



**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. 195/760-761/13-RA / 3679

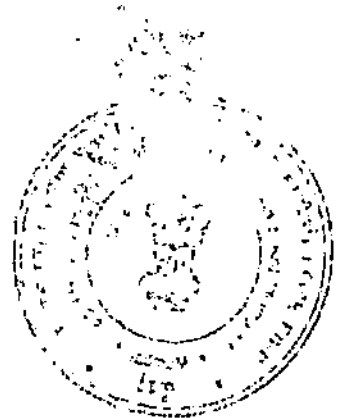
Date of Issue: 31.07.2020

ORDER NO. ⁵¹¹⁻⁵¹² /2020-CX (WZ) /ASRA/MUMBAI DATED 10.06.2020 OF THE
GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE
ACT, 1944.

Applicant : M/s. Baroda Textile Effects Pvt. Ltd., Vadodara.

Respondent : Commissioner of Central Excise, Customs & Service Tax,
Vadodara-I.

Subject : Revision Applications filed under section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. PJ/62/VDR-
I/2013-14 & PJ/63/VDR-I/2013-14 both dated 23.04.2013
passed by the Commissioner (Appeals), Central Excise, Customs &
Service Tax, Vadodara.



ORDER

These Revision Applications have been filed by M/s Baroda Textile Effects Pvt. Ltd., Vadodara (hereinafter referred to as "the applicant") against Orders-in-Appeal No. PJ/62/VDR-I/2013-14 & PJ/63/VDR-I/2013-14 both dated 23.04.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara.

2. Brief facts of the case are that the applicant filed following rebate claims for goods cleared by them for export from their factory premises:

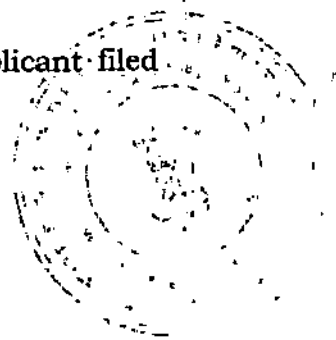
TABLE

Sr. No.	Amount of Rebate Claim (in Rs.)	Date of goods Exported as per Mate Receipt	Date of filing Rebate Claim	Order in Original No. rejecting the claim as time barred	Order in Appeal No. upholding the Order in Original
1	2	3	4	5	6
1.	2,11,967/-	24.12.2009	07.02.2011	Rebate 357/2579/11-12 dated 30.03.2012	PJ/62/VDR-I/2013-14 dated 23.04.2013
2.	2,68,458/-	28.01.2009	23.06.2010	Rebate 358/2580/11-12 dated 30.03.2012	PJ/63/VDR-I/2013-14 dated 23.04.2013

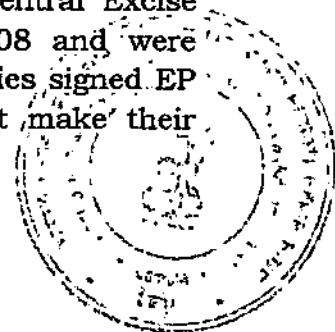
3. As per the provisions of Section 11B of Central Excise Act, 1944, any person claiming any refund / rebate, could file an application for refund of such duty before expiry of one year from the relevant date. As it appeared that in both the above cases, the rebate claim had not been filed within stipulated period of one year from the relevant date (i.e. date of Shipment/ export, shown at column 3 of the Table above) a Show Cause Notices were issued to the applicant by the original authority proposing to reject the said rebate claim for contravention of Section 11(B) of Central Excise Act, 1944. The Original authority after following due process of law rejected the rebate claims on the ground of limitation under the provisions of Section 11B of the Central Excise Act, 1944, vide Orders in Original shown in column 5 of Table above.

4. Being aggrieved by the said Orders in Original, the applicant filed the appeals before Commissioner (Appeals), Vadodara, who vide Orders in Appeal mentioned at column 6 of the Table above upheld the Orders in Original and rejected the appeal of the applicant.

