

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.195/211-214/15-RA

5499

Date of Issue:

24.09.2021

318-321
ORDER NO. /2021-CX (SZ)/ASRA/MUMBAI DATED \14.09.2021\ 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 Application filed under Section 35EE of the Central Excise
Act, 1944 against Order-in-Appeal No. 31 to 34/2015-CE dated
20.05.2015 passed by the Commissioner of Central Excise (Appeals-
I), Salem.

Applicant :- M/s SJLT Spinning Mills (P) Ltd. NH7, Namakkal-Karur, Main Road,
Pillaikalathur, Paramathi Velur P.O., Namakkal-637207.

Respondent :- Commissioner of Central Excise, Salem.

ORDER

These Revision Applications have been filed by M/s SJLT Spinning Mills (P) Ltd., Namakkal (hereinafter referred as the applicant) against the Order in Appeal No. 31 to 34/2015-CE dated 20.05.2015 passed by the Commissioner of Central Excise (Appeals-I), Salem.

2. The brief facts of the case are that the applicant is manufacturer of Cotton Yarn falling under Chapter 52 of the Central Excise Tariff Act, 1985 and is also exporting the goods manufactured by them. They had cleared the following four consignments on payment of duty for export and were exported vide Bill of Lading shown below. The applicant had filed four Rebate claims on 19.09.2014, 15.09.2014, 27.03.2014 & 27.11.2014 as shown below before the original authority claiming rebate of the duty paid on the exported goods as shown in the four ARE1s listed in the table below. But as the rebate claims were not filed properly complying to the checklist as required for processing the claims, the rebate claims were returned under the cover of Defect Memos as shown below requiring them to clarify the passing of duty incidence to the merchant exporter, production of disclaimer certificate from Merchant Exporter, copy of GAR 7 challan not submitted etc.

TABLE

ARE-1 No/Date	Bill of lading date	Rebate claim	Rebate claimed originally filed without relevant documents on	Defect Memo issued on	Rebate claim resubmitted on	Order in Original S.No. dated 06.02.2015
6/26.09.2013	29.09.2013	365130/-	19.09.2014	09.10.2014	27.11.2014	03/2015
7/21.10.2013	27.10.2013	376084/-	15.09.2014	09.10.2014	27.11.2014	04/2015
3/19.07.2013	25.07.2013	376084/-	27.03.2014	15.04.2014	26.12.2014	05/2015
9/26.11.2013	01.12.2013	376084/-	27.11.2014	08.01.2015	22.01.2015	06/2015

3. The applicant had resubmitted the claims subsequently on the above said dates before the original authority with the details called for. The original authority rejected the rebate claims on the ground of time bar by considering the date on which the claim was filed with relevant documents is over one year from the date of export (Date of Bill of Lading).

4. Being aggrieved by the aforesaid Orders in Original, the applicant filed appeal before Commissioner (Appeals) who vide Order in Appeal 31 to 34/2015-CE

dated 20.05.2015 (impugned Order) dismissed the appeals filed by the applicant and upheld the Orders in Original

5. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:-

5.1 They have filed the subject rebate claims on within one year from the relevant date in accordance with Section 11B, from the relevant date, viz., the date on which the bill of lading was issued.

5.2 The learned lower authorities ought to have known and appreciated plethora of decisions of Hon'ble High Courts, Tribunals and Government of India, holding that the date on which the rebate claim was filed for the first time shall be reckoned as the date of claim and not the date on which the claim was resubmitted.

5.3 The learned lower authorities ought to have known the ratio of the decision of Hon'ble High Court in the case of CCE Vs. M/s Arya Exports and Industries [2005 (192) ELT 89 (Del.)], wherein it has been held that the date of original claim has to be reckoned for computing the limitation period from relevant date and not the date on which the claim was re-submitted.

5.4 The learned lower authorities ought to have known and applied the ratio of the decision of Hon'ble Tribunal in the case of Goodyear India Ltd., Vs. CC, New Delhi [2002(150) ELT 331 (Tri.Delhi)], wherein Hon'ble Tribunal observed and held as, the claim filed within six months initially, but on return from the Department, submitted beyond the period of six months after rectifying the defects is a valid claim not hit by limitation and the date of initial filing the claim is within the limitation period.

