

REGISTERED
SPEED POST



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.195/1579/2012-RA/3497

Date of Issue: 29.02.2020

ORDER NO. 515/2020-CX (WZ)/ASRA/MUMBAI DATED 16.06.2020 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 BMS International Pvt. Ltd.

Respondent : Commissioner, Central Excise & Customs, Vadodara

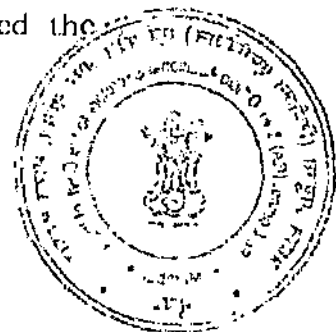
Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
Commr.(A)/373/VDR-II/2010 dated 30.11.2010 passed by the
Commissioner (Appeals), Central Excise & Customs, Vadodara.



ORDER

This Revision Application is filed by the M/s BMS International Pvt. Ltd., Sunmoon Building, Laheripura New Road, Vadodara-390 001 (hereinafter referred to as "the Appellant") against the Order-in-Appeal No. Commr.(A)/373/VDR-II/2010 dated 30.11.2010 passed by the Commissioner (Appeals), Central Excise & Customs, Vadodara.

2. The facts of the case, in brief, are that the Applicant is an exporter, had filed a rebate claim for Rs.4,88,338/- on 18.01.2010 for the export of goods made under ARE-1 No.69 dated 24.11.2007 and invoice No.0731031378 dated 21.12.2007 of M/s. Jindal Stainless Ltd, Hisar (Haryana). Initially the Applicant had filed the refund claim on 11.06.2008 before the Assistant Commissioner of Central Excise and Customs, City Division, Vadodara-II. Assistant Commissioner vide letter dated 11.08.2008 intimated the Applicant that the claim would have to file with the Maritime Assistant Commissioner or with the Jurisdictional Assistant Commissioner. The Applicant on 19.08.2008 submitted disclaimer certificate issued by their manufacturer but failed to submit other relevant documents. The claim was returned to the Applicant. The Applicant vide their letter dated 16.11.2009 re-submitted the claim along with a copy of letter dated 10.02.2009 of Assistant Commissioner(Tech), Central Excise & Customs ,Vadodara-II, wherein he accepted the proof of export in support of CT-1 No.1 and ARE-1 No.69 dated 24.11.07 having duty involvement of Rs.29,66,880/- issued by M/s. Jindal Stainless Ltd, falling within the Jurisdiction of Range-I, Hisar-I, Rohtak, Delhi-V Commissionerate and also authorized to take credit of the said amount in their bond account. Hence, the claim was again returned to the Applicant vide letter dated 24.11.2009. The Applicant then re-submitted the claim on 18.01.2010 and was issued a Show Cause Notice dated 10.03.2010 for rejection of rebate claim. The Assistant Commissioner of Central Excise and Customs, City Division,Vadodara-II vide Order-in-Original No. CITY DVN/01/Refund/10-11 dated-26:04.2010 rejected the rebate claim of Rs. 4,88,338/- on the grounds of jurisdiction.



3. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise & Customs, Vadodara. The Commissioner(Appeals) vide Order-in-Appeal dated 30.11.2010 upheld the Order-in-Original dated 26.04.2010 and rejected their appeal. Aggrieved the Applicant then filed an appeal before the Hon'ble CESTAT, West Zone Bench, Ahmedabad. The Hon'ble CESTAT vide Order No. A/1572/WZB/AHD/2012 dated 23.10.2012 stated that according to Section 35B of Central Excise Act, 1944, appeal does not lie before the Tribunal, therefore, the appeal is not maintainable and the Applicant was allowed 15 days to file appeal before the revisionary authority.

