

REGISTERED SPEED POST AD



**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. 195/259/WZ/2018-RA | 1092 — Date of Issue: 11.05.2022

ORDER NO. 402 /2022-CX(WZ)/ASRA/MUMBAI DATED 9.05.2022
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 : M/s Ipca Laboratories Ltd.
142-AB, Kandivli Industrial Estate,
Kandivli(West),
Mumbai – 400 067

Respondent : Commissioner of CGST & Central Excise, Daman

Subject : Revision Application filed under Section 35EE of the Central Excise
Act, 1944 against Order-in-Appeal No. CCESA-Audit-SRT/VK-
157/2017-18 dated 24.08.2018 passed by the Commissioner of
Central Excise(Appeals), Surat.

ORDER

The revision application has been filed by M/s Ipca Laboratories Ltd., Plot No. 255/1, Village-Athal, Silvassa, Dadra and Nagar Haveli(UT) – 396 230(hereinafter referred to as “the applicant”) against Order-in-Appeal No. CCESA-Audit-SRT/VK-157/2017-18 dated 24.08.2018 passed by the Commissioner of Central Excise(Appeals), Surat.

2. The applicant had filed a rebate claim amounting to Rs. 3,44,605/- with LTU, Mumbai on 10.02.2016 under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002 read with Section 11B of the CEA, 1944 for the goods cleared from the factory for export through Mumbai Airport against ARE-1 No. 0349/2013-14 dated 09.09.2013. The said rebate claim was transferred to Div-II, Silvassa alongwith a corrigendum to SCN dated 31.03.2016 issued vide F. No. LTU/MUM/CX/GLT-2/IPCA/Rebate/270/15-16 by the jurisdictional authority in view of the NOC granted by the Principal Commissioner of Income Tax vide letter F. No. CCCIT/LTU/IPCA/15-16/50 dated 31.03.2016 for exit from the Large Tax Payer Unit, Mumbai to join the jurisdictional Central Excise formation. The concerned AC, LTU had issued SCN No. LTU/MUM/CX/GLT-2/IPCA/Rebate/270/15-16 dated 31.03.2016 proposing rejection of the rebate claim of Rs. 3,44,605/- being inadmissible under Section 11B of the CEA, 1944 as the rebate claim had been filed beyond the stipulated time limit of one year from the relevant date. The adjudicating authority had rejected the said rebate claim vide his OIO No. 200/AC/SLV-II/Reb/16-17 dated 27.03.2017.

3. Aggrieved by the OIO dated 27.03.2017, the applicant filed appeal before the Commissioner(Appeals). The appellate authority after following due process of law referred case laws and para 2.4 of Chapter IX of the CBEC Manual of Supplementary Instructions to come to the conclusion that the rebate claim filed by the applicant was clearly hit by limitation of one

year from the date of export of goods stipulated under Section 11B of the CEA, 1944. He further observed that there was no provision for condonation of delay in terms of Section 11B and that no statutory authority could traverse beyond the confines of law and grant relief by overlooking the bar of limitation. It was also opined that the applicant had the option of filing rebate claim within the time limit without the EP copy of shipping bill. However, the applicant had failed to do so. The Commissioner(Appeals) therefore rejected the appeal and upheld the OIO dated 27.03.2017 vide his OIA No. CCESA-Audit-SRT/VK-157/2017-18 dated 24.08.2018.

4. The applicant has now filed revision application on the following grounds :

- (a) The goods were exported on 12.09.2013 and proof of export was received by them on 11.02.2014. The deficiency in the shipping bill of non-mention of ARE-1 No. was noticed and the request for correction was submitted to the Customs authorities vide letter dated 18.02.2014.
- (b) The Customs authority had delayed issue of corrected documents which had delayed submission of rebate claim within the stipulated period of one year from the date of export before 11.09.2014. After receipt of the corrected documents on 12.02.2015, they had submitted their refund claim to the LTU, Mumbai vide RC No. 2972 dated 06.01.2016.
- (c) The applicant claimed that it was not disputed by the adjudicating authority that filing of rebate claim could not be done because of the fact that they could not get the shipping bill amended for almost a year after submission of application for amendment. The adjudicating authority has mentioned that although he recognizes that delay in filing rebate claim was due to the delay in amending the shipping bill and since it was amended after almost a year, he is not authorized to take cognizance of these facts and is bound by the time limit prescribed under Section 11B of the CEA, 1944 for processing rebate claim. In such manner, the adjudicating authority has accepted that

