

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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

---

F.No.198/52/14-RA / 4233

Date of Issue: 12.08.2021

---

ORDER NO. 258 /2021-CX (WZ)/ASRA/MUMBAI DATED 09.08.2021  
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.

---

Subject : Revision Applications filed, under Section 35EE of the Central  
Excise Act, 1944 against the Orders-in-Appeal No. PUN-EXCUS-  
001-APP-08-10-14-15 dated 09.04.2014 passed by the  
Commissioner (Appeals), Central Excise, Pune I.

Applicant : The Commissioner, Central Excise, Pune-I.

Respondent : M/s Honeywell Turbo Technologies (India) Pvt. Ltd., Pune.

## ORDER

This Revision application is filed by the Commissioner, Central Excise, Pune-I (hereinafter referred to as 'applicant') against the Order-In-Appeal No. PUN-EXCUS-001-APP-08-10-14-15 dated 09.04.2014 passed by the Commissioner (Appeals), Central Excise, Pune I.

2. The brief facts of the case is that M/s Honeywell Turbo Technologies (India) Pvt. Ltd., Pune (respondent) had filed three separate rebate claims of Rs.3,72,546/- Rs.44,74,029/- and Rs.26,71,014/- on 12.08.2011, 11.11.2011 and 21.09.2011 respectively, claiming rebate of Central excise duty paid on inputs cleared as such for export, in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. Since the rebate claims filed were in respect of clearance of inputs as such for export, three separate query letters dated 11.11.2011, 19.12.2011 and 01.12.2011 respectively were issued asking the respondent to submit the respective copies of invoices/bill of entry under which the said inputs/accessories/parts had been procured and also to clarify whether reversal of Cenvat Credit was equal to amount of Cenvat Credit availed on the inputs as per provisions of Rule 3 of Cenvat Credit Rules, 2004. The respondent replied the said query vide their letter dated 14.11.2011 which was not found satisfactory. Therefore, the aforementioned three rebate claims were returned to the respondents to for resubmission afresh after complying with the said query memos. The respondent re-submitted these three rebate claims on 19.12.2012 acknowledged by the jurisdictional Assistant Commissioner on 22.12.2012.

3. As the aforesaid rebate claims were submitted after the stipulated period of one year, the original authority vide Orders in Original No. PI/Div-IV/Reb/102/2013, No. PI/Div-IV/Reb/114/2013 and PI/Div-IV/Reb/115/2013 dated 20.05.2013, 24.05.2013 and 24.05.2013 respectively on the grounds that the same were time barred.

4. Being aggrieved with the aforementioned Orders in Original, the respondent preferred three separate appeals before Commissioner (Appeals), Central Excise, Pune -I, who relying on Tribunal's decision in Goodyear India Ltd Vs CCE New Delhi [2002(150)ELT 331 (Tri-Del)] and Hon'ble High Court of Gujarat Judgement in the case of United Phosphorus Ltd. Vs CCE, vide Order in Appeal No. PUN-EXCUS-001-APP-08-10-14-15 dated 09.04.2014, set aside the all the three Orders

in original (supra) and allowed the appeals filed by the respondent with consequential relief.

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

5.1 As per the Circular No. 130/41/95-CX dated 30.05.1995 issued by the Govt. of India, Ministry of Finance, Dept. of Revenue, New Delhi vide F.No. 268/29/95-CX.8, all refund claims found incomplete shall be issued with a deficiency memo within 48 hours of receipt of such claims. Further, Para 2.4 of Chapter 9 of Supplementary Instructions stipulates that it may not be possible to scrutinize 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 refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within 3 months of the filing of the claim. Consequently, submission of refund claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, 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 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.

5.2 The claimant were asked to clarify certain doubts about the goods exported by them and the copies of certain documents vide divisional deficiency memo/ letters mentioned in the table above. The claimant were asked certain queries about the goods exported by them, as from the rebate application in Form 'C', it was not forthcoming as to whether the claimant had exported the goods 'inputs as such' or whether the said goods were manufactured in their factory premises. The claimant were asked to provide the copies of respective invoices/ Bill of entry under which the said Inputs/Accessories/Spares have been procured or imported by them. The claimant were also asked to clarify as to whether they had reversed the equal amount of Cenvat credit availed on the said inputs at the time of clearance of export under claim of rebate and confirm whether the value shown on excise invoice/ARE- 1 s for inputs exported is the same which has been shown on the invoice/Bill of entry under which these goods have been received initially in their factory premises. They were also asked whether they have claimed DBK(Customs/C.Excise) in respect of goods exported or otherwise and if yes, then the details of the same. All these queries and the documents called for were important in nature as the sanctioning of the refund claim depended on the satisfactory outcome of the said queries and documents. As the reply of the claimant to the said letters was not found satisfactory, the Adj. Authority relying on the Board's Circular dated 30.05.1995 and the Supplementary Instructions mentioned above, correctly returned back the claims.