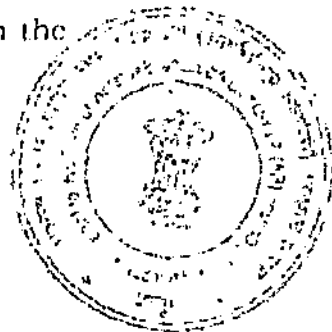
4. The Applicant, then, filed ~~the current Revision Application~~ on the following grounds:

- (i) While the manufacturer had supplied certain documents, which prima facie do not co-relate to the Central Excise invoice raised on the Applicant by them, the Appellant was in the process of obtaining necessary documents from the manufacturer, corresponding to the Central Excise invoice raised by them so as to show that exports have indeed taken place of the duty paid goods and as such, the Applicant is entitled to rebate of the same.
- (ii) The impugned order had raised serious questions on authenticity of documents, the Applicant submitted that they were under bonafide belief as regards the corresponding documents and in fact, the very same documents were accepted by the bond discharging authority as well. Under the circumstances, merely presentation of wrong documents do not ipso facto render the transaction is fake or doubtful.
- (iii) That Para 4.2 of the Order-in-Original is actually not the reproduction of Rule 18 of Central Excise Rules, 2002 but reproduction of Para 3 (b) of Notification No.19/2004-CE (NT) dated 06.09.2004 as amended. In fact this Para of the said



Notification supports the Applicant inasmuch as it requires presentation of claim of rebate to the jurisdictional Asst. Commissioner of Central Excise or the Dy. Commissioner of Central Excise, having jurisdiction over the factory of manufacture or warehouse. That it is not denied anywhere in the impugned order that the Asst. Commissioner (City Division) is the jurisdictional Asst. Commissioner having jurisdiction over the warehouse of the Applicant.

- (iv) The ARE-1 No.69 clearly mentions the address of the jurisdictional Asst. / Dy. Commissioner. However, instead of mentioning 3rd Floor, the ARE-1 mentions 1st Floor. This inadvertent mistake cannot result into taking away the jurisdiction of the Asst. Commissioner (City Division) and transferring the same to the Asst. Commissioner (Tech.), for the purpose of sanctioning of the rebate. So long as ARE-1 mentions Commissionerate, Vadodara-II as the office before whom the Applicant wishes to file the rebate claim, the mistake in mentioning the wrong floor number of the building cannot be so fatal so as to resulting in rejection of the rebate claim.
- (v) On one hand the Asst. Commissioner (City Division) rejects the claim of the Applicant on the ground that he does not have such jurisdiction and it is the Asst. Commissioner (Tech.) who has the jurisdiction to entertain the claim. On the other hand he has invoked his jurisdiction to hold that the claim is barred by limitation. That such contradiction in the impugned order has rendered it liable to be quashed and set aside.
- (vi) In so far as limitation is concerned, it is not denied that the Applicant had filed the rebate claim with the jurisdictional Asst. Commissioner on 11.6.2008 and it is also not denied that the proof of exports and the relevant documents were in the custody of the Asst. Commissioner (Tech.) who refused to part with the



documents. The proof of exports has been accepted by the Asst. Commissioner (Tech.), for the purpose of re-crediting the amount in the Bond, as early as on 02.07.2008. This is evident in Annexure A to the letter dated 10.2.2009 issued by the Asst. Commissioner (Tech.).

(vii) The impugned order admits the fact that the relevant documents were filed before the Technical section and that the Applicant had eventually submitted these documents to his office. It was also informed to the JAC that the documents required for processing rebate claim were lying with the Asst. Commissioner (Tech.). This was made clear vide letter dated 12.6.2009 addressed by the Applicant to the JAC.

(viii) The Asst. Commissioner (City Division) has clearly acted contrary to the provisions of the law and contrary to the instructions of CBEC, which are binding on him, to deny the rebate claim on the ground that he has no jurisdiction and that the Asst. Commissioner (Tech.) has the jurisdiction.

(ix) The impugned order has not refuted or controverted the following facts:

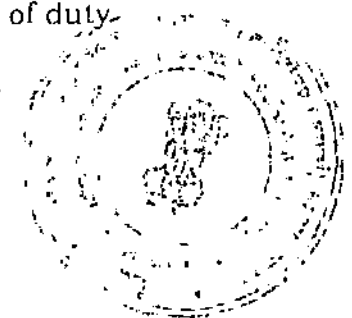
- (a) The Applicant is a Merchant Exporter and whose premises are registered under the provisions of CER, 2009 and therefore such premises constitute warehouse and fall within the jurisdiction of the Asst. Commissioner (City Division).
- (b) The Goods cleared by M/s Jindal Stainless Ltd. wer duty paid.
- (c) Such duty paid goods were exported by the Applicant within six months from the date of removal from the factory of the manufacturer.



