

ORDER

This Revision Application has been filed by M/s. Piramal Enterprises Ltd., (formerly known as M/s Priamal Healthcare Ltd. and hereinafter referred to as "the applicant") against the the Order-in-Appeal No. CD/111/RGD/2014 dated 03.12.2014 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

2. Brief facts of the case are that the applicant are engaged in the manufacturing of excisable goods falling under Chapter Heading 29 & 30 of the Central Excise Tariff Act, 1985. The applicant had exported their final product that is "Vitamin and Mineral Powder" on payment of excise duty of Rs.21,26,721/- (Rupees Twenty One Lakh Twenty Six Thousand Seven Hundred and Twenty One only). The applicant thereafter filed rebate claim of said excise duties paid vide online application no. 122 to no. 123 dated 08.10.2013 along with relevant documents under the Notification No.19/2004 dated 06/09/2004. During the scrutiny of the rebate application it was noted that the rebate claim in respect of goods exported by sea or air has to be filed within a period of one year from the date on which the ship or the aircraft in which such goods are loaded, leaves India. In both the above mentioned cases as the goods are exported by sea, the rebate claim had to be filed within one year from the date goods were loaded on ship i.e. 07.10.2012. However, the applicant had filed both the rebate claims online on 08.10.2013 which is after lapse of one year from the date the goods were loaded on ship. Hence, it was observed that the claims have not been filed within the time prescribed under Section 11B of Central Excise Act, 1944.

3. Based on the above observations, the applicant were issued show cause notice. Deputy Commissioner, Mahad Division vide Order-in-Original No. DC(MHD)/3443 to 3444/13-14 dated 31.01.2014 considered the date of filing of rebate claim as 08/10/2013 which was beyond the period of one year from the date of loading of the goods on the ship, as provided u/s 11B of the Central Excise Act, 1944 and therefore rejected the entire rebate claim as barred by limitation of time.

4. Being aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. CD/111/RGD/2014 dated 03/12/2014 observed the same and dismissed the appeal on the ground of limitation.

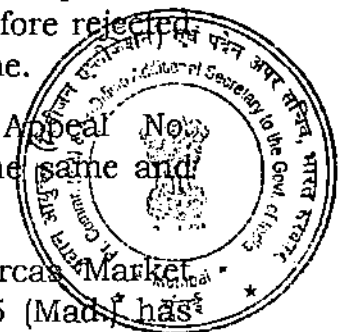
5. Being aggrieved by said order, the applicant has filed the present Revision Application under Section 35EE of the Central Excise Act, 1944 on the grounds mentioned therein.

6. A personal Hearing was held in this case was attended by Shri Manoj Chauhan, Chartered Accountant duly authorized by the applicant and Shri Sunilkumar, Manager who reiterated the submissions filed in the Revision.



Applications along with written briefs/synopsis and case laws. In view of the same it was pleaded that the Order in Appeal be set aside and their Revision Application be allowed. In their written briefs submitted during the personal hearing, the applicant mainly contended as under :-

- 6.1 The said goods were loaded in the ship on 07/10/2012. As per the provisions of Section 11B of the Central Excise Act, 1944, the rebate claim is to be filed within one year from the date on which the goods were loaded on the ship. The applicant filed the rebate claim on 23/09/2013 online on the website www.aces.gov.in. However, the said rebate claim could not be filed due to certain technical error on the said site. Further, the claim was not accepted, and an error was indicated. The error indicated is attached as Annexure-A to the Appeal Memorandum.
- 6.2 After repeated attempts, the appellant was able to file online application on 08/10/2013. The appellant during the said period also visited the office of the Dy. Commissioner of Central Excise, Mahad Division to file an offline application for rebate under Notification No. 19/2004-C.T.(N.T.) dated 06/09/2004 issued under Rule 18 of the Central Excise Rules, 2002. However, the rebate claim was not accepted as online request number is mandatory for submitting hard copy of the rebate claim as per the procedure adopted by the said office.
- 6.3 Further, during the period 23/09/2013 to 08/10/2013, the applicant communicated with the ACES help desk for non-acceptance of the rebate claim by the said system filed on 23/09/2013. The chain of communication is attached as Annexure-10 of the Appeal Memorandum.
- 6.4 The Order-In-Original considered the date of filing of rebate claim as 08/10/2013 which is beyond the period of one year from the date of loading of the goods on the ship, as provided u/s 11B of the Central Excise Act, 1944 and therefore rejected the entire rebate claim as barred by limitation of time.
- 6.5 The Commissioner (Appeals) vide Order in Appeal No. CD/111/RGD/2014 dated 03.12.2014 observed the same and dismissed the appeal on the ground of limitation.
- 6.6 The Madras High Court in the case of M/s. Dorcas Market Makers Pvt. Ltd. reported in 2015 (321) E.L.T. 45 (Mad.) has held that there is no time limit prescribed under Notification No. 19/2014 — C.T.(N.T.) and therefore adopting the time limit u/s 11B of the Central Excise Act, 1944 is incorrect.
- 6.7 The appeal filed against the said Order before the Supreme Court is dismissed vide Order reported in 2015 (325) E.L.T.



