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

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F. NO. 198/46/15-RA / *SUC*

Date of Issue: 24.09.2021

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ORDER NO. 324 /2021-CX (WZ) /ASRA/Mumbai DATED 20.09.2021  
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.

Applicant : The Commissioner of CGST, Rajkot.

Respondent : M/s Rollwell Forge Pvt. Ltd.,  
B/h G.E.B. Sub-Station,  
Rajkot-Gondal Highway,  
Vill : Shapar, Dist. Rajkot.

Subject : Revision Applications filed, under section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
No. RAJ-EXCUS-000-APP-12-15-16 dated 30.04.2015  
passed by the Commissioner of Central Excise  
(Appeals), Rajkot.

**ORDER**

This revision application is filed by the Commissioner of Central Excise, Rajkot (hereinafter referred to as "the Department") against the Order-in-Appeal RAJ-EXCUS-000-APP-12-15-16 dated 30.04.2015 passed by the Commissioner of Central Excise (Appeals), Rajkot.

2. M/ s. Rollwell Forge Pvt. Ltd. Behind GEB Sub-Station, Shapar (Veraval) Village, Distt : Rajkot, (hereinafter referred to as "respondent") are engaged in the manufacture of excisable goods falling under Chapter 72 & 73 of the 1<sup>st</sup> Schedule to the Central Excise Tariff Act, 1985. The respondent filed six (06) rebate claims on 11.10.2011 for refund of duty paid on goods exported, under rule 18 of the Central Excise Rules, 2002. It appeared that the rebate claims were filed beyond one year from the date of export and the same were hit by limitation prescribed under Section 11 B of the Central Excise Act, 1944. The adjudicating authority vide 02/Refund/2012 dated 25.05.2012 rejected the impugned rebate claims being inadmissible. Being aggrieved, the respondent preferred appeal before the Commissioner (Appeals), Central Excise, Rajkot, who vide Order-In-Appeal No. 181/2013(Raj)CE/AK/Commr(A)/Ahd date 26.04.2013 dismissed the appeals and upheld the adjudicating order. Again, being aggrieved, the respondent filed SCA before the Hon'ble Gujarat High Court, under article 226 of the Constitution of India. The Hon'ble Gujrat High Court vide Order dated 21.03.2014 upheld the order of adjudicating authority in respect of ARE-1 Nos. 85 dated 30.08.2008, 149 dated 18.12.2009, 161 dated 09.11.2009 & 04 dated 13.04.2010 and in case of ARE-I Nos. 44 dated 06.07.2010 and 48 dated 13.07.2010 remanded the matter back to the adjudicating authority for considering the claims afresh in accordance with law and on its own merits.

2.1 On remand, the matter was re-adjudicated by the adjudicating authority and two rebate claims under ARE-1 Nos. 44 dated 06.07.2010 and 48 dated 13.07.2010 were rejected vide Order in Original No. 04/Ref/2014 dated 21.10.2014 being hit by the limitation under Section 11B of the Central Excise Act, 1944. The adjudicating authority while passing the impugned

Order relied on the decision of Hon'ble Supreme Court in the case of UOI Vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC).

3. Being aggrieved by the impugned Order in Original, the respondent filed an appeal before the Commissioner of Central Excise (Appeals), Rajkot. The appellate authority vide Order in Appeal No. RAJ-EXCUS-000-APP-12-15-16 dated 30.04.2015 set aside the impugned Order in Original and allowed the appeal filed by the respondent. The Appellate Authority while passing the Order in Appeal observed that :-

- a) The High Court has given clear cut order that three rebate claims in respect of ARE -- 1 Nos. 44 and 48 had to be treated as filed within stipulated time limit.
- b) In catena of judgments, it has been held that the adjudicating / appellate authority is required to follow the principles of judicial discipline. In absence of any stay order from the competent judicial forum, the adjudicating authority was bound to follow the aforesaid order of Hon'ble Gujarat High Court and again rejection of rebate claims on the ground of limitation is not just, proper and legal and is required to be quashed.
- c) The Appellate Authority had relied upon the following judgements:
  - i. Hon'ble Supreme Court in case of Kamalakshi Finance Corporation Limited [1994 (09) LCX 0044].
  - ii. Hon'ble Bombay High Court in case of CCE, Nasik Vs. D. J. Malpani
  - iii. CESTAT, Mumbai in case of M.R. Narkhede Memorial Trust [2010(05) LCX 0036]

4. The department has filed instant Revision Application contesting the Order in Appeal passed by the Appellate Authority on following grounds :-

- 4.1 The Hon'ble Gujarat High Court has directed the adjudicating authority to consider the rebate claims afresh and decide the same in accordance with the law and its own merits. Thus, it is clear that the Appellate Authority has misconstrued the issue and allowed the appeal in the favor of respondent.

