

REGISTERED
SPEED POST



F.No. 195/163/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue...11/8/15

ORDER NO. 77/2015-CX DATED 07.09.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, 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.08/CE/ APPL /CHD-II (JK)/2012 dated 18-01-2012 passed by Commissioner of Central Excise, (Appeals), Chandigarh-II

Applicant : M/s Indian Oil Corporation Ltd., Srinagar (J&K)

Respondent : Commissioner of Central Excise, Chandigarh-II

ORDER

This revision application is filed by M/s Indian Oil Corporation Ltd., Srinagar (J&K) (hereinafter referred to as applicant) against the Order-In-Appeal No.08/CE/ APPL/CHD-II (JK)/2012 dated 18-01-2012 passed by Commissioner of Central Excise, (Appeals), Chandigarh-II with respect to Order-In-Original passed by the Assistant Commissioner of Customs & Central Excise Division, Srinagar (J&K).

2. Brief facts of the case are that the applicant a marketing Division of M/s. Indian Oil Corporation Ltd., supplied duty paid ATF to Indian Airlines, Srinagar for Haj Flights during the period 03.12.2005 to 12.02.2006, 11.2006 to 06.02.2007, 11.11.2007 to 24.01.2008 and from 10.08.2008 to 12.01.2009 and thereafter filed rebate claims under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE dated 06/05/2004 in respect of Central Excise duty paid on ATF supplied as stores for consumption on board an air craft on foreign run. As the applicant had not followed the procedure laid down in the Notification No.19/2004-CE(NT), 4 SCNs were issued to the applicants asking them, as to why the claims for rebate should not be rejected under Section 11B of the Central Excise Act, 1944. The adjudicating authority vide Order-In-Original No.1-4/CE/Rebate/AC/2010-11/2007 dated 15.03.2011 rejected the claim for rebate on the ground of procedural non-compliance of the conditions of Notification 19/2004-CE (NT) dated 06.09.2004. The rebate claim for the period 03.12.2005 to 12.02.2006 amounting to Rs.34,63,118/- was also held to be time barred.

3. Being aggrieved by the impugned Order-In-Original, applicant filed appeal before Commissioner (Appeals), who vide Order-In-Appeal No. 08/CE/APPL/CHD-II(JK)/2012 dated 18.01.2012 partially allowed the appeal and upheld the order of the Adjudicating Authority of rejecting the refund claim amounting to Rs. 34,63,118/- pertaining to the period 03.12.2005 to 12.02.2006 filed on 26.02.2009, being time barred.

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 That the allegations made in the Show Cause Notice and confirmed by the both lower authorities are denied and not admitted. The Show Cause Notice as well as both the orders passed by lower authorities in context to the denial of rebate claim of Rs.34,63,118/- are illegal against the facts and law, hence not sustainable.

4.2 That it stands accepted in the present matter at earlier stage that there has been no dispute about the actual export of the goods; therefore the denial of duty on mere procedural lapses is not justified. Notification/rules are only of procedural nature so as to ensure that the goods are actually exported and the limit of one year is provided in the ordinary circumstances. Admittedly, the goods were actually exported within prescribed time. Jurisdictional Central Excise department of the applicant is located in remote area and hence could not be accessed on daily basis as Central Excise officers generally did not endorse the Central Excise Documents on daily basis and thus, when it is endorsed by the jurisdictional Central Excise officers, the same were submitted for claiming rebate. Hence, for delay in submission of rebate claim, revenue department is accountable who belatedly handed over the central excise documents evidencing export of goods to the applicant and thus, they could not submit the same with the department in prescribed time. Procedural time binding mandated by the rules/notification cannot create debacles in the way of claiming rebate when the very purpose of the notification/rules i.e. export has been achieved successfully. Even in cases of clandestine removal, duties are not demanded if it is proved that the goods are exported. Notification/Rules in question are not creating substantive charge/debacles and are only procedural notification/rules.

4.3 That the departmental instruction issued vide para 2.4 of the Chapter 9 of the CBEC Manual 2005 also favours the circumstances of the revisionist and articulates that-

"2.4 It may not be possible to scrutinize the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department. Consequently, submission of refund claim without supporting documents will not be allowed. Even if post or similar mode files the same, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case of non-availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted that the claimant is not in disadvantageous position with respect to limitation period."