there was a genuine reason for delay but since it was beyond his competence to overlook the time limit, he cannot accept this defense and condone the delay. From these facts, it was evident that the adjudicating authority was acting as an administrative officer and not as a quasi judicial authority.

(d) Reliance was placed upon the case laws in :

- (i) Gravita India Ltd. vs. UOI[2016(334)ELT 321(Raj)]
- (ii) Collector Land Acquisition, Anantnag & Anr. vs. Katiji & Ors.[1987(28)ELT 185(SC)]
- (iii) Cosmonaut Chemicals vs. UOI[2009(233)ELT 46(Guj)]
- (iv) Parke Davis (India) vs. CCE, Mumbai-II[2004(176)ELT 340(Tri-Mum)]
- (v) R. K. Silk Mills (India) Ltd. vs. CCE, Jaipur[2008(228)ELT 308(Tri-Del)]
- (vi) CCE, Vadodara vs. Paradeep Phosphate Ltd.[2013(296)ELT 245(Tri-Ahmd)]
- (vii) CCE, Chandigarh vs. Nalagarh Steel Rolling Mills Pvt. Ltd.[2013(293)ELT 751(Tri-Del)]
- (viii) Shrenik Pharma Ltd.[2012(281)ELT 477(GOI)]
- (ix) CCE, Thane-I vs. Global Wool Alliance P. Ltd., CESTAT Final Order No. A/168/2011-WZB/C-II/(EB) dated 09.02.2011 in Appeal No. E/1315/2003
- (x) Ace Hygiene Products Pvt. Ltd.[2012(276)ELT 131(GOI)]
- (xi) Ford India Pvt. Ltd. vs. AC, C.Ex., Chennai in W.P. No. 14884 of 2008 decided on 25.04.2011.

(e) The applicant contended that it would be clear from these submissions that there was no mistake on their part and therefore time limit under Section 11B should be counted from the date of receipt of the amended shipping bill. Substantial benefit due to them should not be denied on procedural/technical objections and genuine claim should be sanctioned as there was no fault on their part. Moreover, with regard to the mention by the adjudicating authority that condonation of delay was beyond this competence and that this

issue may be decided by higher appellate forum, since the amended shipping bill had been received almost a year after filing application for amendment, the applicant contended that the lower authority was competent to condone the delay and grant them relief.

5. The applicant was thereafter granted opportunity of personal hearing on 26.10.2021. Shri L. P. Sanadhya, Sr. General Manager appeared online and submitted that they had applied for rectification of shipping bill and hence the delay. He requested that their rebate claim be allowed. The applicant also filed a written submission on the date of hearing reiterating their grounds for revision and placing reliance on the judgment of the Hon'ble High Court of Rajasthan in the case of M/s Gravita India vs. UOI[2016(334)ELT 321(Raj)].

6. The issue for decision in the present case is the admissibility of rebate claim filed by the applicant beyond one year of the date of export of goods. The contention of the applicant in the revision application is that the delay in filing rebate claim was due to the time taken by Customs authorities to correct the deficiency in the shipping bill of non-mention of a particular ARE-1. The applicant has averred that limitation of one year for filing rebate claim should commence from the date on which they had received the corrected shipping bill from Customs authorities.

