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. 195/334/14-RA/62 Date of Issue: 05.01.2021

ORDER NO.666/2020-CX (WZ) /ASRA/MUMBAI DATED 16.12.2020 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. Dembla Valves Ltd., Thane.

Respondent : Commissioner of Central Excise, Thane-I.

Subject : Revision Application filed under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. PD/49/Th-I/2014 dated 27.06.2014 passed by the Commissioner (Appeals-I), Central Excise & Service Tax, Zone Mumbai -I

ORDER

This Revision Application has been filed by M/s Dembla Valves Ltd. Unit-II, C-30 Jai Matadi Compound, Kalhar, Thane-Bhiwandi Road, Dist: Thane (hereinafter referred to as "the applicant") against Order-in-Appeal No. PD/49/Th-I/2014 dated 27.06.2014 passed by the Commissioner (Appeals-I), Central Excise & Service Tax Zone, Mumbai –I.

2. Brief facts of the case are that the applicant during the months of May, 2012 and June, 2012 exported excisable goods under Rule 18 of the Central Excise Rules, 2002. They filed three rebate claims for Rs. 2,84,353/-, Rs. 5,78,266/- and Rs. 4,80,140/- (Totally amounting to Rs. 13,42,759/-) on 06.09.2013 under Rule 18 of the Central Excise Rules, 2002. As it appeared that in all the above cases, the rebate claims had not been filed within stipulated period of one year from the relevant date (i.e. date of Shipment/ export) in terms of provisions of Section 11B of Central Excise Act, 1944, a Show Cause Notice dated 22.10.2013 was 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 Order in Original No. GS/R-12/Th. City/13-14 dated 20.12.2013.

3. Being aggrieved by the Order in Original dated 20.12.2013, the applicant filed the appeal before Commissioner of Central Excise (Appeals-I), Mumbai, who vide Order in Appeal No. PD/49/Th-I/2014 dated 27.06.2014 upheld the Order in Original and rejected the appeal of the applicant.

4. Being aggrieved with the impugned Order-in-Appeal, the applicant has filed the present Revision Application mainly on the following grounds :

4.1 It is settled preposition of law that only goods are exported and duties and taxes are not exported and thereforeas per the public policy the duty paid on exported goods needs to be compensated to the exporter in order to facilitate him to be competitive in global market. In this case the product manufactured by them has been exported on payment of Central Excise Duty. After effecting the exports the applicant company has filed its claim for refund / rebate claim of excise duty which is paid on exported goods;

4.2 The department is not disputing the export of goods. At the same time the payment of central excise duty on exported goods is not in dispute. Under the circumstances the goods which are exported are not liable to payment of excise duty but still they have paid the excise duty which is as a matter of fact and in the interest of public policy are entitled to the refunded. Therefore, such export

incentive granted by legislation cannot be subjected to the technicalities for the purpose of denying the said refund;

4.3 The very fact that they have submitted ARE 1 and proof of export in time within the period of one year from the date of shipment then in that case denial of the refund on the ground of non-submission / late submission of form C is unsustainable;

4.4 The very fact that ARE 1 in Part D contemplates the sanction of refund / rebate should be treated as a claim of rebate. The submission of form C is a technical requirement in addition to the submission of ARE 1 for the purpose of rebate / refund. In view of this, the order of both the lower authorities are unsustainable in the light of decision of this Hon'ble Authority in case of Dagger Forest Tools Ltd. reported in 2011 (272) ELT 471 (GOI);

4.5 In view of this underline principle when the substantial condition of export of goods, are fulfilled duty collected on such exported goods cannot be retained by the government under the grab of limitation Hence, the rejection of refund claim is unsustainable on this ground alone in the light of following judgments :

a) Maharashtra Vegetable Products Ltd v/s Union of India 1993 (66) ELT 61 (Bom)

4.6 It is settled preposition of law that filing Original ARE-1 i.e. Application for removal of excisable goods for the purpose of export on payment of duty under the claim of Rebate along with the requisite documents in terms of Rule 18 of Central Excise Rules. 2002 and Notification No. 19/2004 is sufficient compliance for the purpose of processing of Rebate Claim.

