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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**
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 195/266/13-RA / 814

Date of Issue: 28.01.2021

ORDER NO. 19/2021-CX (WZ) /ASRA/MUMBAI DATED 21.01.2021
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 : M/s SRF Ltd.

Respondent : Commissioner of Central Excise, Trichirapalli.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 278/2012
dated 18.10.2012 passed by the Commissioner of Customs &
Central Excise (Appeals), Trichirapalli.

ORDER

This Revision Application is filed by M/s SRF Ltd., Viralimalai, Pudukottai District, Tamilnadu – 621 316 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. 278/2012 dated 18.10.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Trichirapalli.

2. The brief facts of the case are that the Applicant, manufacturers holders of Central Excise Registration No. AAACS0206PXM002 of Dipped Belting Fabrics (EP) under Central Excise Tariff Heading 5906.99.90. They were availing Cenvat credit facility in respect of duties/taxes paid on the inputs, capital goods and input services. The Applicant was clearing their finished goods both for home consumption and for export on payment of duties under PLA or by way of debit in their Cenvat Credit Account. Removal of goods meant for exports were removed from their factory by adopting self-sealing and self certification procedures. The Applicant had filled a rebate claim dated 06.02.2012 for Rs. 4,56,306/- (Rupees Four Lakh Fifty Six Thousand Three Hundred and Six Only) under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 in respect of the duties paid on the exported goods under 03 ARE-1s. The rebate claim was sent to the jurisdiction Range Office for verification. The Range Officer, Viralimalai I Range vide letter date 06.03.2012 reported that in respect of ARE-1 Nos 1200094 dated 25.08.2010 and 1200112 dated 27.09.2010, the stipulated one year time period was already expired. So the rebate for said two ARE-1s are not eligible for sanction as per the provisions of Section 11B of Central Excise Act, 1944. The Deputy Commissioner, Central Excise & Service Tax, Division-II, Trichirapalli vide Order-in-Original No. 38/2012-R dated 16.03.2012 rejected the entire claim amount of Rs. 4,56,306/- under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 as the 02 ARE-1s claims were not submitted within the stipulated time of one year from

the date of shipment and in r/o ARE-1 dated 28.05.11 the date of sailing of vessel was overwritten in the ARE-1 without authentication and it was not legible. Aggrieved, the Applicant filed appeal before the Commissioner of Customs & Central Excise (Appeals), Trichirapalli. The Commissioner(Appeals) vide Order-in-Appeal No. 278/2012 dated 18.10.2012 rejected their appeal and upheld the Order-in-Original dated 16.03.2012

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The lower authority in violation of principles of natural justice the rebate claims had been rejected without issue of any show cause notice or without granting any opportunity of personal hearing to the Applicant
- (ii) The rebate claims in respect of the aforesaid first two exports had been rejected on the grounds of limitation. The lower authority had taken in to consideration the ARE-1 dates as the 'sailing date' (as mentioned in the annexure to the impugned order) and has accordingly held that the claims are barred by limitation as the same have been filed only on 6.2.2012 after expiry of one year period prescribed under Section 11B of the Central Excise Act, 1944.
- (iii) In terms of the provisions contained in Section 11B of the Central Excise Act, 1944 the term 'refund' includes 'rebate of duty paid on excisable goods exported'. In terms of the said section, the claim for filing the rebate claim is within one year from the relevant date and relevant date for exports made by Sea is the date on which the ship in which such goods are loaded, leaves India. Accordingly, what is relevant in terms of the above said Section 11B ibid is the date on which the ship leaves India and not the date of ARE-1 which was considered by the lower adjudicating authority as the 'sailing date'. Therefore, the proposal to deny the rebate claim as time barred by relying on the date of ARE1 and without ascertaining the actual date on which the ship in question left

India, is not at all legally sustainable. Thus the date on which vessel leaves India was relevant for deciding the limitation in the instant case and the let export order date was not at all relevant in this regard.