Being aggrieved with the aforestated Orders-in-Appeal, the applicant filed these Revision Applications mainly on the following identical grounds :



- 5.1 The fact that the finished excisable goods, were cleared from their Factory on payment of Central Excise duty at appropriate rate on proper Assessable value and that the finished excisable goods were exported under the provisions of Rule 18 of the Central Rules. 2002, read with, Notification, 19/2004-C.E. (N.T.), dated 6.9.2004, has been accepted by the Excise Authorities.
- 5.2 The fact that the finished goods on which Central Excise duty was paid, were duly exported by the Preventive Customs Officer on 24.12.2009 and 28.01.2009 has been accepted by the Excise Authorities.
- 5.3 The fact that Shipping Bills, pertaining to export of duty-paid goods, was generated on 11.11.2009 & 31.12.2008, by the Customs Authorities, has also not been denied by the Excise Authorities.
- 5.4 However. the said Shipping Bill could not be released by the Customs Authorities, as some Sample of export goods was draw and Test report was received, but could not be entertained into the system due to system constraints and hence EP copy of the Shipping Bill could not be generated and printed by Customs office in time EP copy of Shipping Bill was released only on 28.01.2011. In second case, the Shipping Bill was not issued by the concerned Customs Authorities, on or near about 31.12.2008 on account of Provisional Assessment. The final EP copy of Shipping Bill, in question, was generated by the Customs Authorities, on 15.6.2010, at 17.55 Hours, was provided with dated seal and signature, by Customs Authorities on 17.06.2010 has also not been denied by the concerned Excise Authorities.
- 5.5 In the premises, on receipt of the said final EP copy of Shipping Bill released on 28.01.2011 they could file their rebate claim on 07.02.2011 and in respect of Shipping Bill generated on 15.6.2010 and provided with dated Seal and Signature, by the Customs Authorities, on 17.6.2010, they had filed their Rebate Claim, on 23.6.2010. It will be seen that nowhere there is any fault on their part.
- 5.6 It is known to all that any Rebate Claim filed without Shipping Bill, is never accepted in the Department and being returned back.
- 5.7 When the finished goods, on payment of Central Excise Duty, were removed from their Factory on 10.11.2009 and were exported on 24.12.2009 and when the Customs Authorities issued EP copy of Shipping Bill dated 11.11.2009 only on 28.01.2011, one cannot make their Rebate Claim filed by them on 07.02.2011 as time-barred. Similarly, when the finished goods, on payment of Central Excise Duty, were removed from their Factory on 31.12.2008 and were exported on 28.1.2009 and when the Customs Authorities signed EP copy of Shipping Bill only on 17.6.2010, one cannot make their Rebate Claim (filed on 23.06.2010) as time-barred.



5.8 Rebate claim without Shipping Bill, is never inwards in the Department. Any fault on the part of the Customs Authorities, cannot result into a punishment, to an Indian Exporter, contributing Foreign Exchange, to the Indian Government. In such case, prudent and benevolent views are required to be taken by the Rebate Sanctioning Authority, in the interest of Exports, which promote growth of the Country. This being the position, the Rebate, in question, should be allowed.

5.9 The case is covered by the following Decisions:

2009 (233) E.L.T. 46 (Guj) Cosmonaut Chemicals Vs UOI.

2011 (267) ELT. 586 (Guj) Exclusive Steels Pvt. Ltd. Vs UOI.

2011 (268) E.L.T. A-76 (S.C.) Exclusive Steels Pvt. Ltd. Vs UOI.

5.10 Though the Respondent has maintained that the Applicant should have filed Rebate Claim without the copy of Shipping Bill but practically he has ignored the fact that this is never possible in the Department. The Rebate Claim is never inwards by the Department, under the aforesaid circumstances and they cannot fall into dispute with the Departmental Authority.

6. A Personal hearing in this case was held on 09.12.2019 and Shri Jaydeep C Patel, Advocate, appeared for hearing on behalf of the applicant and (Order Gujarat High Court) reiterated the submission filed through Revision Application and stated that the issue involved in the instant Revision Applications is covered by judgments delivered by Hon'ble Gujarat High Court (referred at para 5.9 supra). He also cited case laws, viz. Banswara Syntex Ltd. Vs UOI [2017(349) E.L.T. 90 (Raj)] and Gravita India Ltd. Vs UOI [2016(334) E.L.T. 321(Raj)] relied upon and submitted the copies of the same.