4.4 That the applicant again wanted to mention that export rebate claim amounting to 34,63,118/- under Rule 18 of Central Excise Rules, 2002, was rejected on the ground of non-compliance with limitations condition. The said

conditions seem to be of a procedural nature. There has been no dispute about substantive grounds of goods having been exported. The applicant's explanation is that the department belatedly handed over the export documents to the applicant after necessary endorsement and thus they could not be submitted for claiming rebate claim in time. Procedural lapses are to be condoned and claim is to be allowed subject to verification of documents relating to export of goods.

4.5 That it is a failure on the part of the department which had led to belated submissions of rebate claims. Hence they deserve sympathy. It is to be considered that the goods have been actually exported, the interest of the country is to encourage exports, Government as a special case, can condone all the delays as the original authority and appellate authority, are satisfied with the admittance of export. If the belated rebate claims are not considered (being delay occurred due to inactiveness of the department), it will frustrate the object of export. In present case substantive fact of export is not in doubt, a liberal interpretation is to be accorded in case of technical lapses, if any, in order not to defeat the very purpose of such schemes. The plea of the applicant is that the matter should have been decided on merits rather than on the technical ground of limitation.

4.6 That delay in filing of rebate claims has occurred due to belated endorsement of the export documents by the department, then department is accountable for non-compliance of the limitations requirement at the end of the revisionist and they cannot be made to bear losses occurred to the rejection of rebate claim for Rs.34,63,118/-.

4.7. That the applicant explains that rebate claim for Rs.34,63,118/- has been denied on limitation grounds which is not tenable in purview of legislative provisions as export of the subject goods has been executed by the applicant successfully. It is stated that right to rebate of duty accrues under Rule 18 on export of goods. That right is not obliterated if the application for rebate of duty is not filed within the period of limitation prescribed under Section 11B. In fact, Rule 18 of the Excise Rules empowers the excise authorities to grant rebate of duty even if some of the procedural requirements are not fulfilled. Thus, under Section 11B the amount of excise duty is refunded to the exporter even if the duty element is passed on by the exporter. Thus, on reading Rule 18 with Section 11B of the Act it becomes abundantly clear that the limitation prescribed under Section 11B is only procedural and does not affect the substantive right to claim rebate of duty under Rule 18. Moreover, there are no consequences set out in the statute, if the application for rebate of duty is not made within the period of limitation.

Thus the right to rebate of duty which flows from Rule 18 is not destroyed by failure to apply for rebate of duty within one year time prescribed under the statute. Thus Section 11B merely debars the remedy if the claim is not filed within the period of limitation set out therein.

4.8. That it cannot be gainsaid that rebate and other such export promotion scheme of the Government are incentive-oriented beneficial schemes intended to boost export in order to promote exports by exporters to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme. In fact, as regards rebate specifically, it is now a trite law that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met, other procedural deviations can be condoned.

4.9. That in case of rebate claim of duty the condition which is principally required to be fulfilled by the applicant is 'export of subject goods'. In the present case, there have been some procedural lapses on the part of the applicant but the factum of the export is not doubted, and the same has also been confirmed by the Assistant Commissioner of Central Excise Srinagar vide para no. 6.2 of the impugned order that-

"However, perusal of the co-relation statement submitted by the noticees as mentioned above reveals that the goods have been exported within 6 months from the date on which they were cleared for exports from the factory of manufacture".

4.10. That from the above mentioned observation, export of goods is principle requirement for filing of rebate claim which has been fulfilled by the applicant and has been duly affirmed by the revenue, then the applicant are at a loss to understand as to why the Assistant Commissioner failed to exercise the discretionary power vested in him while considering the applicant's claim for rebate applied under Section 11B.

4.11 That the applicant also wanted to mention here that the Joint Secretary (Revision) in their Order No. 387/2006 dated 24.05.2008 in case of BPCL, Mumbai has already taken a view that minor lapses cannot deny the substantive benefits of rebate.

4.12 That the appellate authority, in their Order-in-Appeal dated 18.01.2012 have while referring that 'the making of lenient and liberal view on relaxation of limitation is not included in their vested powers' again have not doubted the factum of export and have only made their views that relaxation in time limitation is not their vested powers. Hence, the present matter is condonation of delay in limitation grounds being belatedly submissions of rebate claims for which department is accountable alone.

