

**REGISTERED  
SPEED POST**



**F.No. 195/427/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...5/6/17

Order No. Sl 0 /13-cx dated 4-6-2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 35 EE of the Central Excise Act, 1944.

**Subject** : Revision Application filed,  
under section 35 EE of the Central Excise,  
1944 against the Order-in-Appeal No.  
P-III/VM/362/2010 Dated 20-12-2010  
passed by Commissioner of Central Excise,  
(Appeals), Pune.

**Applicant** : M/s Rushab Investment Pvt. Ltd.,  
Gate No. 753, (Part),  
Opp. SPSL, Pune Nagar Rd.,  
Sanaswadi, Tal. Shirur, Pune-412208.

**Respondent** : Commissioner of Central Excise,  
Pune-III, Commissionerate,  
ICE House, 41-A,  
Sassoon Road, Pune-411001.

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ORDER

This revision application is filed by M/s Rushab Investment Pvt. Ltd., Gate No. 753, (Part), Opp. SPSL, Pune Nagar Rd., Sanaswadi, Tal. Shirur, Pune against the Order-in-Appeal No. P-III/VM/362/2010 Dated 20-12-2010 passed by Commissioner of Central Excise, (Appeals), Pune with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Pune.

2. The brief facts of the case is that the applicant had filed a rebate claim on 01-12-2009 for Rs. 4,75,775/- in respect of goods cleared under ARE-1 Nos. 48 dtd 1-10-2008, No 55 dtd 29-11-08 and No 43 dtd 26.9.08 for export in terms of Rule 18 of the Central Excise, Rules, 2002 read with Section 11 B of Central Excise, Act, 1944. Scrutiny of the said refund claim revealed that the claim in respect of ARE-1 No 48 dtd 21-10-08 and No 43 dtd 26-9-08 were barred by limitation. The corresponding Shipping Bills indicated the date Let Export order as 21-10-08 and 26-9-08 respectively. In view of the said facts a Show Cause Notice was issued proposing partial rejection of the said claim filed by the applicant. Subsequently, the said claim was partially rejected, in respect of two ARE-I No. 48 dt. 21-10-2008 and 43 dt. 26-09-2008.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Commissioner (Appeals), has erred in referring to the judgment of Hon'ble Gujarat High Court in the case of Ashwin Fastners of Ashwin Panehal Vs. UOI 2010 (258) E.L.T.1174 (Guj.) in as much as, the facts stated in the said case are completely different from the facts and circumstances of the present case. The

Commissioner has failed to appreciate that the petitioner in that case has admitted the fact of filing the rebate claim after a lapse of one year from the date of export of the goods, that is , even though the petitioner were in possession of all the documents relevant for filing rebate claim, but the rebate claim was not filed by the petitioner within the period of one year from the relevant date as prescribed under section 11 B of the Central Excise Act 1944 resulting the delay due to their own lapse. However, in the present case, due to faulty system at the Customs Department the Shipping Bill could not be issued to the applicant even after due export of the goods on the dates mentioned in the said Shipping Bills. In absence of the Shipping Bill, the applicant was prevented from filing the rebate claim as copy of the Shipping Bill was a vital documents for processing the rebate claim laid down in the CBEC Manual. Hence, the facts of both these cases are poles apart and accordingly the principle of law settled in the aforesaid case cannot be applicable to the facts of the present case.

4.2 The rebate claims filed under Rule 18 of Central Excise Rules is governed by the procedure laid down under Section 11B of the Central Excise Act,1944. At sub section 5(A) of the said Section 11B, "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" A plain reading of the definition of "refund" makes amply clear that the provisions relating to refund of excise duty mutatis mutandis applicable to rebate claims. The Commissioner of Central Excise (Appeals),has failed to appreciate that the documents required for filing rebate claims for goods under Rule 18 of the Central Excise Rules, 2002, has been prescribed by the CBEC at 'para 8.3' of the CBEC Manual. The Commissioner of Central Excise (Appeals), has failed to appreciate that in absence of these documents, the department would not accept the rebate claim as complete and cannot proceed with sanctioning rebate claims, as laid down at para 2.4 of the CBEC Manual.