A104 (S.C.). Further, it is submitted that following the above judgement, it is consistently held that the time limit of one year of filing the rebate claim is not applicable to the claims filed under the said notification. • JSL LIFESTYLE LTD. 2015 (326) E.L.T. 265 (P & H)

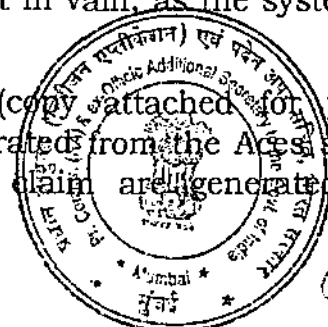
- 6.8 The date wise chart of the event of removal of goods and filing of the rebate claim is reproduced below:

Date	Event
07/10/2012	Goods removed under ARE-1 nos. 133 & 134 were loaded in the ship
23/09/2013	Applicant successfully filed the application for rebate. However, the same was not processed due to technical issues. As a result, the refund request no. was not generated.
23/09/2013 to 08/10/2013	Several attempts were made for generating the refund request no. for ARE-1 nos. 133 and 134. However, the attempts were unsuccessful due to technical issues.
08/10/2013	The online application for rebate was processed and refund request no. was generated.
09/10/2013	Hard copy documents submitted before the department.

- 6.9 It will be evident from the above that the first online application dated 23/09/2013 is within the time limit prescribed u/s. 11B of the Central Excise Act, 1944. It is submitted that after filing of the rebate claim, the ACES system generates the rebate request number. However, the said request number was not generated in the present case and a message was popped up on the screen which reads as "your request cannot be processed. Please contact the system Administrator". The screenshot of the message is attached as Annexure-g; to the Appeal Memorandum.

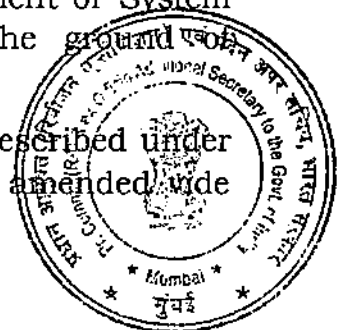
- 6.10 They contacted the system Administrator who in turn informed that there can be some server problem and asked us to file the claim on later date. All along, the appellant made several attempts to file the rebate claim but managed to file only one refund request for 30/09/2013 for claim no. AAACN4538PXM00 1_2013 _ 119_RF_RR pertaining to ARE-1 no. 155/2012-13 and immediately the appellant started refiling of the earlier claims (for ARE-1 nos. 133 & 134) but in vain, as the system failed in accepting the online claims.

- 6.11 In the refund request list (copy attached for your ready reference as Annexure-9) generated from the ACES system, you will find the refund request claim are generated upto no.



AAACN4538PXM001_2013_113_RF_RR is dated 03/08/2013. The refund request claim numbers starting from AAACN 4538PXM001_2013_ 114_ RF_RR to AAACN4538PXM001_2013118RFRR is not listed in the list. The next refund request no. AAACN4538PXM001_2013_119_RF_RR dated 30/09/2013 is listed in the list.