- (iv) In both the first two ARE-1's as mentioned above, the Customs Officer has only endorsed the shipping bill Nos and the name of the vessel in Part B and the details regarding the date on which the ship left India is left blank. In the absence of the said details in the ARE-1s the impugned orders of the lower authority in rejecting the rebate claims on the ground of limitation was not at all sustainable. They relied on the decision of the Hon'ble Revisionary Authority in the case M/s. Bajaj Electricals Ltd [2012 (281) ELT 146] wherein in respect of dispute regarding exact date of vessel leaving India, the Hon'ble Revisionary Authority had remanded the case back to the original authority for causing necessary verification in this regard and decide the rebate claims accordingly.
- (v) With regard to the rebate claim pertaining to the third ARE-1, the lower authority had denied on the ground that date of sailing was over written in the ARE-1 and it was not legible. The Applicant submitted that ARE1 date 28.05.2011 with regard to the third export and the rebate claim was filed on 06.02.2012, which was very much within the time limit of one year prescribed under Section 11B. As such, irrespective of the over writing, since the rebate claim has been filed within one year from the date of clearance for export itself, the rebate claim cannot be denied on the ground of limitation.
- (vi) The Original authority had only observed that the date of sailing is over written and not legible but has not questioned the validity of the ARE-1. Notwithstanding the same, even presuming without admitting that the original authority also had questioned the validity of the ARE-1 and limitation was not the ground for rejecting the rebate claim, the Applicant submitted that they had submitted the copies of the Shipping

Bill and Bill of Lading to support the fact that the goods cleared under the said ARE-1 had been duly exported out of India and hence, the question of denying the rebate claim merely going by the overwritten date and without considering the copies of the shipping bill and bill of lading submitted was not at all sustainable. The details of Shipping Bill and date is clearly endorsed by the Customs Officer in Part B of the ARE-1 in question and the copy of the shipping bill had also been produced before the lower authorities.

- (vii) In the case law cited and relied upon by the lower appellate authority i.e. the decision of the Revisionary Authority in the case of JMP Cast Ltd [2011 (268) ELT 120], the merchant exporter had blackened the FOB value of the export in the shipping bill, bill of lading, export invoice, etc., in order to avoid disclosing the said value to the manufacturer exporter and accordingly, in that case it was held that in the absence of such value the correlation of export goods cleared under the cover of ARE-1 was not possible that tampered documents. In the instant case, the Applicant had not tampered with the ARE-1 in question and there is no allegation or finding in this regard against the appellant. Further, in terms of the orders of the lower authority, the date of sailing is overwritten and not legible in the ARE-1. In this regard, the Applicant submitted that there was no doubt that the goods cleared for export under the ARE-1 had been exported and the shipping bill and bill of export are a clear proof of the same. Under the circumstances, the sailing date which appears to be over written in Part B of the ARE-1 was relevant only for determining the limitation aspect and since the rebate claim has been filed much before the expiry of one year from the date of ARE-1 itself, such sailing date is not of much relevance. Therefore, the case law relied upon by the lower appellate authority is distinguishable on facts.

(viii) The lower authority had denied the rebate claims also for the reason that the internal record for Cenvat credit taken and utilized for inputs was not properly self attested by the Applicant. In this regard, the Applicant submitted that had they been given a deficiency memo in this regard, they would have got the same cured, but the lower authority has proceeded to deny the rebate claim on this ground without giving them any opportunity to cure the defect. The self attested copies of the Cenvat credit return filed along with the monthly return, covering the debit entries for the duty paid in respect of the three exports are placed with the Revision application. Though the above documents were submitted before the lower appellate authority, he had not considered the same nor recorded any finding in this regard in his impugned order.

(ix) The Applicant prayed that the impugned order be set aside and allow the application with consequential relief.

4. The Applicants delayed filing the Revision Applications, details of which are as given below:

Sl. No.	Revision Application	OIA dt	Dt OIA recd by Applicant	Date RA filed	COD recd	No. of days delay
1	195/266/13-RA	18.10.12	04.11.12	07.02.13	18.09.15	05 days

Appellants filed the Revision Applications and Miscellaneous Application for Condonation of Delay (herein after as 'COD').