4.7 In their case it is an admitted fact that they filed Original copy of ARE- 1 along with Central Excise Invoices. Photo copy of Bill of lading, Copy of export invoice and copy of shipping bill vide their letter dated 1.1.2013 acknowledged by the department on 18.1.2013;

4.8 As per the Notification No 19/2004 claimant has to file original copy of ARE 1 evidencing the export of goods with the Jurisdictional Asstt. Commissioner for the purpose of Rebate Claim. The said original ARE-1 needs to be compared by Jurisdictional Asstt. Commissioner with duplicate copy of ARE 1 received from the Officer of Customs and triplicate copy received from Central Excise Officer and then after satisfaction that the claim is in order, he has to sanction the Rebate Claim accordingly. The Rule 18 or above stated Notification nowhere prescribed any specific format in which rebate application to be preferred. Thus the letter dated 1.1.2013 submitted by them with the Jurisdictional Asstt. Commissioner along with original ARE-1 along with the requisite documents is to be treated as a Rebate application;

4.9 The ARE 1 is an application for removal of the goods for export on payment of excise duty under the claim of Rebate. The said application is divided in five parts as under:

a) Application for removal goods for exports **b)** Part A - Certification by Central Excise Officer **c)** Part B -Certification by Officer of Customs **d)** Part C - Export by post **e)** Part D - Rebate Sanction order.

The above component of ARE 1 construe the entire compliance of Notification No. 19/2004 i.e. from removal of excisable goods for the purpose of exports till the sanction of Rebate Claim of duty paid on goods exported. Thus, the submission of ARE 1 in original along with the requisite documents within a period of one year form the date of export is sufficient compliance for the purpose of Rebate claim in terms of Section 11B of the Central Excise Act, 1944;

4.10 Their letter dated 1.1.2013 complied with all the requisitions of Notification No 19/2004, therefore, the said letter needs to be treated as Rebate application in terms of Section 11B of the Central Excise Act 1944. Accordingly the Rebate claim is filed very well within stipulated period of one year from the date of let export order needs to be entertained and to be sanctioned accordingly;

4.11 They have filed all the papers to the department in time which is evident from the letter of proof of export issued by the department Therefore, the impugned order upholding the rejection of rebate claim on mere ground of limitation is against the legislative intent referred supra and therefore unsustainable in the light of following judgments a) Dorcas Market Makers Pvt Ltd. v/s Commissioner of Central Excise 2012 (281) ELT 227 (Mad.);

4.12 It is settled preposition of law that the construction of provisions of Rule which advances the object of the scheme to be preferred as against the construction which militates the scheme. In case of export the underline principle is to export the goods and not the taxes therefore the exporters are given refund as incentive. The second object of the government is to promote the export by making the exporter to be competitive in global market by not loading taxes as part of cost. It is worthwhile to understand the legislative intent which promotes the activity of export in the interest of economic growth and to avoid deteriorating condition of deficit of foreign exchange. Therefore, by denying the refund of duty paid on export goods the rule so designed which militates the scheme is to be avoided and hence the sanction of refund of the duty paid on export goods should be the rule and rejection of such rebate claim should be avoided in order to maintain and follow the legislative intent;

4.13 As discussed hereinabove the goods are exported on payment of duty whereas both the lower authorities rejected the Rebate claims on the ground of limitation without considering timely submission of original ARE 1 along with the requisite documents as per Notification vide letter dated 1.1.2013 This approach of both the lower authorities of non-consideration of substantial compliance of Notification No 19/2004 tantamount to rejection of impugned rebate claims which will certainly culminate into the export of domestic duty along with the goods exported. Both the lower authorities have not considered and dealt with this aspect and therefore the rejection of rebate claim by both the lower authorities is against the duty free export policy of the government. Therefore, the impugned order rejecting the rebate claims and retaining the amount of duty paid on export goods is against the policy of the Government of India and hence the Rebate claim filed by them needs to be allowed.