4.3 The Commissioner of Central Excise (Appeals), has failed to appreciate that in the present case, there is a serious delay on the part of Customs House in issuing the correct copy of the Shipping Bill and only after the insistence of the applicant by way of

filing of affidavit and on execution of the indemnity Bond on hence delay, if any, in filing rebate claim for want of Shipping Bill squarely falls on the customs department and hence the principle of law laid down by the Gujarat High Court M/s. Cosmonaut Chemicals V s. Union of India - 2009 (233) E.L.T. 46 (Guj)., applicable to the facts of the case.

4.4 The Commissioner(Appeals) had failed to consider the judgment of Tribunal in the case of Alpha Garments V s. CCE, New Delhi 1996 (86) ELT 600(Trb.) and various judgments passed by the Government of India which were cited and referred before him during the course of hearing viz. Re: Modern Process Printers 2006 (204 )ELT 632(GOI), Re: Allanasons Ltd. 1999 (111) ELT 295 (GOI), Re: Ikea Trading (India) Ltd. 2003 (157) ELT 359(GOI), Re: Krishna Filaments Ltd. 2001 (131) EL T 726 (GOI), Re: Drawcans (P) Ltd. 1998 (103) ELT 189(GOI) wherein it has been consistently held that procedural lapse cannot come on the way of substantial benefit of rebate claims. The same view has been echoed by the Government of India in its recent decisions viz. Re: Barot Exports 2006 (203)ELT 321(GOI), Re: Harison Chemicals 2006 (200) ELT 171(GOI).

5. Personal hearing scheduled in this case on 04-03-2013 was attended by Shri C.S.Anantha Krishnan, Sr. Assistant on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended the hearing on behalf of the respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the said rebate claims were rejected being time barred as the same were filed with the rebate sanctioning authority after the period of one year as stipulated in sanction 11B of Central Excise Act, 1944.

Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that 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 of section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refunds 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. As per explanation B(a)(i) of Section 11B, the relevant date for filing rebate claim 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 load, leaves India, or"*

There is 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.

9. Applicant has given various reasons for filing rebate claim after a stipulated period of one year. In addition, he contended that delay in filing rebate claim is an account of late receipt of export promotion copy of Shipping Bill from Customs and this delay being a procedural lapse may be condoned as the substantial benefit cannot be denied to them due to procedural infractions. In this regard, Government observes that filing of rebate claim within one year is a statutory requirement which is to be followed mandatorily. The statutory requirement can be condoned only if there is a statutory provision to condone it. Since there is no provision for condonation of any delay under

Section 11B, the delay cannot be condoned and rebate claim has to be treated as time barred.

10. Government notes that rebate claim filed after one year being time barred cannot be sanctioned as categorically held in the case laws/judgments cited below :-

10.1 Hon'ble High Court of Gujrat in its order dated 15.12.2011 in the case of IOC Ltd. Vs. UOI (SCA No. 12074/2011) has held as under:-

*"We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11E, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.*

*Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 had the occasion to deal with the question of delayed claim of refund of Customs and Central Excise. Per majority view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.*

*The decision of the Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a different factual background. It was a case where the refund claim was filed beyond the period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under :*

*"32. In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May 1999 and 10th June 1999, the due date for application of rebate of duty was 20th November*

1999 and 10th December, 1999 respectively. However, both the applications were made belatedly on 28th December 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May 2000, wherein the limitation for applying for refund of any duty was enlarged from 'six months' to 'one year'. Although the amendment came into force with effect from 12th May, 2000, the question is whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May 2000 ?"

10.2 The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 (Tri.-Chennai) held as under:

*"Tribunal, acting under provisions of Central Excise Act, 1944 has no equitable or discretionary jurisdiction to allow a rebate claim de hors the limitation provisions of Section 11B ibid – under law laid down by Apex Court that the authorities working under Central Excise Act, 1944 and Customs Act, 1962 have no power to relax period of limitation under Section 11B ibid and Section 27 ibid and hence powers of Tribunal too, being one of the authorities acting under aforesaid Acts, equally circumscribed in regard to belated claims – Section 11B of Central Excise Act, 1944 – Rule 12 of erstwhile Central excise Act, 1944 – Rule 18 of the Central Excise Rules, 2002. – Contextually, in the case of Uttam Steel Ltd. also, the Hon'ble Bombay High Court allowed a belated rebate claim in a writ petition filed by the assessee. This Tribunal, acting under the provisions of the Central Excise Act, has no equitable or discretionary jurisdiction to allow any such claim de hors the limitation provisions of Section 11B."*

10.3 Further, it has been held by the Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag & Others vs. Ms. Katji & Others reported in 1987 (28) ELT 185 (SC) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

10.4 Hon'ble Supreme Court has also held in the case of UOI vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of the said Section. In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act.