5. A personal hearing in the case was held on 05.11.2019 and was attended by Shri Ganesh K.S. Iyer, Advocate, on behalf of the Applicant. The Applicant pleaded that the 04 days delay in filing RA was on account of postal delay as they had sent RA on 01.02.2013 whereas the OIA was received on 04.11.2012 and requested to condone the delay of 05 days. The Applicant reiterated earlier personal hearing and grounds of revision application the submission filed

through their RA and written submissions made and placed on record. Overwriting contested to be irrelevant as supporting documents (B/L) show evidence that goods have been shipped on 01.06.2011. In respect of the remaining 02 shipments the Applicant reiterated the RA submissions. In their RA, the Shipping Bill No. wrongly mentioned as 3875170, it should be 3876178. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 04.12.2020. A Personal hearing in this case was held 08.01.2021 and Shri Ganesh K.B. Iyer, Advocate appeared on behalf of the Applicant. They reiterated their revision submission and requested for condonation of four days delay. He particularly drawn attention to their submission dated 14.05.2018 and requested to allow the rebate.

6. The Applicant in their written submission dated 14.05.2018 submitted the following:

- (i) Requested for condoning the delay in accordance with the principles laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition Vs MST Katiji [1987 (28) ELT 185 (SC)].
- (ii) In respect of ARE-1 Nos. 1200094 dated 25.08.2010 and 1200112 dated 27.09.2010, the endorsement on the ARE-1s does not mention about the exact date when the shipment left India and has not been determined and the Let Export Order date cannot be considered as the date on which the vessel left India. In respect of ARE-1 No 1200041 dated 28.05.2011, the ARE-1 itself is sufficient to show that the claim was well within the stipulate time. Attested copies of the relevant documents had been submitted along with the application. The impugned order was not in consonance with the principles laid down by the Hon'ble High Court in th case of UM Cables Ltd Vs UOI [2013 (293) ELT 641 (Bom)].

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

8. Government first proceeds to discuss the issue of delay in filing these three revision applications. It is clear that Applicant had filed the revision application after 3 months + 04 days. The Applicant submitted that they had received the Order-in-Appeal No. 278/2012 dated 18.10.2012 on 04.11.2012 and had couriered the revision application on 01.02.2013 to the Hon'ble Revisionary Authority to reach within the stipulate time. However, due to delay in transit, it was delivered only on 07.02.2013. Therefore, the Applicant prayed that the delay of 04 days may please be condoned. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

9. On perusal of the records, Government observes that the Applicant, manufacturer had filled a rebate claim dated 06.02.2012 for Rs. 4,56,306/- under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 in respect of the duties paid on the exported goods under 03 ARE-1s. The Deputy Commissioner, Central Excise & Service Tax, Division-II, Trichirapalli vide Order-in-Original No. 38/2012-R dated 16.03.2012 rejected the entire claim amount of Rs. 4,56,306/- under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 as the 02 ARE-1s claims were not submitted within the stipulated time of one year from the date of shipment and in respect of ARE-1 dated 28.05.11 the date of sailing of vessel was overwritten in the ARE-1 without authentication and it was not legible.

Sl. No.	Refund dt. & amt (Rs.)	ARE-1 & dt	Refund Amt (Rs)	S/B No & dt	B/L No & dt	Reason for Rejection
1	dt 6.2.2012 & Rs.4,56,306	1200094 dt 25.8.10	9006	1449034 dt 26.8.10	TUP013418 dt 31.8.10	The claim was not submitted within the stiputed time of one year from the date of shipment
2		1200112 dt 27.9.10	328884	159227 dt 28.9.10	TUP013735 dt 02.10.10	The claim was not submitted within the stipulated time of one year from the date of shipment
3		1200041 dt 28.5.11	118416	3876178 dt 30.5.11	TUP016149 dt 1.6.11	The date of sailing of vessel is overwritten in the relevant ARE-1 without authentication. Further it is not legible.
			4,56,306			

10. The Government observes that the Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd. [2017 (355) E.L.T. 342 (Mad.)] upheld the rejection of rebate claim filed beyond one year of export by citing the judgment of In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai reported in 2015 (324) E.L.T. 270 (Mad.) and held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder :-

29. *In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), it has been held as follows :*

5. *The claim for refund made by the Applicant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-*

"(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 despatch of goods by the Post Office concerned to a place outside India;.....