5. Personal hearing in this case was held via video conferencing on 09.12.2020 which was attended online by Shri H.G. Dharmadhikari, Advocate on behalf of the applicant. He reiterated his submissions dated 09.04.2018 made during the

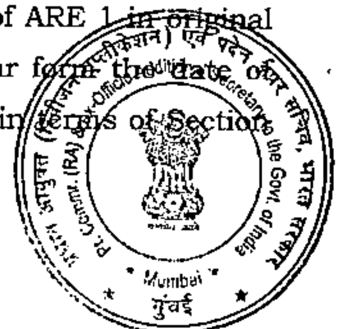
previous personal hearing. He submitted that his claims were filed in time and only procedural deficiencies were rectified subsequently.

6. In its submissions dated 09.04.2018, the applicant reiterated the grounds of the Revision Application mentioned at para 4 above. It was pleaded that ARE-1 is the only document prescribed under Rule 18 read with Notification No 19/2004 for the purpose of filing of Application for removal of goods and for claiming rebate Claim and there are no other documents mentioned in the said Notification. Thus, the filing of ARE 1 application duly certified by Custom officer affirming export of goods mentioned therein alongwith the details of duty payment is an Application itself under No.19/2004 for the purpose of rebate. Thus, their Application for rebate is within a period of limitation and needs to be allowed in the light of following judgments:-

a) In Re : Famy Care Ltd. - 2014 (311) E.L.T. 871 (G.O.I.)
b) Arya Exports And Industries, - 2005 (192) E.L.T. 89 (Del.)
c) Repro India Ltd. VsCommr- 2016 (43) S.T.R. 203 (Tri. - Mumbai)
d) Duraline India Pvt. Ltd. Vs CCE- 2009 (237) E.L.T. 689 (Tri. - Mumbai)
e) CCE V Simplex Engg. & Foundary Works P. Ltd.-2016 (333) E.L.T. 112 (Tri. - Del.)
f) CCE Vs Motherson Sumi Systems Ltd.- 2009 (247) E.L.T. 541 (Tri. - Mumbai)
g) Dorcas Market Makers Pvt. Ltd.Vs CCE- 2012 (281) E.L.T. 227 (Mad.)
h) In Re : Dagger Forst Tools Ltd.- 2011 (271) E.L.T. 471 (G.O.I.)
i) Maharashtra Vegetable Products Ltd. Vs UOI - 1993 (66) E.L.T. 61 (Bom.)

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions/synopsis 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) specified under Section 11B of Central Excise Act, 1944. Whereas the applicant contended that after completion of export of goods they had submitted Original ARE-1s in respect of rebate claims for Rs. 2,84,353/-, Rs. 5,78,266/- and Rs. 4,80,140/-, with other ARE-1s to the Divisional Assistant Commissioner for obtaining proof of export, alongwith respective Excise Invoices, Bill of Lading /Airway Bill, Export Invoices and Shipping Bills, under covering letter dated 01.01.2013 which was received by department on 18.01.2013. Further in terms of their submissions at para 4.9 supra, the applicant contended that the submission of ARE 1 in original along with the requisite documents within a period of one year form the date of export is sufficient compliance for the purpose of Rebate claim in terms of Section 11B of the Central Excise Act, 1944.



9. Government observes that the applicant vide letter dated 01.01.2013 had submitted 12 ARE-1s along with other export documents in respect of goods exported under letter of undertaking under Rule 19 of Central Excise Rules, 2002 for acceptance of proof of export, to the Deputy Commissioner of Central Excise, Thane City Division, Thane-I. Later on the applicant vide letter dated 04.09.2013 (received by the department on 06.09.2013) informed Divisional Deputy Commissioner that during the time of scrutiny of their account and cenvat re-conciliation it had been realized that out of 12 ARE-1s submitted vide their letter dated 01.01.2013 for acceptance of proof of export, goods against following 3 ARE-1s were cleared on payment of duty under claim for rebate under Rule 18 of Central Excise Rules, 2002. :-

