

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, Cuff Parade,
Mumbai- 400 005**

F. NO. 195/277/14-RA/612

Date of Issue: 03/10/2018

ORDER NO. 312/2018-CX (WZ) /ASRA/Mumbai DATED 21.09. 2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION
35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Saga Laboratories, Survey No.198/2 & 198/3,
Chachrawadi, Vasna, Taluka: Sanand, District:
Ahmedabad – 382210, State – Gujarat.

Respondent : Deputy Commissioner, Central Excise Division-IV,
Ahmedabad Commissionerate-II, Ahmedabad,
Vidyalaya Chamber, Nr., Paldi Cross Road, Ellisbridge,
Ahmedabad, Gujarat-380013.

Subject : Revision Application filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
No. AHM - EXCUS -002-APP-016-14-15 dated
25.04.2014 passed by the Commissioner (Appeals)
Central Excise, Ahmedabad.



ORDER

This revision application is filed by M/s Saga Laboratories, Sanand, Gujarat (herein after referred to as "the applicant" against Order in Appeal No. AHM-EXCUS-002-APP-016-14-15 dated 25.04.2014 passed by the Commissioner (Appeals) Central Excise, Ahmedabad.

2. The brief facts of the case that the applicant filed rebate claim of Rs.51,480/- (Rupees Fifty One thousand Four hundred and Eighty only) with the Adjudicating authority (Deputy Commissioner, Central Excise, Division IV, Ahmedabad-II) along with relevant documents on 24.01.2013. On scrutiny of the documents it was observed that the applicant had not submitted all requisite documents and some verbal queries were communicated to the applicant. Therefore, the applicant vide letter dated 20.03.2013 voluntarily requested that they wish to withdraw the rebate claim due to some discrepancy. Accordingly, on 21.03.2013 the rebate application alongwith its enclosures was returned to the applicant. Subsequently, on 13.06.2013 the applicant resubmitted the rebate claim alongwith all requisite documents. Thereafter, on scrutiny of the documents, it was noticed that as per the self-certified copy of the Bill of Lading No. AMD/LCL/MNL/1110034, the goods were exported by sea and the ship left India on 17.05.2012 from Pipavav Port whereas the rebate claim was filed on 13.06.2013 i.e. after one year from the relevant date. Therefore, show cause notice F.No.V.30/18-3534/R/IV/13 dated 08.08.2013 was issued to the applicant proposing to reject the rebate claim for non-submission of rebate claim within the prescribed time limit as per the provisions of Section 11B of the Central Excise Act, 1944.

3. The Adjudicating Authority rejected the afore stated rebate claim on the ground of limitation vide Order in Original No. 4673/REBATE/2013 Dt. 13.09.2013.

4. Being aggrieved, the applicant filed an appeal before Commissioner (Appeals), who vide impugned Order in Appeal No. AHM-EXCUS-002-APP-016-14-15 dated 25.04.2014



EXCUS-002-APP-016-14-15 dated 25.04.2014 dismissed the appeal filed by the applicant and upheld the Order in Original No. 4673/REBATE/2013 Dt. 13.09.2013 passed by the Adjudicating Authority.

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

- 5.1 The applicant has exported the goods under ARE-1 No. C-006 dated 11.05.2012 and LEO date is 17.05.2012 under claim of Rebate of duty under rule 18 of the Central Excise Rules, 2002.
- 5.2 The applicant on receipt of the export documents from the Customs through C.H.A., submitted the rebate claim with the Central Excise Division Office on 24.01.2013. However, the Department has instead of sanctioning the Rebate Claim the claim was return with oral query, and therefore, the applicant has re-submitted the Claim on 16.03.2013 by Registered Post A.D., as the Officer has refused to acknowledge the same, again the Department has raised the query Memo vide Letter No. V.30/18-3341 to 3343, 3533 to 3534/R/IV/13 dated 03.07.2012. However the Department has issued Show Cause Notice for rejection of the Claim on 08.08.2013.
- 5.3 The applicant has at the time of Hearing submitted the reply to the Show Cause Notice and also put forth the two Judgments which are as under: -

(a) SHASUN PHARMACEUTICALS LTD. V/s. JOINT SECRETARY, M.F. (D.R.), NEW DELHI REPORTED IN 2013 (291) E.L.T. 189(Mad.) "Export - Rebate - Limitation - Claim filed on 5-11-2007, along with relevant documents - Returned to exporter, on 20-2-2008, though application for rebate in Form C was retained by Department - Final confirmation of date of shipment obtained on 23-12-2008 - HELD : Relevant date for limitation was 5-11-2007, exporter submitted rebate claim application - Even though certain documents had been returned to exporter on 20-2-2008, it can be said that rebate claim was not filed on 5.11.2007



was more so application for rebate of duty in Form C had been retained – Also, delay in confirmation of shipment was due to delay by SCIL – Hence, rebate claim allowed – Rule 18 of Central Excise Rules, 2002. [para 12]

(b) BEFORE THE COMMISSIONER OF CENTRAL EXCISE (APPEALS), PUNE-II REPORTED IN 2010 (261) E.L.T. 790 (COMMR. APPL.)