7. 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.

8. Government observes that the rebate claims filed by the applicant were rejected by the Original Authority as the same had not been filed within stipulated period of one year from the relevant date (i.e. date of Shipment/ export, (shown at column 3 & 4 of the Table at para 2 above) specified under Section 11B of Central Excise Act, 1944. Whereas the applicant contended that the Shipping Bills, pertaining to export of duty-paid goods could not be released by the Customs Authorities immediately. However, in respect of goods exported on 24.12.2009, the Customs Authorities released final EP copy of Shipping Bill on 28.01.2011 and on receipt of the same they could file their rebate claim on 07.02.2011. In respect of another claim where goods were exported on 28.01.2009, Shipping Bill was



generated on 15.6.2010 and provided with dated Seal and Signature by the Customs Authorities on 17.6.2010 and they had filed their Rebate Claim, on 23.6.2010 and therefore there was no fault on their part.

9. The applicant has relied on / submitted the following case laws in support of their case in their Revision Applications as well as during the personal hearing.

- (A) 2009 (233) E.L.T. 46 (Guj) Cosmonaut Chemicals Vs UOI.
- (B) 2011 (267) ELT. 586 (Guj) Exclusive Steels Pvt. Ltd. Vs UOI.
- (C) 2011 (268) E.L.T. A-76 (S.C.) Exclusive Steels Pvt. Ltd. Vs UOI.
- (D) 2017(349) E.L.T. 90 (Raj.) Banswara Syntex Ltd. Vs UOI.
- (E) 2016(334) E.L.T. 321(Raj) Gravita India Ltd. Vs UOI.

10. Government observes that the issue involved in both these Revision Applications is whether the applicant is entitled for the rebate claims which were rejected on the grounds of limitation, when such delay was attributable to delay by Customs Department in issuing EP copies of the Shipping Bills as detailed at para 8 above. As the issues involved these two Revision Applications being common, they are taken up together and are disposed of vide this common order.

11. Government observes that applications for rebate of Central excise duty paid on excisable goods, consequent on their export, are required to be filed within one year of the date of their export, under Section 11B of the Act. Sub-Section (1) of the Section 11B, and the relevant clauses of the explanation to Section 11B, for ready reference, are reproduced below: —

“11B. Claim for refund of duty and interest, if any, paid on such duty. — (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of (1) one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :—

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act:]

Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.



Explanation. — For the purposes of this section, -

(A) "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;

(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, -

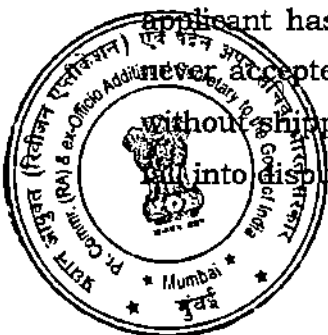
(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(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.

(Emphasis supplied)

12. From the above, it would be seen, (i) refund claims are required to be made within one year of the "relevant date" (ii) the expression "refund" includes rebate of excise duty paid on goods exported outside India , the condition of filing the rebate claim within 1 year is squarely applicable to the rebate of duty when dealt with under Rule 18 of the Central Excise Rules 2002 which is not independent from Section 11B, ibid. Further, there is no provision under Section 11B, to condone any delay.

13. Further, as per Para 2.4 of the Chapter IX of C.B.E.C. Central Excise Manual of Supplementary Instructions, in case any document is not available for which Central Excise or Custom department is solely responsible, the claim may be received so that the claim is not hit by limitation period. In view of said instruction, it is clear that applicant could have filed said rebate claim within one year's time limit without EP copy of shipping bill so as to avoid the same getting time barred. Government observes that the Commissioner (Appeals) while upholding the Orders in Original vide impugned Orders in Appeal has also relied on Para 2.4 of the Chapter IX of C.B.E.C. Central Excise Manual. However, the applicant has argued that that any Rebate Claim filed without Shipping Bill, is never accepted in the Department and being returned back and such claims (filed without shipping bills) are never inwards by the Department and that they cannot be taken into dispute with the Departmental Authority.