Sr. No.	ARE-1 No.	Date of Let Export Order	Amount of Duty Paid (Rs.)
1.	003/12-13/U-II dated 25.05.2012	28.05.2012	2,84,353/-,
2.	005/12-13/U-II dated 28.05.2012	29.06.2012	5,78,266/-,
3.	005/12-13/U-II dated 28.05.2012	07.06.2012	4,80,140/-,

The applicant further informed that due to oversight the above said documents were submitted to Division office along with other ARE-1s for acceptance of proof of export instead of filing rebate claim. Hence, applicant requested Divisional Deputy Commissioner to consider above 3 ARE-1s for rebate claim with the date of filing as 18.01.2013. It was also mentioned in the said letter that since all the documents were lying with Division office, they are enclosing duly filled form "C" along with declaration and Xerox copies of ARE-1s, Invoice copy, Airway bill, Custom invoice, shipping Bill and Part-II Debit entry.

10. Government observes that the issue involved in this Revision Application is whether date of filing rebate claim in the instant case is the date of filing form "C" by the applicant on 06.09.2013 or the date when the applicant submitted these ARE-1s alongwith other ARE-1s for acceptance of proof of Export under Rule 19 of Central Excise Rules, 2002 on 18.01.2013.

11. Government in this regard observes that while deciding the issue of the petitioner M/s Everest Flavours Ltd., in Writ Petition No. 3262 of 2011, as to whether

> *"(2) The submission of Form ARE-1 would itself constitute the filing of a rebate claim. Consequently, the actual filing of the rebate claim on 17 July 2007 was a surplus age which must be ignored"*

The Hon'ble Bombay High Court vide its Judgment dated 29.3.2012 [2012 (282) E.L.T. 481 (Bom.)] observed as under:-

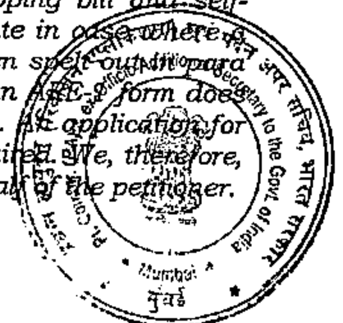
10. *In exercise of the powers conferred by Rule 18, the Central Government has issued a Notification. The Notification prescribes the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that the excisable goods shall be exported within six months from the date on which they were cleared from the factory of manufacture or warehouse. The procedures are stipulated in Clause (3). Sub-clause (iv) provides for the sealing of goods intended for export, at the place of dispatch and the exporter shall present goods along with four copies of an application in Form ARE-1 specified in the Annexure to the Notification to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse. Sub-clause (v) then stipulates that the Superintendent or Inspector shall verify the identity of goods mentioned in the application, the particulars of the duty paid or payable and if found in order, shall seal each package or the container and endorse each copy of the application in token of having carried out the examination. The original and duplicate copies of the application are returned to the exporter. The triplicate copy of the application is to be sent to the Officer with whom a rebate claim is to be filed either by post or by handing over to the exporter in a sealed cover after posting the particulars in the official record or to be sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration. Sub-clause (b) of Clause (3) of the Notification makes a provision for presenting a claim for rebate of Central Excise duty in the following terms :*

"(b) Presentation of claim for rebate to Central Excise :-

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of the application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