7.1 Before delving into the issue, it would be apposite to examine the statutory provisions regulating the grant of rebate. Rule 18 of the CER, 2002 has been instituted by the Central Government in exercise of the powers vested in it under Section 37 of the CEA, 1944 to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA, 1944. Moreover, the Explanation (A) to Section 11B explicitly sets out that for the purposes of the section "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. The duty of excise on excisable goods exported out of India or on excisable materials used in the

manufacture of goods which are exported out of India covers the entire Rule 18 within its encompass. Likewise, the third proviso to Section 11A(1) of the CEA, 1944 identifies “rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India” as the first category of refunds which is payable to the applicant instead of being credited to the Fund. Finally yet importantly, the Explanation (B) of “relevant date” in clause (a) specifies the date from which limitation would commence for filing refund claim for excise duty paid on the excisable goods and the excisable goods used in the manufacture of such goods. The relevant text is reproduced below.

“(B) “relevant date” means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;”

7.2 It would be apparent from the definition of relevant date in Section 11B of the CEA, 1944, that for cases of refund of excise duty paid on exported goods or on excisable materials used in exported goods, the date of export is the relevant date for commencement of time limit for filing rebate claim.

8.1 The next issue that arises is whether the non-availability of documents would have the effect of postponing such “relevant date”. Government infers that in the normal course any diligent applicant would try and ensure that their rebate claim would be lodged within time. Therefore, the applicant should have filed the rebate claim within one year of date of shipment of the goods with the available documents and photocopies

of documents which had been submitted by them to the Customs Authorities. Such timely action on their part would have ensured that the rebate claim was not time barred. Even if the claim was returned by the rebate sanctioning authority for deficiency in the documents submitted, the applicant could have established their entitlement to the rebate claimed as and when the proper documents were received. In such a case, their rebate claim would be deemed to have been filed in time. Para 2.4 of Chapter 9 of the CBEC's Excise Manual of Supplementary Instructions, 2005 in very explicit terms provides for such exigencies. The text thereof is reproduced below.

"2.4Even 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."

8.2 In the present case, far from adhering to the mandate of law, the applicant has been extremely lax. The goods were exported on 12.09.2013 and the applicant has filed request for amendment in shipping bill before Customs authorities on 18.02.2014. In the interim, the applicant has not bothered to inform the Department about the error in the shipping bill. It is interesting to note that the applicant noticed the discrepancy in the shipping bill five months after the goods had been exported. Thereafter, after receipt of the corrected shipping bill on 12.02.2015, the applicant waited a full year to file the rebate claim on 06.01.2016. The applicant has been lackadaisical about their responsibility to comply with the procedures incumbent upon them in terms of Rule 18 of the CER, 2002 read with Section 11B of the CEA, 1944.

9.1 Although, the applicant has placed reliance upon various case laws it is a matter of record that the Government has as far back as in 2010 itself

held In Re : Dagger Forst Tools Ltd.[2011(271)ELT 471(GOI)] that where the applicant had filed incomplete documents, the initial date of filing would be the relevant date under Section 11B of the CEA, 1944. However, in the present case the applicant has failed to file rebate claim within the prescribed time limit. The decisions of the Tribunal cited by the applicant are not being discussed since the proviso to Section 35B(1) of the CEA, 1944 specifies that the Tribunal shall not have jurisdiction to decide any appeal against orders of rebate of duty of excise on exported goods or on excisable materials used in the manufacture of exported goods. The judgment of the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors.[1987(28)ELT 185(SC)] involves a case for condonation of delay in terms of the Section 5 of the Limitation Act, 1963. In this regard, Government finds that the Hon'ble Supreme Court has in para 10 of its judgment in Singh Enterprises vs. CCE, Jamshedpur[2008(221)ELT 163(SC)] while rejecting that appellants plea for condonation of delay, held that if a statute itself prescribes limitation directing condonation would render otiose the limitation prescribed in that statute.

9.2 The decisions In Re : Shrenik Pharma Ltd.[2012(281)ELT 477(GOI)] and In Re : Ace Hygiene Products Pvt. Ltd.[2012(276)ELT 131(GOI)] are distinguishable and pertain to situations where there were procedural lapses of technical nature or infractions of the notification which have been condoned by the Government in revision. Likewise the judgment of the Hon'ble Madras High Court in the case of Ford India Pvt. Ltd. vs. AC, C.Ex., Chennai in W.P. No. 14884 of 2008 decided on 25.04.2011 has been rendered in facts where the refund claim has been filed within a period of one year.