- 4.2 While deciding the rebate claims of the respondent, the adjudicating authority has rightly considered all the legal aspects of the case viz. Act, Rules, Regulations & case laws; and decided the claims on merits, as directed by the Hon'ble Gujarat High Court.
- 4.3 The rebate claims were governed by Section 11B of the Central Excise Act, 1944 and the limitation prescribed therein also applies to the rebate claim. It was more essential that the filing of rebate claims within a year is mandatory and there is no provision under the Act to condone any delay and also supported by the Board's Circular No 234/68/96-CX dated 26.07.1996, wherein, it has been clarified that the limitation period for filing rebate claim as prescribed under Section 11B is absolute, since the Act does not prescribe any provision for relaxation.
- 4.4 The department relied upon the case in Reference Application made before the GOI in M/s Vee Excel Drugs and Pharma. Pvt. Ltd. [2012 (283) E.L.T. 305 (G.O.I.)] wherein it has been observed that Section 11 B of the Central Excise Act, 1944 provides for the time limit and there is no provision to extend the same. Further, reliance has been placed on the decision of Hon'ble Supreme Court in the case of UOI Vs. Kirloskar Pneumatics Company wherein it has been categorically held that the High Court cannot direct the Customs Authorities to ignore the time limit prescribed u/s 27 of the Customs Act, 1962 even though the High Court itself may not be bound by the time limit of the said section.

5. A Personal hearing in the matter was granted on 03.03.2021, 10.03.2021, 06.04.2021, 13.04.2021, 23.07.2021 and 29.07.2021. However, no one appeared for the personal hearing so granted. Since sufficient opportunities for personal hearings have been offered, the case is taken up for decision on the basis of documents available on records.

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

7. In the instant case, the Government notes that the Hon'ble Gujrat High Court while deciding the SCA filed by the respondent passed an order dated 12.03.2014 and upheld the Order in Original 02/Refund/2012 dated 25.05.2012 in case of ARE-1 No. 85 dated 30.08.2008, 149 dated 18.12.2009, 161 dated 09.11.2009 & 04 dated 13.04.2010 and in respect of ARE-1 No. 44 dated 06.07.2010 and 48 dated 13.07.2010 remanded the matter back to the original adjudicating authority for considering the claims afresh on merits. The Government finds that the Hon'ble Gujrat High Court has drawn specific conclusion which reads as under:-

*"7.1 Now so far as the remaining rebate claims with respect to ARE:-1 Nos. 44. and 48 are concerned, it appears that the copies of the shipping bills were received on 12/08/2011 and 18/10/2011 respectively and the claims were submitted Immediately on 11/20/2011. Under the circumstances, as such, it cannot be said that there was any delay on the part of the petitioners in submitting, the rebate claims with respect to ARE-I Nos. 44 and 48 and therefore the impugned order deserve to be quashed and set aside and the matter is required to be remanded to the adjudicating authority to consider the rebate claims afresh in accordance with law and on its own merits.*

*8. In view of the above and for the reason stated hereinabove, the impugned order passed by the authority below rejecting the rebate claims with respect to ARE-l No. 85, 161, 149 and 4 is hereby confirmed and the present petition Is dismissed with respect to the aforesaid rebate claims. So far as the Impugned order with respect to rebate claims of ARE-1 Nos. 44 and 48 are concerned, the impugned orders are quashed and set aside and the matter Is remanded to the adjudicating authority to consider the rebate claims with respect to ARE-1 Nos. 44 and 48 afresh in accordance with law and on its own merits. The present petition is partly allowed to the aforesaid extent only. Rule is made absolute to the aforesaid extent. No order as to costs."*

7.1 On perusal of the above order, the Government finds that the Hon'ble High Court after careful examination of the relevant documents pertaining to impugned rebate claims has ascertained that the claims in respect of ARE-1 No. 44 and 48, were filed immediately after receipt of copies of shipping bills and directed that these claims need to be processed afresh on merit as there was no delay on part of the applicant in filing the impugned claims. Thus, it was imperative for the adjudicating authority to follow the directions of the Hon'ble High Court in keeping with the Principles of the Judicial Discipline. The Government observes that the original authority had not passed the fresh order-in-original on remand as directed by the Hon'ble High Court. Instead the adjudicating authority passed an order maintaining the opinion in his earlier order without considering merit of the case. In the absence of any clear finding by the applicant to support their disagreement with the finding of fact by the Hon'ble High Court, mere disagreement with the order of the High Court, will be against the Principle of judicial discipline.