The section 11B of Central Excise Act, 1944 is pari material to section 27 of Customs act, 1962. As such, the ratio of this Apex Court judgment is squarely applicable to this case, as Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision under Section 11B to extend this time limit or to condone any delay.

10.5 In a very recent judgement, Hon'ble High Court of Bombay in the case of Everest Flavours Ltd. Vs. UOI reported as 2012 (282) ELT 481 (Bom) vide order dated 29.03.2012 dismissed a WP No. 3262/11 of the petitioner and upheld the rejection of rebate claim as time barred in terms of section 11B of Central Excise Act 1944. Hon'ble High Court has observed in para 11 & 12 of its judgement as under:-

*"11. Finally it has been sought to be urged that the filing of an export promotion copy of the shipping bill is a requirement for obtaining a rebate of excise duty. This has been contraverted in the affidavit in reply that has been filed in these proceedings by the Deputy Commissioner (Rebate), Central Excise. Reliance has been placed in the reply upon Paragraph 8.3 of the C.B.E. & C. Manual to which a reference has been made above, and on a Trade Notice dated 1 June 2004 which is issued by the Commissioner of Central Excise and Customs Paragraph 8.3 of the Manual makes it abundantly clear that what is required to be filed for the sanctioning of a rebate claim is, inter alia, a self-attested copy of the shipping bill. The affidavit in reply also makes it clear that under the Central Excise rules, 2002 there are two types of rebates: (i) A rebate on duty paid on excisable goods and (ii) A rebate on duty paid on material used in the manufacture or processing of such goods. The first kind of rebate is governed by Notification No. 19/2004 dated 6 September 2004. In the case of the rebate on duty paid on excisable goods, one of the documents required is a self-attested copy of the shipping bill. For the second kind of rebate a self-attested copy of the export promotion copy of the shipping bill is required. Counsel appearing on behalf of the petitioner sought to rely upon a Notification issued by the Central Board of Excise and Customs on 1 May 2000. However, it is abundantly clear that this Notification predates the Manual which has been issued by the Central Board of Excise and Customs. The requirement of the Manual is that it is only a self-attested copy of the shipping bill that is required to be filed together with the claim for rebate on duty paid on excisable goods exported.*

*12. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. Where the statute provides a period of limitation, in the*

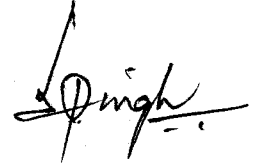


*present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law."*

11. In view of above position, the rebate claim filed after stipulated time limit of one year being time barred in terms of section 11B of Central Excise Act, 1944 and Commissioner (Appeals) has rightly upheld the rejection of said claim. Therefore, Government upholds the impugned Order-in-Appeal and rejects the revision application.

12. The revision application is thus rejected being devoid of merits.

13. So ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Rushab Inestment Pvt. Ltd.,  
Gate No. 753, (Part),  
Opp. SPSL, Pune Nagar Rd.,  
Sanaswadi, Tal. Shirur,  
Pune-412208.

ATTESTED



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Revu)  
भारत सरकार/Govt of India  
नई दिल्ली/ New Delhi

Order No. S10 /13-Cx dated 4-6- 2013

Copy to:

1. Commissioner of Central Excise, Pune-III, Commissionerate, ICE House, 41-A, Sassoon Road, Pune-411001.
2. Commissioner of Central Excise, (Appeals), Pune-III, Pune, 3<sup>rd</sup> Floor, ICE House, 41-A, Sassoon Road, F-Wing, Pune-411001.
3. The Asstt. Commissioner of Central Excise, Pune-III, Commissionerate Pune VIII, Ist Floor, ICE House, Sassoon Road, D-Wing, Pune-411001.
4. Shri C.S.Anantha Krishnan, Sr. Assistant c/o. M/s Rushab Inestment Pvt. Ltd., Gate No. 753, (Part), Opp. SPSL, Pune Nagar Rd., Sanaswadi, Tal. Shirur, Pune-412208.
- ✓ 5. PS to JS (RA)
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ATTESTED



(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)