The provisions of the Notification thus make it abundantly clear that a mere submission of the ARE-1 form does not constitute the presentation of a claim for rebate of Central Excise. Form ARE-1 in turn has various parts including Part A which deals with the certification by Central Excise Officer, Part B which deals with certification by the Officer of Customs and Part D which is the actual Rebate Sanction Order. Moreover, it would be necessary to take note of the fact that under Section 11BB of the Act, interest is liable to be paid if any duty which is ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of Section 11B. For the purpose of Section 11BB, presentation of the application is the relevant date from which the period of three months has to be reckoned. If the submission of the petitioner were to be accepted, viz. that the mere presentation of the ARE-1 form would constitute an application for rebate of Central Excise Duty, that would defeat the whole scheme that has been enunciated in Section 11B and Section 11BB. Before the application for rebate can be allowed, an exporter has to furnish various documents including a request on the letterhead of the exporter containing a claim for rebate, the ARE-1 numbers and dates, corresponding invoice numbers and dates, the original copy of the ARE-1, invoice issued under Rule 11, self-attested copy of shipping bill and self-attested copy of bill of lading together with a Disclaimer Certificate in case where the claimant is other than the exporter. These requirements have been spelt out in para 8.3 of the C.B.E. & C. Excise Manual. The mere presentation of an ARE-1 form does not, therefore, constitute the filing of a valid application for rebate. An application for refund has to be filed, together with documentary material as required. We, therefore, do not accept the second submission which has been urged on behalf of the petitioner.



12. The same issue came to be considered by Hon'ble Delhi High Court in another decision namely in W.P.(C) 7683/2019- Orient Micro Abrasives Limited Vs. UOI [2020 (371) E.L.T. 380 (Del.)] wherein Hon'ble Delhi High court considered the issue and vide its decision dated 27.11.2019 observed as under :-

12. Mr. Sachdev submits, alternatively, that the date of submission of the ARE-1 form, to the customs authorities, should be regarded as the date of filing of the rebate claim.

13. We find ourselves unable to accede to either submission.

14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, the rebate claim of the petitioner was required to be filed within one year of the export of the goods.

15. In Everest Flavours Ltd. v. Union of India 2012 (282) E.L.T. 481 (Bom.), the High Court of Bombay, speaking through Dr. D.Y. Chandrachud, J. (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree.

16. ....

17. We are also unable to subscribe to the submission, vehemently urged by Mr. Sachdev, that the date of submission of the ARE-1, to the Customs Officer, ought to be treated as the date of filing of the rebate claim. "ARE-1" expands to –"Application for Removal of Excisable Goods". The ARE-1 is, therefore, an application which accompanies the removal of the excisable goods, and its submission is necessarily anterior,in point of time, to the export of the goods. Indeed, this is apparent from Clauses 3(a) (vii), (xii), (xiv) and 3(b) of Notification 19/2004 – CE (NT) (supra), which deal with the procedure for sealing of goods, examination thereof and presentation of rebate claim, and may be reproduced thus:-

(3) Procedures :-

(a) Sealing of Goods and examination at the place of dispatch and export :-

(vii) The triplicate copy of application shall be –

(a) sent to the office with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(b) sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;

(xii) In case of self-sealing, the said Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars –

(a) send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or (b) send to the Excise Rebate Audit Section at the place of export in case rebate is to be

claimed by electronic declaration on Electronic Data Inter-change system of Customs;

(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify onthe copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export :

Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export.

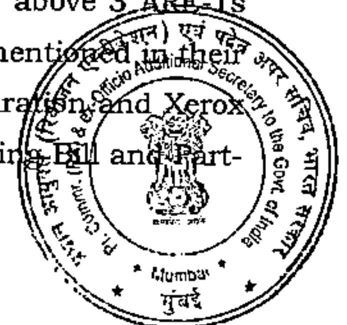
(b) Presentation of claim for rebate to Central Excise :-

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part.|

18. Clearly, the submission of the ARE-1 is anterior to the filing of the rebate claim and the date of submission of the said application cannot, therefore, be treated as the date of filing of the rebate claim. Mr. Sachdev was unable to draw our attention to any statutory provision, or judicial authority, enabling the date of submission of the ARE-1 application to be treated as the date of filing of the rebate claim.