- (d) The proof of exports was accepted by the Asstt. Commissioner(Tech) on 02.07.2008 though the acceptance was communicated on 10.02.2009.
- (e) The manufacturer of the exported goods had issued disclaimer, disclaiming the benefit of export incentive on the said goods.
- (x) The Applicant prayed that the impugned order be set aside and the Applicant's refund be granted.

4. The Applicant also filed an additional submission dated 25.04.2013 on the following grounds:

- (i) The claim for rebate is in respect of the duty paid on 28 nos HR Plates of stainless steel manufactured by M/s Jindal Stainless Ltd which were then exported by the Applicant. The invoice cum-challan No. 0731031378 dated 21.12.2007 evidencing the payment of duty by the manufacturer and sent directly from the factory to the port of export.
- (ii) The Applicant had exported 47 Nos. of HR Plates which comprised of the aforesaid 28 Nos (for which rebate is claimed) and 19 nos of HR Plates (for which no rebate was claimed) i.e. copies of invoice No. EXP/025/07-08 dated 24.12.2007 and the packing list.
- (iii) The Applicant had filed a Shipping Bill No. 5879906 dated 26.12.2007 in respect of the said 47 nos of HR plates were shipped on 10.01.2008 (which included the 28 nos of the plates on which the rebate has been claimed) as evidence by the certification made by the Customs authorities in Part B of the ARE-1 No.72/JSL/2007-08 dated 21.12.2007. No rebate had been claimed in respect of the 19 Nos of plates in the said shipping bill as the same were received without payment of duty.



under CT-1 i.e. copy of invoice No. 0731031377 dated 21.12.2007.

- (iv) The aforesaid goods under the Shipping Bill No. 5879906 dated 26.12.2007 were shipped on 10.01.2008 as evidence by the certification made by the Customs authorities in Part B of the ARE-1 No.72/JSL/2007-08 dated 21.12.2007. Part A of the ARE-1 also evidences that the fact that the goods in question were dispatched from the manufacturer's factory to the port directly.
- (v) The Applicant had also received the payment in free foreign exchange currency as is evidenced by the certificate issued by the Applicant's Bankers.

4. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No	OIA No. & dt	CESTAT Order	Revision Application date recd	No. of delay	Application for COD date
1	Commr.(A)/373/VDR-II/2010 dated 30.11.2010 (Recd on 14.12.2010)	A/1572/WZB/A DH/2012 dated 23.10.2012	195/1579/2012-RA 20.11.2012	12 days delay from the 15 th date of CESTAT order dated 23.10.2012	Filed on 20.11.2012

Appellant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

4. A personal hearing in the case was held on 09.10.2019 and the Applicant vide letter dated 03.10.2010 requested to waive its right for personal hearing and prayed to rely upon the facts and the grounds stated in the Revision Application.

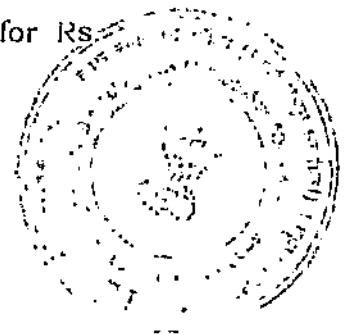


5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government first proceeds to discuss the issue of delay in filing this revision application. It is clear that Applicant had filed this revision application after 3 months and 16 days when the time period spent in proceedings before CESTAT is excluded. 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.

7. In view of judicial precedence that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. 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.

8. On perusal of the records, it is observed that the Applicant had filed a rebate claim for Rs.4,88,338/- on 11.06.2008 for invoice No.0731031378 dated 21.12.2007. The said claims were returned by the department and the Applicant resubmitted the claim on 18.02.2010. The Commissioner(Appeals) rejected the claim on one of the grounds that the refund claim was time bared. In respect of time bar, Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. Government places reliance on the case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 (2016 (333) E.L.T. 246 (Guj.)]. The decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018. Applying the ratio of the afore stated judgment, Government holds the original date of filing of these claims i.e. rebate claim for Rs