10.1 The applicant has placed reliance upon the judgments in the case of Gravita India Ltd.[2016(334)ELT 321(Raj)] & Cosmonaut Chemicals[2009(233)ELT 46(Guj)]. With due respect to these judgments of the Hon'ble High Courts relied upon by the applicant, it is observed that these judgments have been delivered in exercise of the powers vested in

these courts in terms of Article 226/Article 227 of the Constitution of India. Needless to say, no statute passed by Parliament or State Legislative Assembly or any existing law can abridge the powers vested in the High Courts which is known as writ jurisdiction of the High Court under Article 226 of the Constitution of India. However, the irrefutable fact in the present case is that the Central Excise Act, 1944 provides for a period of limitation in Section 11B of the CEA, 1944. The powers of revision vested in the Central Government under Section 35EE of the CEA, 1944 are required to be exercised within the scope of the CEA, 1944 which includes Section 11B of the CEA, 1944. In other words, notwithstanding the mitigating circumstances or compelling facts, there can be no exercise of powers in revision outside the scope of the Central Excise Act, 1944. Thus, there is a great difference in the degree of powers exercisable by the High Courts and creatures of statute.


10.2 Be that as it may, the Hon'ble Delhi High Court has in its judgment in the case of *Orient Micro Abrasives Ltd. vs. UOI*[2020(371)ELT 380(Del.)] dealt with the issue involved in the present revision application and disagreed with the views expressed by the Hon'ble High Court of Gujarat in its judgment in *Cosmonaut Chemicals*[2009(233)ELT 46(Guj.)] and the Hon'ble High Court of Rajasthan in its judgment in *Gravita India Ltd.*[2016(334)ELT 321(Raj.)]. The text of the relevant judgment is reproduced below.

“16. We also record our respectful disagreement with the views expressed by the High Court of Gujarat in *Cosmonaut Chemicals*[2009(233)ELT 46(Guj.)] and the High Court of Rajasthan in *Gravita India Ltd.*[2016(334)ELT 321(Raj.)], to the effect that, where there was a delay in obtaining the EP copy of the Shipping Bill, the period of one year, stipulated in Section 11B of the Act should be reckoned from the date when the EP copy of the Shipping Bill became available. This, in our view, amounts to rewriting of Explanation (B) to Section 11B of the Act, which, in our view, is not permissible.”

10.3 The judgment of the Hon'ble Delhi High Court has very unambiguously held that the period of one year must be reckoned from the date of export and not from the date when the copy of shipping bills is received.

11. In the light of the foregoing facts and in keeping with the judicial principle of *contemporanea exposito est optima et fortissima in lege*(contemporaneous exposition is the best and strongest in law), Government respectfully follows the ratio of the judgment of the Hon'ble Delhi High Court in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)]. The applicants contention that limitation of one year for filing rebate claim should commence from the date on which they had received the corrected shipping bill from Customs authorities cannot be approved as it is beyond the scope of the statute. The criteria for the commencement of time limit for filing rebate claim under the Central Excise law has been specified as the date of export of goods and cannot be varied by any exercise of discretion. Therefore, the rebate claims filed by the applicant have correctly been held to be hit by bar of limitation by the Commissioner(Appeals) in the impugned order.

12. The Order-in-Appeal No. CCESA-Audit-SRT/VK-157/2017-18 dated 24.08.2018 passed by the Commissioner(Appeals) is upheld. The revision application filed by the applicant is rejected as devoid of merits.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 402 /2022-CX(WZ) /ASRA/Mumbai DATED 09.05.2022

To,
M/s Ipca Laboratories Ltd.
142-AB, Kandivli Industrial Estate,
Kandivli(West),
Mumbai - 400 067

Copy to:

- 1) The Commissioner of CGST & Central Excise, Daman
- 2) The Commissioner of Central Excise(Appeals), Surat
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file