13. Government observes that the applicant vide letter dated 04.09.2013 (received by the department on 06.09.2013) informed Divisional Deputy Commissioner that during the time of scrutiny of their account and cenvat re-conciliation it had been realized that out of 12 ARE-1s submitted vide their letter dated 01.01.2013 for acceptance of proof of export, goods against 3 ARE-1s were cleared on payment of duty under claim for rebate. Thus, the applicant have themselves admitted that due to oversight the 3 ARE-1s (in respect of which rebate claims ought to have been filed) were submitted to Division office along with other ARE-1s for acceptance of proof of export instead of filing rebate claim and hence, applicant requested Divisional Deputy Commissioner to consider above 3 ARE-1s for rebate claim with the date of filing as 18.01.2013. It was also mentioned in their letter that they are enclosing duly filled form "C" along with declaration and Xerox copies of ARE-1s, Invoice copy, Airway bill, Custom invoice, shipping Bill and Part-II Debit entry.



14. Thus it is clear that the applicant had initially not filed rebate claims in respect of the said 3 ARE-1s and the same were filed vide letter dated 04.09.2013 when form "C" claiming the rebate was filed in terms of Sub-clause (b) of Clause (3) of the Notification 19/2004-CE(NT). It is pertinent to note here that the applicant vide letter dated 16.05.2013 was informed about acceptance of proof of export by Supdt. (Technical) of the concerned Division in respect of 15 ARE-1s (which also included 3 ARE-1s which were cleared on payment of duty under claim for rebate). The date of shipment in these 3 ARE-1s was 28.05.2012, 29.06.2012 and 07.06.2012. Thus, the applicant had ample time to file the claim within the limitation period, particularly when they during the time of scrutiny of their account and cenvat re-conciliation had realized that out of 12 ARE-1s submitted vide their letter dated 01.01.2013 for acceptance of proof of export, goods against 3 ARE-1s were cleared on payment of duty under claim for rebate. Despite this, it is not understandable why the applicant allowed the limitation under Section 11B of the Act to run out. When an applicant prefers to postpone his remedial measure without being vigilant and unmindful of the consequence of delay he forgoes his remedy with the lapse of time. Hence, the applicant at a belated stage cannot take undue advantage of the fact that ARE-1s filed before the department for obtaining proof of export be treated as filed for claim of rebate, particularly when they were specifically filed to obtain proof of export in respect of exports effected under L.U.T. No. V(UT-15) DVL/Th.City/2005/1046 valid upto 28.09.2012 and more so they had realized during the scrutiny of their account and cenvat re-conciliation that rebate claim in r/o these 3 ARE-1s had not been filed.

15. In view of the foregoing, the Government is of a considered view that the Commissioner (Appeals) while rejecting the appeal filed by the applicant vide his impugned Order has rightly observed as under:-

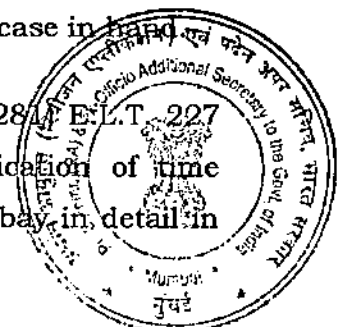
> *"10. The Appellants have contended that they have filed original copy of ARE-1 along with other documents in respect of these exports vide their letter dated 01.01.2013, which was acknowledged by the department on 18.01.2013 and the same should be treated as rebate claim for the purpose of sanction of rebate. In this regard I find that although the Appellants have claimed so in the appeal memorandum, no documentary evidence is produced by them in support of their claim. Neither have they established that in their application for admission of proof of export, they have also claimed rebate of duty paid on such goods exported. Furthermore, from the impugned order it is observed that these documents were filed by them on 18.01.2013 for admission of proof of export in respect of these exports and not for the purpose of claim of rebate under Rule 18 of the Central Excise Rules, 2002. The Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, which lays down the procedure for the purpose of claiming rebate of duty paid on goods which are exported, requires lodging of a claim of proper rebate along with necessary documents with the jurisdictional Deputy/Assistant Commissioner. The Notification further states that only if satisfied*

that the claim is in order, the Deputy/Assistant Commissioner of Central Excise shall sanction the rebate either in whole or in part. Hence, the contention of the Appellant on this count cannot be appreciated".