4.13 That in the present case the lower authority is satisfied that the applicant has complied with the statutory legal requirements and also have sufficient cause for the delay caused in not filing the present rebate claim within the statutory time limitation and the same can be condoned being reasons beyond their control towards which they failed to comply with any of the provisions of the Rules for time limitation.

4.14 That it is stated that as a matter of practice and policy and for reasons mentioned above, relaxation under time limitation is not grantable. The applicant also want to mention here that it is not wise to harm the statutory rights of the assessee on merely procedural and limitation grounds when the very purpose of Notification and Rules is achieved successfully. The fundamental and statutory rights of the assessee are above all statues mandated under the law.

4.15 That relaxations on limitation ground cannot be granted. It has been specified in Board Circular No. 234/68/96-CX dated 26.07.1996 that, 'In the notification issued under Rule 12(1), *ibid*, the time- limit for filing rebate has been prescribed with reference to Section 11B of Central Excise & Salt Act. 1944.' The limitation period of 6 months for filing rebate as prescribed under this Section is absolute since the Act do not prescribe any provision for relaxation. No rules or notification can transcend, modify or abbreviate the provision of the Act. Accordingly, it has been decided that the Commissioner of Central Excise can relax any or all the conditions of the notification in terms of proviso to sub-rule 1 of Rule 12 except the condition related to the relaxation of limitation period for filing claim of rebate. Hence, it is within the vested powers of the department and any delay occurred on genuine ground can be condoned.

4.16. That the applicant also wanted to mention that Notification No. 19/2004 dated 6.9.2004 shows an apparent omission viz., the omission of the time limit as per section 11B of the Central Excise Act. It is only a conscious omission when all other conditions are retained in the Notification No. 19/2004. Rule 18 of the Central Excise Rules, 2002 gives the power to the authorities to issue Notification prescribing conditions, limitations and

procedures, the same have to be followed. What is not prescribed in the Notification cannot be imported into the said Notification. No time limit has been prescribed in the relevant Notification No. 19/2004 dated 06.09.2004. When the statutory Notification issued under Rule 18 does not prescribe any time limit, Section 11B is not applicable and based on which the benefit cannot be denied to the applicants.

4.17. That the Government of India in order to promote India as a World Trading Partner and for the purpose of earning foreign exchange have promoted various policy measures to boost exports of the goods manufactured or produced in India. Several schemes are available for manufacturer exporters and merchant exporters for the goods and services exported by them. The basic principle of the various schemes is to offer incentives to exporter to neutralize the taxes suffered by the inputs and final products. The object of the entire scheme is that the goods are to be exported and not taxes. Therefore, the Government of India has issued several exemptions Notifications to facilitate manufacturers and exporters to reduce the cost of production so that Indian products may survive in the global market. Similarly, in order to encourage the local manufacturer to manufacture and export goods, certain goods promotion schemes/exemption Notifications have been incorporated under the central excise law itself. As a matter of policy, the Government of India do not levy tax on export of goods and services and if levied/collected, the amount of tax so levied/collected is given back by way of refund/rebate/drawback. As an incentive to exporters, the Government also returns the amount of duties and taxes collected on inputs and input services used for production of export goods or for exporting services. In the present case, the Notification No.19/2004-CE(NT) is an exemption Notification and such exemption is made available by way of rebate of duty paid on export goods as specified in the said Notification.

4.18. That from the above submissions, it is precisely clear that rebate claim filed by the applicants is admissible to them and for any delay occurred, the department is accountable and such delay is also condonable.

4.19. That in view of the submissions made above, order passed by Commissioner (Appeals), is liable to be set aside to the extent of the rebate claim of Rs. 34,63,118/-.