14. In this regard, Government refers to and rely on GOI Order No. 774/2006, dated 5-9-2006 in Re: I.O.C. Ltd. [2007 (220) E.L.T. 609 (G.O.I.) wherein, in respect of the rebate claim filed by M/s I.O.C. Ltd., some discrepancies had been noticed. These discrepancies were (1) Duplicate and Triplicate copies of TR-6 Challan, original had not been filed (2) AR4, ARE-1, original and duplicate copy had not been filed (3) Relevant shipping bills had not been filed and communicated to them vide letter dt. 6-5-2002. M/s I.O.C. Ltd. submitted rebate claim after removing defects/discrepancies after period of limitation. The adjudicating authority rejected the rebate claims on the grounds of limitation as M/s I.O.C. Ltd. had filed the claims beyond the prescribed time limit of 1 year under Section 11B of the Central Excise Act, 1944. However, GOI vide its Order No. 774/2006 dated 05.09.2006 held that time limit should be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted and, accordingly, remanded the case back to the original authority for passing de novo order for taking into account initial date of filing the rebate for the purpose of limitation u/s 11B of the Act and following principle of natural justice. It is clear from the said case law that the rebate claim is accepted by the department without prescribed documents including shipping bill and the rebate claim was also held to be admissible even when the shipping bill was submitted after period of limitation when the initial rebate claim was filed within prescribed time limit under Section 11B of the Central Excise Act, 1944 in accordance with para 2.4 of the Chapter IX of C.B.E.C. Central Excise Manual of Supplementary Instructions. This case law has laid to rest the unfounded contention of the applicant that the rebate claims filed without shipping bills were not accepted / inwards in the Department.

15. Government observes that Hon'ble Supreme Court in Union of India (UOI) and Ors. v. Uttam Steel Ltd. [2015 (319) E.L.T. 598 (S.C.)] has categorically held that the claim under Section 11B of the Act could be made only in cases where the claim is allowed, that is the claims made within limitation. Government further observes that issue regarding application of time limitation of one year is dealt by Hon'ble High Court of Bombay in detail in the case of M/s. Everest Flavour V. Union of India, (2012 (282) E.L.T. 48 wherein it is held that since the statutory provision for refund in Section 11B specifically covers within its purview a rebate of Excise duty on goods exported, Rule 18 cannot be independent of requirement of limitation prescribed in Section 11B.



16. Government observes that applicant has relied on judgment of Hon'ble High Courts of Gujarat and Rajasthan in the case of M/s. Cosmonaut Chemicals v. U.O.I. - 2009 (233) E.L.T. 46 (Guj.), M/s Exclusive Steels Pvt. Ltd. Vs U.O.I. -2011 (267) ELT. 586 (Guj), M/s Gravita India Ltd. Vs U.O.I. 2016 (334) E.L.T. 321(Raj) and M/s Banswara Syntex Ltd. Vs U.O.I. 2017 (349) E.L.T. 90 (Raj.) wherein it has been held that "exception for claim filed beyond time limit of one year available when delay due to circumstances beyond control of claimant and delay on account of lapse on the part of departmental officers".