“Rebate – Limitation – Relevant date – For original rebate claim, date of shipment is to be considered and for anticipating situation, where there may be rebate claim, date of payment is to be taken into account for restoring one year’s period for granting rebate under Section 11B of Central Excise Act, 1944.[para 4.1]

Rebate – Duty paid on supplementary invoices – No dispute with regard to payment and export of goods – Rebate not to be denied on flimsy ground – Once it has been held that rebate has been filed within the time limit, appellant is legally entitled to get back duty paid to government exchequer – Rule 18 of Central Excise Rules, 2002 [para 4.3]”

5.4 However, the above facts have been totally discarded by the Adjudicating Authority and rejected the claim on the ground of Limitation

5.5 The applicant has submitted, the Case Law is support of the claim but discarding without justifying and relied on the following decision of Hon’ble CESTAT and the Hon’ble Supreme Court though the facts of both the case are not identical to the present one and therefore the action of rejection of claim is appear to be prejudice one.

a) 1988 (37) E.L.T. 478 (SC)

b) 2000 (117) E.L.T. 583(Trib.)

5.6 The applicant observed that, these two judgment are old one and after that the following decision of Hon’ble High Court and Tribunal are pronounced, the applicant relied on this Judgment:-

a) KAPADIA ENTERPRISE V/s. UNION OF INDIA REPORTED IN 2013 (287) E.L.T. 255 (GUJ.)



"Demand - Limitation - Rebate claim of petitioner-exporter arising out of a fraud committed by manufacturer from whom petitioner had purchased the textile goods - Additional Commissioner dropped the penalty proceedings against the petitioner and other exporters accepting their explanation of not being aware of fraud committed by manufacturer - Department did not establish any collusion on part of exporters in such a fraud - However, Department was of the opinion that a person who is not party to a fraud or collusion or wilful mis-statement, may avoid penal consequences but not extended period of limitation - Such logic not acceptable - Words 'such person or his agent' in Proviso to Section 11A of Central Excise Act, 1944 are extremely significant -It cannot be accepted that statute envisages invocation of extended period of limitation against a person who had nothing to do with such fraud, collusion, mis-statement, etc - Petitioner held entitled to retain the rebate previously sanctioned and paid over. [paras 14, 17, 18, 20, 21]"

b) DORCAS MARKET MAKERS PVT. LTD. V/s. COMMISSIONER OF CENTRAL EXCISE REPORTED IN 2012 (281) E.L.T. 227 (MAD.)

"Rebate - Limitation - Time limit under Section 11B of Central Excise Act, 1944 - Prescribed by Notification No. 41/94-CE., but omitted by subsequent Notification No. 19/2004-C.E., prescribing procedure for obtaining rebate - HELD : Omission was conscious as all other conditions for obtaining rebate were retained in the subsequent Notification - Rebate could not be rejected on ground of limitation - It was more so as even Rule 18 of Central Excise Rules, 2002 did not prescribe it. (para 8]

Rebate - Claim of Limitation - Rule 18 of Central Excise Rules, 2002 is not subject to Sections 11A and 11B of Central Excise Act, 1944 - In that view, rebate cannot be rejected on ground of limitation. [para 8]

Writ jurisdiction - Alternative remedy - Its availability is not an absolute bar for High Court to exercise its writ jurisdiction - It is more so where facts are before the Court and only question to decide is whether Rules or Notifications were to be applied - Article 226 of Constitution of India (Para 9) "



- 5.7 The applicant requested to consider the date of filing the claim as 24.01.2013, and not 13.06.2013 in respect of Export made under ARE-1 No. 006 dated 11.05.2012, which left the India as per LATE EXPORT DATE (LEO) is 17.05.2012, and therefore the claim is within the time limit stipulated under Section 11B of the Central Excise Act, 1944.
6. A Personal hearing in the matter was fixed on 17.04.2018 however, the applicant vide letter dated 19.04.2018 informed that the Management of the Company after considering the amount of Rebate involved i.e Rs.51480/- decided to waive an opportunity of Personal hearing before the Govt. of India at Mumbai for the reason that the cost of appearing was not viable and therefore requested to decide the appeal on the basis of records available in the file on merit.
7. As per the applicant's request as above, Government proceeds to decide the case on merits on the basis of records available in the concerned file.
8. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.
9. Government observes that while dismissing the appeal filed by the applicant, the Commissioner (Appeals) in his impugned Order observed that :

