export. As per condition 3(g) of the Notification No. 41/2012-ST dated 29.06.2012, the claim for rebate shall be filed within one year from the date of exports of the said goods. Any notification, being an exception to the general rule, must be strictly construed. In this case, the refund application was filed 21.01.2019 and the date of shipment was 30.03.2017 i.e. after one year of the export. Hence, the refund is not admissible as per the Notification No. 41/2012-ST dated 29.06.2012.



10. Government further notes that the issue of limitation period/ time bar has been discussed in the judgment dated 27.11.2019 passed by the Honble High Court of Delhi in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380 (Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below.

"14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.

15. In Everest Flavours Ltd. v. Union of India [2012(282) ELT 481 (Bom.)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree."

11. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that the Applicant has failed to act diligently in as much as they have failed to file rebate claim within the statutory time limit of one year from the date of shipment of the export goods. Therefore, the rebate claims filed by the Applicant have correctly been held to be hit by bar of limitation by the Commissioner(Appeals) in the impugned order.



12. In view of above, Government finds no infirmity in the impugned Order-in-Appeal No. MKK/122/RGD APP/2019-20 dated.19.06.2019 and upholds the same.


(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 24/2021-ST (WZ) /ASRA/Mumbai Dated 22.12.2021

To,
M/s Global Exim,
318, Grohitam Building,
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Vashi, Navi Mumbai-400705.

Copy to:

1. The Commissioner of CGST & CX, Belapur Commissionerate
1st Floor, CGO Complex CBD Belapur, Navi Mumbai-400614.
2. The Commissioner of CGST & CX (Appeals), Raigad, 5th Floor,
CGO Complex, CBD Belapur, Navi Mumbai 400614.
3. The Deputy/Assistant Commissioner, Division-III, CGST & CX,
Belapur Commissionerate, CGO Complex CBD Belapur,
Navi Mumbai-400614.
4. Sr. P.S. to AS(RA), Mumbai.
5. Guard File