- 6.12 It is evident from the records that ARE-1 nos. 133/2012-13 and no. 134/2012-13 falls within the ambit of missing refund request nos. in the system between AAACN4538PXM001_2013_114_RF_RR to AAACN4538PXM001_2013_118_RF_RR dated 23/09/2013. Hence, this evidently shows that the appellant in the interim period has filed the rebate claims for ARE nos. 133 & 134/2012 and due to some technical error the same were not processed and not listed in the refund request list.
- 6.13 They have filed the above referred refund request claim in respect of both the ARE-1 nos. 133/2012-13 and no. 134/2012-13 online on 23/09/2013. Since, there were link failure all throughout during the period from 23/09/2013 to 08/10/2013 (late afternoon) they could finally refile it into the Aces system only on 08/10/2013 (evening).
- 6.14 They also had written through email to Aces helpdesk regarding the problem they are facing, but all along they have not received any communication/reply/feedback from the Aces helpdesk even after repeated reminders (for your ready reference, the chain of communication with Aces Helpdesk is attached as Annexure-10).
- 6.15 Neither the Dy. Commissioner nor the Commissioner has given any observation on the above mentioned submissions of the applicant. They have merely stated that the rebate claim has been filed on 08/10/2013 and accordingly the rebate claim is ought to be rejected as the same is time barred.
- 6.16 In view of the above, it will be evident that non-generation of the rebate request number was on account of the non-working of the ACES system. The appellants rely upon the judgement in the case of M/s. Cosmonaut Chemicals & ANR v/s. M/s. Union of India reported in 2008-TIOL-473-HC-AHM-CX wherein it is held that the delay in filing the rebate claim is on account of lapse on the part of the Central Excise Department or System Department and shall not be rejected on the ground of limitation.
- 6.17 Upto 29.02.2016 date there was no time limit prescribed under the said notification. The said notification was amended vide



Notification No. 18/2016 -C.E. (N.T.) dated 01.03.2016 by amending the sub-paragraph (i) in paragraph (b) under the heading (3) "procedure" and prescribing the time limit for filing the rebate claim. It is submitted that the period of dispute in the present case i.e. 2012-2013 is prior to the said amendment. Therefore, it is submitted that the time limit under the said notification is not applicable in the present case.

7. In their cross objection filed against the Revision Application the department contended that:

7.1 M/s Piramal Enterprises Ltd. had filed rebate claims amounting to Rs. 21,26,721/- (Rupees Twenty One Lakh Twenty Six Thousand Seven Hundred Twenty one only) vide online application dt. 08.10.2013 vide notification no. 19/2004 dt. 06.09.2004. During the scrutiny of the rebate application, it was observed that the rebate claim was filed after the period of one year from the date on which goods were loaded on ship. i.e 07.10.2012. Hence it was observed that the claims were not filed within the time prescribed under Section 11 B of Central Excise Act, 1944. Accordingly, an Order- in-Original No.DC(MHD)/3443 to 3444/13-14 dated 31.01.2014 was passed rejecting the rebate claim. Aggrieved by the same, the applicant filed an appeal with Commr (A) who vide O-I-A No. CD/111/RGD/2014 dt. 03.12.2014 upheld the O-I-O and rejected the appeal. Being aggrieved by the said O-I-A, the applicant has filed an revision Application.

7.2 The Case laws relied upon by the Adjudicating authority as well as the Commissioner (A) are squarely applicable in the present case. In this regards, the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act is mandatory as held by various judicial forums including Apex Court. However, the following Hon' ble Supreme Court judgment has laid down the principles that in making refund claims before departmental authority, an assessee is bound within four corners of the statute, and period of limitation prescribed under Central Excise Act and rules framed there under must be adhered to and the authorities functioning under the Act are bound by the provision of the Act. The Supreme Court in the case of Collector of Central Excise, Chandigarh v. Doaba Co-op Sugar Mills Ltd. as reported in 1988 (37) E.L.T. 478 (S.C.) has held in para 6 as under

"It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or



the specific provisions of the act and the Rules framed there under have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed there under must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail."