In the instant case, I find that relevant date is 17.05.2012 and as per the above provisions of the Central Excise Act, 1944, the claim of rebate should have been filed on or before 16.05.2013. I further find that though the claim was originally filed on 23.01.2013 but the same was voluntarily withdrawn by the appellant vide letter dated 20.03.2013 due to some discrepancy accordingly the Department returned the claim to the appellant on 21.03.2013. The appellant was having time from 21.03.2013 till 16.05.2013 to correct the discrepancies and resubmit the same but they failed to do so and re-submitted the same but they failed to do so and resubmitted the same on 13.06.2013 i.e. after expiry of one year from the relevant date and therefore the same is liable by limitation of time and therefore liable for rejection on this ground.



10. Now, vide instant revision application the applicant has prayed to consider the date of filing the claim as 24.01.2013, and not 13.06.2013 in respect of Export made under ARE-1 No. 006 dated 11.05.2012, which left India as per LATE EXPORT DATE (LEO) is 17.05.2012, and therefore the claim is within the time limit stipulated under Section 11B of the Central Excise Act, 1944 on the basis of grounds mentioned at para 5 supra.

11. Government finds it pertinent to reproduce para 10 & 11 of the Order in Original No. 4673/REBATE/2013 Dt. 13.09.2013 passed by the Adjudicating Authority which read as under :-

10. I find that the assessee filed rebate claims without requisite documents on 24.01.2013. Thereafter assessee had voluntarily requested vide letter dated 20.03.2013 that they wish to withdraw their rebate application due to some discrepancy. They also stated that they are submitting after necessary correction in their application. Accordingly, this office had returned the rebate claim in respect of ARE-1 No.C006 dated 11.05.2012 on 21.03.2013, as per Para 2.4 of Chapter 9 of CBEC's Central Excise Manual.

11. I find that the contention of the assessee at the para 7 of the reply is not acceptable as the assessee has not submitted the required document within the stipulated time period as prescribed in terms of Sub-section 1 of Section 11B of the Central Excise Act,1944. I also find that the assessee was not having the requisite document hence they resubmitted the rebate claims on 13.06.2013 after expiry of one year from the relevant date 17.05.2012.

12. From the aforesaid contents, Government observes that the applicant desired to withdraw the rebate claims in order to resubmit the same after necessary correction in their application and that the applicant resubmitted the rebate claims on 13.06.2013.

13. Government thus, in the instant case observes that the applicant's initial claim was received in the Adjudicating Authority's office on 24.01.2013 which was well within the time. The said claim was withdrawn by the applicant for the rectification of some discrepancy after the same was intimated by the Department. The applicant in its letter dated 20.03.2013, in which it had withdrawn the claims had



stated they they are submitting the same after necessary correction in their application. Thus, Government observes that the claims received in the Adjudicating Authority's office on 13.06.2013 were in continuation of the claims received in the office of Adjudicating Authority on 24.01.2013.

14. 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 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.

15. 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."

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."

16. 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 although, in wrong format and the said claim was returned to



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 Gujrat in its Order dated 17.12.2015, observed that

Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules.

17. 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.

18. Applying the ratio of the afore stated judgements, Government holds that since the said rebate claim was initially filed by the applicant within stipulated time limit i.e. on 24.01.2013, the same is to be treated as filed within period of one year and hence is not barred by limitation under Section 11B of the Central Excise Act, 1944.



19. In view of the facts and circumstances as above, Government sets aside the impugned Order-in-Appeal and remands the case back to original Adjudicating Authority to decide the same afresh on merits keeping in line with observations of Government of India as discussed supra. The original adjudicating authority is directed to pass a speaking order in accordance with law after following the principles of natural justice, within 8 weeks from the receipt of this order.

20. The revision application is allowed of in terms of above.

21. So ordered.

(Handwritten Signature)
24.9.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 312/2018-CX (WZ) /ASRA/Mumbai Dated 21.09.2018.

To,
M/s. Saga Laboratories,
Survey No.198/2 & 198/3,
Chachrawadi, Vasna,
Taluka: Sanand,
District: Ahmedabad - 382210,
State - Gujarat.

ATTESTED

(Handwritten Signature)
31/09/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of GST & CX, Ahmedabad South, Central Excise Bhavan, Ambawadi, Ahmedabad-380015.
2. The Commissioner of GST & CX, (Appeals) Ahmedabad, , Central Excise Bhavan, Ambawadi, Ahmedabad-380015.
3. The Deputy Commissioner, Vatva-I Division, Central Excise Bhavan, Ambawadi, Ahmedabad-380015.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