4.20. Applicant placed reliance on the following case laws:-

- Union of India Vs. A.V. Narasimhalu- 1983 (13) E.L.T. 1534 (SC),
- Suksha International v. Union of India- 1989 (39) E.L.T. 503 (S.C.),
- Collector of C. Ex., Vs. Fort William Co. Ltd.- 1989 (43) E.L.T. 339 (Tribunal)

- Formika India Vs. Collector of Central Excise- 1995 (77) E.L.T. 511 (SC),
- Wipro Information Tech. Ltd. Vs. Under Secy. (Drawback Directorate)- 1998 (102) E.L.T. 547 (Kar.)
- M/s Krishna Filaments Ltd.- 2001 (131) E.L.T. 726 (G.O.I).
- Commissioner of C.Ex., Shillong Vs. Vinay Cement Ltd.- 2002 (147)- 724 (Tri.-Kolkata),
- Uttam Steel Ltd. Vs. Union of India,- 2003 (158) E.L. T. 274 (Bom.),
- IOC Ltd. Vs. Commissioner of Central Excise, Calcutta-II- 2004 (178) E.L.T. 834 (Tri.-Kolkata)
- M/s Modern Process Printers - 2006 - 204 (E.L.T.) 632 (G.O.I.).
- M/s Cosmonaut Chemicals & Anr Vs. UOI & Anr- 2008-TIOL-473-HC-AHM-CX
- M/s Aarvee Denims & Exports Ltd., Vs. Commissioner of C.Ex., Ahmedabad,- 2010 (17) S.T.R. 262 (Tri.-Ahmd.)
- M/s Ford India Pvt. Ltd. Vs. Assistant Commissioner of C.Ex., Chennai- 2011 (272) E.L.T. 353 (Mad.)
- M/s Dorcas Market Makers Pvt. Ltd. Vs. CCE (Appeals), Chennai- 2012-TIOL-I08-HC-MAD-CX.

5. Personal hearing was scheduled in this case on 18.05.2015. Shri Dinesh Verma, Advocate and Shri Mukesh Kumar Senior Manager (Finance), IOCL appeared for personal hearing on behalf of applicant. The applicant submitted written submission dated 18.05.2015, wherein, they mainly reiterated contents of impugned revision application. None attended personal hearing on behalf of respondent department.

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

7. On perusal of records Government finds that the Commissioner (Appeals) upheld the order of the Original Authority rejecting the rebate claim amounting to Rs. 34,63,118/- being time barred. It is an undisputed fact that the applicant had filed the rebate claim on 26.02.2009 in respect of goods which were exported during the period 02.12.2005 to 12.02.2006 i.e. after a lapse of more than three years from the date of export. Now, the applicant has filed this revision application on grounds mentioned in para 4 above and contended that export of duty paid goods is not in dispute and these rebate claims may be allowed.

8. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is a

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

Government finds no ambiguity in provision of section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

9. Applicant has contended that delay in filing rebate claim is a procedural lapse and same 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 and not a merely procedural requirement. The statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim has to be treated as time barred.

10. Government further observes that there is a specific observation of the Original Authority that the Noticee has not denied the allegation that the claim was barred by time limitation. However, before Commissioner (Appeals) the applicant's ground was that limitation being only a procedural issue and not a substantive requirement their rebate claim of Rs. 34,63,118/- for the period 03.12.2005 to 12.02.2006 should not be treated as time barred. Thereafter, before the Revisionary Authority the applicant has contended that the delay in filing of rebate claim is due to delay in receipt of documents from the excise authorities. However, there is nothing on record to substantiate this contention of the applicant nor is it stated as to which documents were delayed. This was also not a point in contention before the Original Authority or the Appellate Authority.

It clearly appears to be an after thought which the applicant has failed to support with any documentary evidence.

11. Government also notes that rebate claims filed after one year being time barred cannot be sanctioned as categorically held in a plethora of case laws/judgments cited below which have laid down the principle that in making refund claims before departmental authorities, an assessee is bound within four corners of the statute, and period of limitation prescribed under Central Excise Act and Rules framed thereunder must be adhered to and the authorities functioning under the Act are bound by the provisions of the Act:-

11.1. 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.

11.2. Further, the Supreme Court in the case of Collector of Central Excise, Chandigarh v/s Doaba Co-op Sugar Mills Ltd. as reported in 1988 (37) E.L.T.478 (S.C.) has held in para 6 as under:

"It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed there under have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed there under must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail."