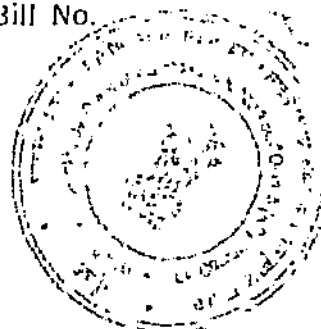
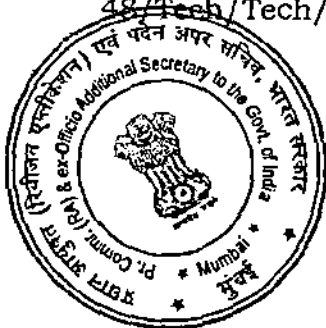
4,88,338/- dated 11.06.2008 shall be taken as the date of submission of the original claim and subsequent applications are in continuation of the original claims and therefore the claim is not barred by limitation under Section 11B of the Central Excise Act, 1944.

9. The Applicant had filed the rebate claim for Rs. 4,88,338/- on 11.06.2008 for invoice No.0731031378 dated 21.12.2007 before the Asstt. Commissioner(Tech), Central Excise & Customs, City Division, Vadodara-II.

10. Government finds that the rebate claim dated 11.06.2008 does not mention any ARE-1 No., invoice No.0731031378 dated 21.12.2007 mentioned thereof was issued by the manufacturer M/s. Jindal Stainless Ltd, Hisar (Haryana) in the name of the Applicant consignee, quantity is 28 nos i.e. 17.030 MT, total duty is Rs.4,88,338/- . The Applicant in their letters dated 12.06.2009 and 16.11.2009 had stated that the rebate claim arising out of exports made under ARE-1 No. 69 dated 24.11.2007 and the material was directly sent to Nhava Shav Port.

11. In respect of ARE-1 No. 69 dated 24.11.2007, the quantity of goods was 103.465 MT, duty was Rs. 29,66,880/-, and the export was shown under Bond against CT-1 01/07-08 dated 19.11.2007 and Excise Invoices mentioned there under are Nos. 0731029167 to 0731029171 dated 24.11.2007. Part A of ARE-1 shows Bond No. 48/2007 (with the A.C. C.Ex. Vadodara F.No. IV/11-48/Tech/Tech/BMS/07 on 19.11.2007) and Part B shows Shipping Bill No. 5799918 dated 30.11.2007 and Mate Receipt 98555 dated 10/12/2007.

12. The Applicants have later furnished ARE-1 No. 72 dated 21.12.2007 with remarks "the quantity of goods was 44.620 MT, duty was Rs. 12,79,487/-, and the export was shown under Bond against CT-1 01/07-08 dated 19.11.2007 and Excise Invoices mentioned there under are Nos. 0731031370, 0731031371 and 0731031377 all dated 21.11.2007. Part A of ARE-1 shows Bond No. 48/2007 with the A.C. C.Ex. Vadodara F.No. IV/11-48/Tech/Tech/BMS/07 on 19.11.2007 and Part B shows Shipping Bill No.



5879906 dated 26.12.2007 and Mate Receipt 108237 and 108235 dated 10/01/2008 " mentioned there under.

13. The aforesaid documentary evidence unambiguously prove that the exports made under these ARE-1s were under CT-1 Bond procedures i.e. under Rule 19 of Central Excise Rules, 2001 read with Notifications No. 42/2001-CE(NT) dated 26.06.2001 as amended. Since all clearance were made under CT-1 Bond procedure, the question of sanctioning rebate under Rule 18 of Central Excise Rules, 2001 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 as amended does not arise. Hence the rebate claim is not admissible.

14. In view of the above discussions and findings, Government do not find any reason to interfere with Order-in-Appeal No. Commr.(A)/373/VDR-II/2010 dated 30.11.2010 passed by the Commissioner (Appeals), Central Excise & Customs, Vadodara except on the issue of limitation under Section 11B of the Central Excise Act, 1944 as discussed in Supra above .

15. The revision application is rejected.

16. So ordered.

(SELMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 515/2020-CX (WZ)/ASRA/Mumbai DATED 16.06.2020.

To,
M/s BMS International Pvt. Ltd.,
Sunmoon Building, Laheripura New Road,
Vadodara-390 001

Copy to:

1. The Commissioner of CGST, Vadodara-II, GST Bhavan, Subhanpura, Vadodara 390 023.
2. Sp. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.

ATTESTED

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