Further in the case of Miles India v. Assistant Collector of Customs - 1987 (30) E.L.T. 641, the Supreme Court observed that the Customs Authorities were justified in disallowing the claim for refund as they were bound by the period of limitation provided under the relevant provisions of the Customs Act, 1962.

Similarly in the instant case also, the Adjudicating authority, who decided the refund claim was bound by the provisions of the Act and the Rules. Therefore, the refund claim rejected on the ground that the claim is made beyond the period of limitation is also eminently just and proper.

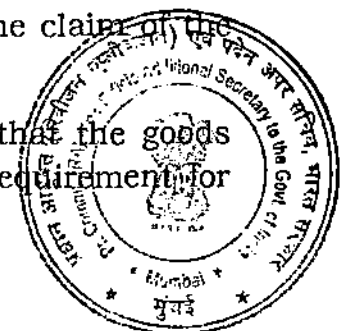
In the matter of Mafatlal Industries Limited (supra), the Hon'ble Supreme Court had occasion to consider the scope of Section 11 B of the Act. In paragraph 91 of the judgment, the Hon'ble Court observed that,

".....All claims for refund, arising in whatever situations (except where the provision under which the duty is levied is declared as unconstitutional), has necessarily to be filed, considered and disposed of only under and in accordance with the relevant provisions relating to refund, as they obtained from time to time, We see no unreasonableness in saying so."

In the present case, it is not disputable that the assessee did not make claim for rebate within one year from the relevant date as is required under Section 11B of the Act. Hence, the Assistant Commissioner was right in rejecting the claim of the petitioner as time barred.

- 7.3 The assessee's stand that, there is no dispute that the goods have been duly exported and as the essential requirement for

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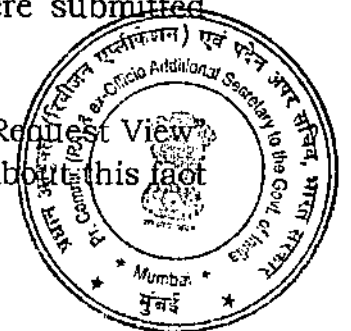
rebate is fulfilled, the procedural lapse in filing the claim by just two days should be condoned cannot be accepted. Section 11B of the Act empowers a person, inter alia, to claim refund of any duty of excise before the expiry of one year from the relevant date. The said section does not provide, either expressly or impliedly, that such application, in the given circumstances may be made after the period of one year from the relevant date. The filing of rebate claim within the stipulated time therefore cannot be construed as a procedural lapse but a mandatory requirement prescribed under Section 11 B of the Act and cannot be dispensed or condoned.

8. 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.

9. On perusal of records, Government observes that the applicant filed Revision Application against Order-in-Appeal No. CD/111/RGD/2014 dt.03.12.2014 which upheld the Order-in-Original No. DC(MHD)/3443 to 3444/13-14 dated 31.01.2014 in terms of which rebate claim of the applicant for Rs. 21,26,721/- (Rupees Twenty One Lakh Twenty Six Thousand Seven Hundred Twenty one only) filed by the applicant was rejected holding it to be time-barred. The applicant have contended that they had filed the refund claim electronically on 23.09.2013 and reckoned from that date the entire amount was within the limitation period of one year. They stated that the adjudicating authority has reckoned the date of filing the refund as 08.10.2013 when their online application for rebate was processed and refund request number was generated.

10. Government observes that the issue involved in these appeals is whether the claims filed by the applicant is time-barred or not. It is contention of the applicant that rebate claims in respect of both the ARE-1 Nos. 133/2012-13 dated 02.10.2013 and No. 134/2012-13 dated 04.10.2013 in questions were filed by them, electronically on 23/09/2013. However, the same was not processed due to technical issues. As a result, the refund request no. was not generated. Thereafter, they made several attempts for generating the refund request no. for ARE-1 nos. 133 and 134. However, their attempts were unsuccessful as there were link failures all through out during the period from 23.09.2013 to 08.10.2013. The online application for rebate was processed and refund request no. was generated only on 08.10.2013 and thereafter hard copy documents were submitted before the department on 09.10.2013.