11.3. The Hon'ble High Court of Gujarat in the case of Alembic Glass Ind. Ltd. v. Union of India reported at 1992 (60) ELT.64 (Guj.) held in para 11, as under:

"That the claim was required to be made within the prescribed period of six months from the relevant date. The relevant date would be the date on which the goods re-entered the factory. In this case it would be January 4, 1988 and January 9, 1988 as provided in sub clause (b) of Clause B of Explanation to Section 11 B of the Act. Thus the period of six months

would expire on July 8, 1988 while the claim has been preferred on March 29, 1989. The Assistant Collector is bound by the provisions of the statute. This is the law laid down by the Supreme Court in the case of Collector of Central Excise, Chandigarh v. M/s. Doaba Co-op. Sugar Mills Ltd. reported in AIR 1988 SC 2052 = 1988 (37) E.LT.478 (S.C.). In that case the department sought to invoke the provisions of Section 11A of the Act and attempted to make recovery of the amount of duty after the period of limitation prescribed under Section 11A of the Act. The Supreme Court inter alia observed that "But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the rules framed there under must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the act will prevail". The Supreme Court referred to its earlier decision in the case of Miles India v. Assistant Collector of Customs - 1987 (30) ELT.641 (S.C.). In that case the Supreme Court observed that the Customs Authorities were justified in disallowing the claim for refund as they were bound by the period of limitation provided under the relevant provisions of the Customs Act, 1962. Similarly in the instant case also, the Asstt. Collector, who decided the refund claim was bound by the provisions of the Act and the Rules. Therefore, the refund claim rejected on the ground that the claim is made beyond the period of limitation is also eminently just and proper."

11.4. The 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 act contrary to Section 27 of Customs Act. The ratio of this Apex Court judgement is squarely applicable to this case as Section 11 B of the Central Excise Act, 1944 provides for the time limit and there is no provision to extend this time limit.

11.5. 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 that under law laid down by Apex Court the authorities working under Central Excise Rules, 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 Rules, 1944 – Rule 18 of the Central Excise Rules, 2002. 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.

11.6 Hon'ble High Court of Gujarat in its order dated 15.12.2011 in the case of IOC Ltd. Vs. UOI (SCA No. 12074/2011) as reported in 2012 (281) ELT 209 (Guj.) 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 11B, 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 where under 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".

11.7 In an another 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 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 by holding that 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. In this double bench order of Bombay High Court the order of Single Judge bench in case of M/s Dorcas Market Makers Pvt Ltd Vs CCE, 2012(281)ELT 227, Madras relied upon by the applicant has been discussed and it has been held that the learned Single Judge bench of Hon'ble Madras High Court has not had due regard to the specific provision of Explanation (A) of Section 11 B of the Act under which the expression "refund" is defined to include rebate of duty of excise on excisable goods exported out of India.

12. Government finds that the applicant has cited various case laws in support of its contentions. However, facts of the cases cited by the applicant are not identical to this case and hence, ratio of these cases is not applicable to the present case.

13. In view of the above position, Government observes that the rebate claim filed after one year's time limit stipulated under Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 is clearly hit by time limitation clause and cannot be entertained. As such it is rightly rejected and Government does not find any infirmity in the impugned Order-in-Appeal upholding the rejection of said claim as time barred.

14. In view of above, Government finds no infirmity in the order of Commissioner (Appeals) and hence upholds the same.

15. The Revision Application is thus rejected being devoid of merits.

16. So ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s Indian Oil Corporation,
Aviation Fuel Station,
Srinagar Airport, \Srinagar (J&K)



Attested.

शुकोत अली
Shaukat Ali
Under Secretary (G. M.)
Under Secretary (RA)

GOI ORDER NO. 77/2015-CX DATED 07.09.2015

Copy to:

1. The Commissioner, Customs and Central Excise, J&K, OB-32, Rail Head Complex, Jammu-180012.
2. The Commissioner (Appeals) Customs & Central Excise & Service Tax, Chandigarh-II, C.R. Building, Plot No. 19, Sector 17, Chandigarh.
3. Shri Dinesh Verma, Advocate, Jammu.
4. The Assistant Commissioner of Central Excise Division, Srinagar.
5. PA to JS(RA).
- ✓ 6. Guard File.

Attested



(Shaukat Ali)
Under Secretary (RA)

शुकात अली
Shaukat Ali
अधीक्षक (उ. रा.)
Under Secretary (RA)