5.5 The learned lower authorities ought to have known and applied the ratio of the decision of Hon'ble Tribunal in the case of Angiplast Pvt. Ltd., Vs. CCE, Ahmedabad [2010 (19) STR 838 (Tri.Ahmd.)], wherein Hon'ble Tribunal held that initial date of filing the claim is relevant and subsequent date of filing with documents is not to be considered as date of filing. The Hon'ble Tribunal has also recorded that the issue is no longer res integra and stands settled by various decisions.

5.6 The learned lower authorities, ought to have known the decision of Government of India in the case of I.O.C.Ltd., [2007 (220) ELT 609 (G01)] wherein it has been held by Government of India in an identical issue covering an identical facts, that the time limit has to be computed from the date on which the rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted.

5.7 The learned lower authorities, ought to have known the decision of Government of India in the case of Dagger Forst Tools Ltd, [2011 (271) ELT 471 (G01)] wherein while dismissing the revision application filed by the Department, that the time limit has to be computed from the date on which the rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted. Government of India has further observed that technical deviations

or procedural lapses are to be condoned if there is sufficient evidence as export of duty paid goods.

5.8 While the issue of computation of limitation of time for the purpose of granting rebate/refund under Section 11B, the issue has attained finality that the date of filing the claim initially is to be considered for computation of time limit under Section 11B and not the date of re-submission of claim, returned for the purpose of rectifying defects.

5.9 The learned lower appellate authority has grossly failed to appreciate the various decisions of Hon'ble High Court, Tribunals and Government of India cited by them in their appeal memorandum, and passed the impugned orders without even recording any findings as to why he chose to ignore the ratio of such decisions, in gross violation of cardinal principles of Nature Justice, rendering the orders passed by him as has been passed without application of mind, non-speaking and thus, liable to be set aside ab initio void.

6. Personal hearing in this case was held on 17.08.2021 through video conferencing which was attended online by Shri V. Sunderrajan, C.A. He reiterated earlier submissions and requested to allow the claims.

7. Government has carefully gone through the relevant case records oral and written submissions and perused the impugned letters and order-in-appeal.

8. Government observes that the respondent had filed four separate rebate claims on 19.09.2014, 15.09.2014, 27.03.2014 and 27.11.2014 respectively, claiming rebate of Central excise duty paid on exported goods in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. Subsequently, all the four rebate claims were returned vide separate defect memos dated 09.10.2014, 09.10.2014, 15.04.2014 and 08.01.2015 respectively, asking the applicant to clarify the passing of duty incidence to the merchant exporter, production of disclaimer certificate from Merchant Exporter, copy of GAR 7 Challan not submitted etc. The applicant resubmitted the said rebate claims on 27.11.2014, 27.11.2014, 26.12.2014 and 22.01.2015. Since the date of re-submission of these claims was beyond the stipulated period of one year, the original authority rejected these four rebate claims as time barred.

9. Government observes that Hon'ble High Court of Gujarat in a similar situation 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 similar stand has 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 as 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. 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 rebate applications. Since the said rebate applications are initially filed within stipulated time limit i.e. on 19.09.2014, 15.09.2014, 27.03.2014 and 27.11.2014 respectively, by the applicant, 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.

13. In view of above discussion, Government modifies and sets aside the Order-In-Appeal No. 31 to 34/2015-CE dated 20.05.2015 passed by the Commissioner of Central Excise (Appeals-I), Salem and remands the case back to original authority to decide all the four rebate claims 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. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. Revision application is disposed off on the above terms.

Shrawan
14/9/21
(SHRAWAN KUMAR)

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

318-321
ORDER No. /2021-CX (SZ) /ASRA/Mumbai Dated 14.09.2021

To,

M/s SJLT Spinning Mills (P) Ltd. NH7,
Namakkal-Karur, Main Road,
Pillaikalathur, Paramathi Velur P.O.,
Namakkal-637207.

Copy to:

1. Commissioner of Central Goods & Services Tax, Salem, No.1, Foulks Compound, Anai Medu, Salem-636001
2. Commissioner of Central Goods & Services Tax, Coimbatore Appeals 6/7, A.T.D. Street, Race Course Road, Coimbatore-641018
3. The Assistant Commissioner, Salem-II Division: Foulke's Compound, Anaimedu, Salem-636001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.