5.3 The claimant filed the three claims again on 22.12.2012. As the date of filing of these claims was beyond the period of one year from the date of export, as prescribed under Section 11B of the Act, the claims were rightly rejected vide the Orders in original dated 20.05.2013, 24.05.2013 and 24.05.2013. The Appellate Authority has erred in not considering the said claims as time-barred, the decision of Goodyear India Ltd. Vs. CCE , New Delhi 2002(150) ELT 331 (Tri-Del) relied upon by the Commissioner (Appeals) is not relevant , as the original adjudicating authority had returned the claims not to rectify the defects but to provide the necessary documents required necessarily required for examination of the claim.

5.4 The Appellate Authority has also erred in finding that the claims were filed with all the required documents viz. Original & duplicate copies of ARE- ls, relevant duplicate invoice, triplicate ARE- ls along with commercial invoices, packing list, abstract of cenvat credit, account current, EP copy of shipping bill, Airway Bill and disclaimer certificate to establish that the goods were exported and duty is paid. As the claimant assessee were exporting the goods 'inputs as such', they had to provide the documentary proof by furnishing of respective copies of invoice/bill of entry under which the said Inputs/Accessories/Spares etc. have been procured or imported so that the department can be satisfied before sanctioning the claim that the same Inputs/Accessories/Spares etc. that had been procured or imported, had been exported by the claimant. The claimant had to give this necessary proof, as it was observed by the excise officers that they had not mentioned whether the said goods had been cleared as 'inputs as such' or otherwise, on the export tax invoice. So, the Appellate Authority has taken in to consideration only export documents as per Para 8 of Chapter 8 and as in this case the goods that had been exported were imported first, the claimant had to give the proof of import of the said goods, along with the documents of Exports.

5.5 The Dept. /original Adj. Authority had never disputed the fact that the duty has been paid or that the goods have been exported. The claim was rejected/ returned on the grounds of time limitation for filing of rebate claim. The dates on which the claims were originally filed cannot be considered, as the claimant failed to satisfy the objection raised by the department within the time limit as prescribed by the Board Ode Circular dated 30.05.1995. The claims have not been examined at 01 on merits, ,, the prima facie they seem to be time barred by the Adj. Authority a. ,,s such were finally rejected on that ground vide abovementioned Order-in-Original dated 20.05.2013, 24.05.2013 and 24.05.2013 and therefore, Appellate Authority has erred in holding that the claimant are entitled to get the entire rebate of duty as claimed by them. The Appellate Authority instead of remanding the case to the original adjudicating authority has set aside the abovementioned Order-in-Original dated 20.05.2013, 24.05.2013 and 24.05.2013 of adjudicating authority, which means accepting the incomplete claims submitted by the claimant in toto, without going into the merits of the case.

5.6 In view of the above mentioned facts, it will be seen that the claimant have not followed the conditions and limitations, as laid down under Board's Circular

dated 30.05.1995, and therefore, the Adjudicating Authority has correctly rejected the rebate claim. The Commissioner (Appeals) has therefore erred in allowing the appeal filed by the claimant.

In view of the above, the applicant department has prayed to set aside impugned Order in Appeal and to restore the three Orders in Original dated 20.05.2013, 24.05.2013 and 24.05.2013 respectively.

6. A Personal hearing in this matter was held through video conferencing on 25.03.2021 which was attended online by Ms. Shruthee Srinivasan, Assistant Commissioner, CGST & Central Excise, Pune - I Commissionerate on behalf of applicant department. She submitted that rebate applications were rejected as time barred by the adjudicating authority. She further submitted that the Appellate Authority allowed rebate claims without cases being examined on merits. She requested to provide department an opportunity for examining the cases on merit, if rebate claims are held as not time-barred.

7. Government has carefully gone through the relevant case records/available in case files, oral submissions and perused the orders-in-original and impugned order-in-appeal.

8. Government observes that the respondent had filed three separate rebate claims on 12.08.2011, 11.11.2011 and 21.09.2011 respectively, claiming rebate of Central excise duty paid on inputs cleared as such for export, in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. Subsequently, three separate query letters dated 11.11.2011, 19.12.2011 and 01.12.2011 respectively were issued asking the respondent to submit the respective copies of invoices/bill of entry under which the said inputs/accessories/parts had been procured and also to clarify whether reversal of Cenvat Credit was equal to amount of Cenvat Credit availed on the inputs as per provisions of Rule 3 of Cenvat Credit Rules, 2004. The respondent replied the said query vide their letter dated 14.11.2011 which was not found satisfactory. Therefore, the aforementioned three rebate claims were returned to the respondents for resubmission afresh after complying with the said query memos. The respondent re-submitted these three rebate claims on 19.12.2012 acknowledged by the jurisdictional Assistant Commissioner on 22.12.2012. Since the date of re-submission of these claims was beyond the stipulated period of one year, the original authority rejected these three rebate claims as time barred.