17. Government in this regard relies on Hon'ble High Court of Delhi's latest decision dated 27.11.2019 in W.P.(C) 7683/2019 filed by M/s Orient Micro Abrasives Limited (petitioner) involving an identical issue. In this case the rebate claim, filed by the petitioner, was rejected by the Assistant Commissioner of Customs on the ground that it was barred by time, as it had been filed after the expiry of one year from the date of export of the goods. The appeal, preferred there against by the petitioner, was dismissed by the Commissioner of Customs (Appeals). The petitioner challenged the aforesaid Order-in-Appeal, of the Commissioner (Appeals), before the Revisionary Authority. The petitioner also contended before Revisionary authority that his inability in filing the rebate claim within one year of export of the goods was because the Export Promotion (EP) copy of the Shipping Bills, which were required to be filed with the rebate claim, were not made available to it. It was further contended that the rebate claim was filed as soon as the EP copy became available. It was further sought to be pointed out, that the non-availability of the EP copies of the shipping bills, was owing to a failure in the computer systems in the Customs house, for which the petitioner could not be prejudiced. These submissions were not accepted by the Revisionary Authority, New Delhi who, vide the Order No.692/18-CX dated 10.12.2018, rejected the petitioner's rebate claim, reiterating the finding, of the authorities below, that the claim was barred by time. Reliance was placed, by the Revisionary Authority, for this purpose, on the judgment of the Supreme Court in Union of India vs. Uttam Steel Ltd. [(2015) 13 SCC 209], as well as of the Bombay High Court in Everest Flavours vs. Union of India [(2012) 282 ELT 481], and of the Madras High Court in Hyundai Motors India Ltd. vs. UOI [2014 SCC Online Mad 12157]. Hon'ble Delhi High Court while dismissing the said Writ Petition filed by the petitioner, in its Decision dated 27.11.2019 observed as under :-

16. We also record our respectful disagreement with the views expressed by the High Court of Gujarat in Cosmonaut Chemicals 2009 (233) E.L.T. 46 (Guj.),



and the High Court of Rajasthan in *Gravita India Ltd. 2016 (334) E.L.T. 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.

19. Periods of limitation, stipulated in taxing statutes, are sacrosanct. It is settled, as far back as in *Cape Brandy Syndicate vs. Inland Revenue Commissioners (1921) 2 K.B. 403*, thus: —

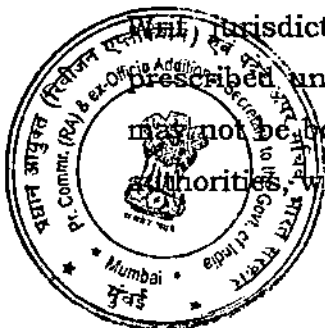
... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

20. Section 11(B)(1) of the Act read with the Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of the goods, where against rebate is claimed. There is no provision which permits relaxation of this stipulated one year time limit.

21. We, therefore, find no reason to disturb the concurrent view of all three authorities below i.e. the AC, the Commissioner (Appeals) and the Revisionary Authority, that the rebate claim of the petitioner merited rejection, as it was barred by time.

18. As the judgments of Hon'ble Gujarat and Rajasthan High Courts referred to and relied upon by the applicant at para 9 (A), (D) and (E) supra have been duly distinguished by the aforesaid decision of Hon'ble High Court of Delhi, the reliance placed on the said judgments does not advance the case of the applicant. Moreover, the case laws mentioned at Sr. No, (B) and (C) of para 9 are having altogether different facts and circumstances than the present case, the applicant's reliance on them is also misplaced.

19. Further, Hon'ble Supreme Court has also held in the case of *UOI v. Kirloskar Pneumatics Company* reported in 1996 (84) E.L.T. 401 (S.C.) that High Court under its 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 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 to extend this time limit. As such the refund claim is clearly time barred as it was filed after the time limit specified under Section 11B of Central Excise Act, 1944.

20. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that the applicant has failed to act diligently in as much as they have failed to file rebate claim with the available documents within the statutory time limit of one year from the date of shipment of the export goods. 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 orders. Government, therefore, does not find any infirmity in the Orders-in-Appeal No. PJ/62/VDR-I/2013-14 & PJ/63/VDR-I/2013-14 both dated 23.04.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara and therefore uphold the same.

21. The Revision Applications are thus rejected being devoid of merit.

22. So, ordered.

(SEEMA ARORA)

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

ORDER No. ⁵¹¹⁻⁵¹² /2020-CX (WZ) /ASRA/Mumbai DATED 10.06.2020.

To,

ATTESTED

M/s Baroda Textile Effects Pvt. Ltd.,
P. O. Umraya, Padra, Vadodara - 391440

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. Commissioner of CGST, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
2. The Commissioner of CGST (Appeals), Central Excise Building, 1st Floor Annexe, Race Course Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissioner, of CGST Division-II, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
4. P.S. to AS (RA), Mumbai.

5. To be filed.
6. Spare Copy.