8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

11. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is thus a mandatory provision. As per explanation (A) to Section 11B refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. The explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim is

to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. Government finds no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

12. In respect of ARE-1 Nos. 1200094 dated 25.08.2010 and 1200112 dated 27.09.2010, Government finds that the "relevant date" is the date on which the ship in which goods are loaded and leaves India. In the current case the goods were exported vide Bill of Lading Nos. TUP013418 dated 31.8.2010 and TUP013735 dated 02.10.2010 respectively. Hence the relevant date is 31.8.2010 and 02.10.2010 respectively. The Applicant had filed refund claim on 06.02.2012 i.e. after expiry of the stipulated time of one year from the date of shipment. Government finds that the statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim in respect of ARE-1 Nos. 1200094 dated 25.08.2010 and 1200112 dated 27.09.2010 has to be treated as time barred.

13. In respect of ARE-1 No 1200041 dated 28.05.2011, Government observes that the goods were exported vide Bill of Lading No. TUP016149 dated 01.06.2011 and the Applicant had filed refund claim on 06.02.2012, hence the refund claim of Rs. 1,18,416/- was filed within the stipulated time of one year from the date of shipment. Further, Government observes that the Original authority in Annexure mentioned the reason for declining the rebate claim- *"The date of sailing of vessel is overwritten in the relevant ARE-1 without authentication. Further it is not legible"* and *"Further, it is also observed that the 'internal record for Cenvat Credit taken and utilized for input' is not properly self attested by the assessee."* The Government finds that the Bill of Lading No. TUP016149 dated 01.06.2011 clearly shows the Vessel as *"TIGER SKY"*, *Inv No. 1200041 DT 28.05.11* and *SB NO:*

3876178 and said details are matching with that of ARE-1 No 1200041 dated 28.05.2011 and Part 'B' – Certificate by the Customs Officer.

14. Government finds that the deficiencies observed by the adjudicating authority and Appellate authority are of technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International – 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In UOI vs. A.V. Narasimhalu – 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

15. Hence Government hereby condones the overwritten date of sailing by the Customs Officer. Further, the Applicant has submitted all the records of the Cenvat Credit taken and utilized for rebate claim. Thus Government finds that in respect of ARE-1 No 1200041 dated 28.05.2011, the Applicant is entitled to the refund claim of Rs. 1,18,416/-. Therefore, Government remands the matter back to the original authority for the limited purpose of verification

and to sanction the rebate claim of Rs. 1,18,416/- with consequential relief. The adjudicating authority shall reconsider the claims for rebate on the basis of the documents submitted by the Applicant after satisfying itself in regard to the authenticity of those documents.

16. In view of the above position, Government

- (i) finds no infirmity in the Order-in-Appeal No. 278/2012 dated 18.10.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Trichirapalli to the extend of ARE-1 Nos. 1200094 dated 25.08.2010 and 1200112 dated 27.09.2010 and, therefore, upholds the same to that effect. The Revision applications is rejected without merit;
- (ii) Set aside the Order-in-Appeal No. 278/2012 dated 18.10.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Trichirapalli to the extend of ARE-1 No 1200041 dated 28.05.2011 and remands the case to the Original Authority. The Revision application is allowed with consequential relief.


21/1/21
(SHRAWAN KUMAR)

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

ORDER No. 29/2021-CX (WZ) /ASRA/Mumbai Dated 21.01.2021

To,
M/s SRF Ltd.,
Viralimalai, Pudukottai District,
Tamilnadu - 621 316

Copy to:

1. Swamy Associates, New No. 18, Rams Flats, Ashoka Avenue, Directory's Colony, Kodambakkam, Chennai 600 024.
2. The Commissioner of Central Goods & Service Tax, No.1 William Road, Cantonment, Trichy - 621 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.