9. Government observes that Hon'ble High Court of Gujarat in a similar situation and while allowing Special Civil Application filed by United Phosphorus Ltd., vide its judgement dated 06.05.2003 [2005 (184) E.L.T. 240 (Guj.)) held that the refund sanctioning authority cannot part with the refund claim by returning the same. He is obliged to pass an order on the merits of such application. When the refund sanctioning authority who received the original refund claims has not rejected these refund claims on merits and has merely returned the same, further filing of the refund claims ought to be considered only as resubmission and not as fresh claims.

10. Government further observes that there similar stands have been taken by Hon'ble High Courts, GOI and Tribunals vide following judgements/orders, holding that time-limit is to be computed from the date on which refund/rebate claim was originally filed; 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.

- (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, Pune-I v. Motherson Sumi Systems Ltd. - 2009 (247) E.L.T., 541 (T. Mum.) = 2011 (22) S.T.R. 496 (Tribunal).
- (vi) In Re: IOC Ltd. 2007 (220) E.L.T. 609 (GOI).
- (vii) In Re: Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013.
- (viii) IN RE : TATA BLUESCOPE STEEL LTD 2018 (364) E.L.T. 1193 (G.O.I.)
- (ix) Apar Industries (Polymer Division) Vs Union of India {2016 (333) E.L.T. 246 (Guj.)}

11. Government also observes that the decision of High Court of Gujarat in Apar Industries (Polymer Division) Vs Union of India {2016 (333) E.L.T. 246 (Guj.)} [Sl. No. (ix) supra has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

12.1 Government observes that the applicant department has relied upon Board Circular No. 130/41/95-CX, dated 30-5-1995 on "Refund — Interest on delayed refunds" which states [at para 2(g)] that "*Where the refund application is found to be*

*incomplete a letter shall be issued stating the deficiencies therein, the additional information/document required within 48 hours of the receipt. In such cases the letter shall be issued only with the approval of a Superintendent and the period of 3 months, for purpose of Section 11BB, shall count from the date of receipt of all the requisite information or documents".*

12.2 Further, Table at para 4(a) of the Revision Application (reproduced below) clearly indicates that the applicant department has failed to adhere the time limit of 48 hours of the receipt of the rebate claims, for issuing deficiency letter to the respondent :

Date of filing the Rebate claims	Date of Divisional office letter
12.08.2011	11.11.2011
11.11.2011	19.12.2011
21.09.2011	30.11.2011

Hence, the reliance placed on this circular by the department is misplaced.

Further Para 2.4 of Chapter 9 of supplementary instructions also mentions that

*..... Even if claim is filed by post or similar mode, the claim should be rejected or returned with query memo (depending upon the nature of importance of documents not filed).*

Reading of above instructions clearly reveals that the query memo is to be issued depending upon the nature of importance of documents not filed. Moreover, when the replies submitted by the respondent to the queries raised by the department (para 5.2 supra) vide letters dated 11.11.2011, 19.12.2011 and 30.11.2011 were not found satisfactory, the Adj. Authority ought to have rejected the rebate claims for want of requisite documents or information and returning back the rebate claims to the respondent was not in accordance of the said instructions.

13. Relying on various case laws discussed at paras 9 to 11 supra, Government holds that the time limitation in the instant cases is to be computed from the initial date of filing of such applications as available in relevant office records. Since the said applications are initially filed within stipulated time limit i.e. on 12.08.2011, 11.11.2011 and 21.09.2011 respectively, by the respondent, the same are to be treated as filed in time. However, these applications are required to be

decided on merits in accordance with law on verification of documents/records and the impugned order is required to be set aside to the extent it has allowed rebate to the respondents with consequential relief without its proper verification.

14. In view of above discussion, Government modifies the Order-In-Appeal No. PUN-EXCUS-001-APP-08-10-14-15 dated 09.04.2014 passed by the Commissioner (Appeals), Central Excise, Pune I to the extent discussed above and remands the case back to original authority to decide the same afresh in view of above observations and for taking appropriate decision on these rebate claims in accordance with law after giving adequate opportunity to the respondent to furnish documentary proof, if any, in support of its claims. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

15. Revision application is decided on above terms.

*Shrawan*  
9/8/21  
(SHRAWAN KUMAR)

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

ORDER No. 258/2021-CX (WZ) /ASRA/Mumbai Dated 09.08.2021

To,  
The Commissioner of CGST, Pune-I Commissionerate,  
GST Bhavan, ICE House,  
Opp. Wadia College, Pune 411 001.

Copy to:

1. M/s Honeywell Turbo Technologies (India) Pvt.Ltd.,  
Plot No.4A, Rasoni Indl. Park, Village Mann, Tal-Mulsi,  
Near Hinjewadi Phase-II, Pune 411 057.
2. The Commissioner of CGST (Appeals-I) Pune, GST Bhavan,ICE House, Opp.  
Wadia College, Pune 411 001.
3. The Assistant Commissioner Division II (Pimpri Division), CGST Pune-I  
Commissionerate, GST Bhavan, Dr. Ambedkar Marg, Near Akurdi Railway  
Station, Akurdi-411044.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.