11. Government in the instant case observes from "Refund Request View (Annexure -2 to Revision Application) that there is no dispute about this fact



that these claims were submitted by the applicant electronically on 23.09.2013. Government also finds that the applicant were informed by CBEC on ACES portal that *"Your request cannot be processed. Please Contact the system Administrator"* (Annexure-8 to Revision Application). Government further notes that the applicant vide email dated 26.09.2013 also informed 'aces.servicedesk@icegate.gov.in' requested them to look into error. Further, from the Refund Request List generated from the ACES (Annexure-9 to Revision Application) Government observes that Rebate claim No. 113 was generated on 03.08.2013 and thereafter Rebate claim No. 119 dated 30.09.2013 is listed in the list. However, Refund Request No. 114 to 118, generated in ACES in respect of refund claims filed by the applicant are not appearing in the Refund Request List mentioned above. It is also on record that the applicant had thereafter been in correspondence with ACES Admin for rectification of this problem.

12. In view of the foregoing, Government is of the considered view that the applicant did file the rebate claims on 23.09.2013 but the same could not be accepted due to systems problem of ACES and could ultimately be filed on 08.10.2013. Government further notes that in its reply dated 12.12.2013 to the Show Cause Notice dated 09.12.2013 issued proposing rejection of rebate claims as barred by limitation in terms of Section 11 B of Central Excise Act, 1944, by the Deputy Commissioner of Central Excise, Mahad Division, the applicant at para 4 had clearly mentioned that:

"without getting confirmation copy of online filing of refund request claim No. the hard copy of the submission is not accepted at your office. Therefore, we have been waiting for on line generation of the same. We also spoke to the personnel in your office who insisted on line refund request No. is mandatory for submitting hard copies of rebate claim".

13. Government observes while rejecting the rebate claims vide Order in original No. DC (MHD)/3443 to 3444/13-14 dated 31.01.2014 the Original Adjudicating Authority has not given any observations on the above mentioned submissions of the applicant. Therefore, Government does not find any force in the observation of the Commissioner (Appeals) in his impugned Order in Appeal that the *"appellant could have submitted physical claim within time limit with the department stating above facts which has not been done by them"*.

14. In this regards, Government observes that in para 2.4 of Chapter 9 of Central Excise Manual, the following lines are also mentioned:

"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."

Government observes that contrary to the above, in the instant case the Division Office insisted for online refund request number for submitting the hard copies of the rebate claim which the applicant could provide only on 08.10.2013 due to link failure problem of ACES System.

15. Accordingly, Government observes that in the instant case, the initial date of filing of the rebate claim by the applicant i.e. 23.09.2013 has to be the relevant date under Section 11B of the Central Excise Act, 1944 as the delay in online filing of the rebate claim is attributable to the Department. Hence, Government holds that the rebate claims are not hit by limitation.

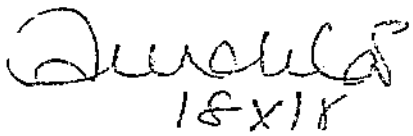
16. In view of the facts and circumstances as above, Government sets aside the impugned Order-in-Appeal No. CD/111/RGD/2014 dated 03.12.2014 and remands the case back to original Adjudicating Authority to decide the same afresh on merits keeping in line with observations of Government of India as discussed 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.

17. The instant Revision Application is allowed of in terms of above.

18. So ordered.

ATTESTED


S.R. HIRULKAR
Assistant Commissioner (R.A.)


18x18
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 345 /2018-CX (WZ) /ASRA/Mumbai, DATED 18.10.2018.

To,

M/s. Piramal Healthcare Limited (now Piramal Enterprises Limited),
Additional MIDC Mahad,
District Raigad, Maharashtra.



Copy to:

1. The Commissioner of GST & CX, Raigad Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor,CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Mahad Division, GST & CX, Raigad Commissionerate.
4. Sr.P.S. to AS(RA),Mumbai.
- ✓ 5. Guard file
6. Spare Copy.