16. The applicant has relied upon judgment of Hon'ble Bombay High Court in Maharashtra Vegetable Products Ltd. v/s Union of India [1993 (66) E.L.T. 61 (Bom.)] wherein it was held that the refund claim not to be disallowed merely on ground of limitation. However, Hon'ble Supreme Court in the case of UOI v. Kirloskar Pneumatics Company reported in 1996 (84) E.L.T. 401 (S.C.) held 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. Section 11B of the Central Excise Act, 1944 being *pari materia* with Section 27 of the Customs Act, 1962, the aforesaid decision 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.

17. As regards other case laws viz. Re : Dagger Forst Tools Ltd.- 2011 (271) E.L.T. 471 (G.O.I.), Re : Famy Care Ltd. - 2014 (311) E.L.T. 871 (G.O.I.), Arya Exports And Industries, - 2005 (192) E.L.T. 89 (Del.), Repro India Ltd. Vs Commr-2016 (43) S.T.R. 203, Duraline India Pvt. Ltd. Vs CCE- 2009 (237) E.L.T. 689 (Tri. - Mumbai) CCE V Simplex Engg. & Foundary Works P. Ltd.-2016 (333) E.L.T. 112 (Tri. - Del.), CCE Vs Motherson Sumi Systems Ltd.- 2009 (247) E.L.T. 541 (Tri. - Mumbai) in all these cases the claims were initially filed within the stipulated period however they were returned to the claimants for getting clarification/rectifying deficiencies/ not filed in prescribed form or because they being incomplete and also without requisite documents and were resubmitted after lapse of limitation period. In these cases Courts held that time limit provided under Section 11B of Central Excise Act, 1944 must be computed from date of original filing of refund claim and not from date of re-submission of claim after rectification of mistake/defects. However, in the instant case the initial rebate claim was filed by the applicant (on 04.09.2013) after lapse of limitation period hence the ratio of these case laws cannot be made applicable to the case in hand.

18. As regards Dorcas Market Makers Pvt. Ltd.Vs CCE- 2012 (281) E.L.T. 227 (Mad.) relied upon by the applicant, this issue regarding application of time limitation of one year is dealt [with] 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. 481 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. In the said decision the Hon'ble High Court has differed from the Madras High Court's decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. [2012 (281) E.L.T. 227] and even distinguished Supreme Court's decision in the case of M/s. Raghuvar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.)]. Hence, the applicant's reliance on the decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. is not of much value.

19. Moreover, in none of the cases cited by the applicant it is held that submission of ARE-1s for any other purpose (submitted for obtaining proof of export in this case) can be considered as filing of rebate claim and the department suo moto is required to process and sanction the rebate claims.

20. In the light of the detailed discussions herein above, Government does not find any ground to modify the Order-in-Appeal No. PD/49/Th-I/2014 dated 27.06.2014 passed by the Commissioner (Appeals-I), Central Excise & Service Tax Zone, Mumbai –I and therefore upholds the same.

21. The Revision Application is rejected being devoid of merit.

Shrawan 16/12/2020
(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No.666/2020-CX (WZ) /ASRA/Mumbai DATED 16.12.2020

To,
M/s Dembla Valves Ltd. Unit-II,
C-30 Jai Matadi Compound, Kalhar,
Thane-Bhiwandi Road, Dist: Thane.

ATTESTED
T. P. SALIM KUMAR
ASSISTANT COMMISSIONER (R.A.)

Copy to:

1. Commissioner of CGST, Bhiwandi Commissionerate, 11th & 12th Floor, Lotus Infotech Centre, Station Road, Parel (East), Mumbai 400 012.
2. The Commissioner of CGST (Appeals), Thane, 12th Floor, Lotus Infotech Centre, Station Road, Parel (East), Mumbai 400 012.
3. The Deputy / Assistant Commissioner, of CGST Bhiwandi, Division-IV, 2nd Floor Rabee Plaza, Dhamankar Naka, Bhiwandi 421302, Dist: Thane.
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.