7.2 The Government opines that in case of any disagreement with the Order of the Hon'ble High Court the appropriate course for the department would have been to challenge the order before appropriate forum. The Government observes that the department has not challenged the High Court order by taking recourse to the legal remedy available under the law, therefore, adjudicating authority had no option but to pass order adhering to the directions of the Hon'ble High Court.

7.3 The Government finds that in *Union of India v. Kamalakshi Finance Corporation Limited*, 1992 (38) ECR 486 = 1991 (55) E.L.T. 433 (S.C.), Hon'ble Supreme Court held in clear terms that the mere fact that the order of the appellate authority is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. In that case arising out of the Central Excise Tariff Act, 1985 the adjudicating authority did not comply with the order passed by the appellate authority. The Hon'ble Supreme Court held that utmost regard should be paid by the adjudicating authorities as well as the appellate authorities to the requirements of judicial discipline and the need for giving effect to orders of

the higher appellate authorities which are binding on them. Principles of judicial discipline require that orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities.

8. The Government notes that the appellate authority at para 12 of the impugned Orders in Appeal has drawn the observations which read as :-

*"12. Regarding reliance placed by the lower adjudicating authority on judgment of Supreme Court in the case of Union of India Vs. Kirloskar Pneumatic Company [1996 (84) EL T 401 (SC)], I find that the facts and circumstances of the case were different and although the ratio of said judgment may be applicable in the present case, reliance thereof for rejection of rebate claims is out of context at this juncture. Further, the said judgment is pronounced by the Supreme Court after filing of appeal by the Department. Thus, the lower authority was required to simply follow the order passed by the Gujarat High Court and cannot overrule the same relying upon aforesaid judgement. If the Department was of the view that the order of the High Court was not in accordance with the provisions of law for the time being in force, it was at liberty to review the same and appeal could have been filed before appropriate authority against the same. Meanwhile, as per the instructions, the Department was bound to follow the order and sanction the rebate claims in respect of AR E - 1 No. 44 and 48 as the order passed by the Hon'ble High Court of Gujarat was in force and is required to be followed as per the principles of judicial discipline."*

8.1 The Government finds that the perspective of the Appellate Authority in above observations is fair enough to distinguish the reliance placed by the department in case of Union of India Vs. Kirloskar Pneumatic Company [1996 (84) EL T 401 (SC)] and needs no further elaboration.

9. In view of the above discussion, Government holds that the appellate authority has justifiably allowed the appeal filed by the respondent. Thus, Government does not find any infirmity in the Order in Appeal No. RAJ-

EXCUS-000-APP-12-15-16 dated 30.04.2015 passed by the Commissioner of Central Excise (Appeals), Rajkot and, therefore, upholds the impugned order in appeal.

10. The Revision Application is dismissed being devoid of merit.

*Shrawan Kumar*  
20/9/21

(SHRAWAN KUMAR)

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

ORDER No 324/2021-CX (WZ) /ASRA/Mumbai DATED 20.09.2021

To,

The Commissioner of CGST & CX,  
Rajkot Commissionerate,  
Central GST Bhavan,  
Race Course Ring Road,  
Rajkot- 360 001.

Copy to:

1. M/s Rollwell Forge Pvt. Ltd., B/h G.E.B. Sub-Station, Rajkot-Gondal Highway, Vill : Shapar, Dist. Rajkot.
2. The Commissioner of CGST & CX, Rajkot Commissionerate, Central GST Bhavan, Race Course Ring Road, Rajkot- 360 001.
3. The Commissioner of GST & CX, (Rajkot Appeals), 2<sup>nd</sup> floor, Central GST Bhavan, Race Course Ring Road, Rajkot- 360 001.
4. The Deputy Commissioner, CGST, Rajkot-II Division, 2<sup>nd</sup> floor, Central GST Bhavan, Race Course Ring Road, Rajkot- 360 001.
5. Sr P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.