F.No. 195/156/2015-RA

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. 195/156/2015-RA, 11312 Date of Issue: 24.02.2021

ORDER NO. 78 /2021-CX (WZ) /ASRA/MUMBAI DATED 10.02.2021 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 Thanky's Export Pvt. Ltd., Porbandar.

Respondent : Commissioner of Customs & Central Excise, Bhavnagar.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BHV-EXCUS-000-APP-69-14-15 dated 31.03.2015 passed by the Commissioner (Appeals-III), Central Excise, Rajkot.

ORDER

This Revision application is filed by Thanky's Export Pvt. Ltd., Rajkot (hereinafter referred to as 'applicant') against the Order-in-Appeal No. Order-in-Appeal No. BHV-EXCUS-000-APP-69-14-15 dated 31.03.2015 passed by the Commissioner (Appeals-III), Central Excise, Rajkot.

2. Brief facts of the case are that the applicant had exported 54,200 MT of Metallurgical Grade Bauxite of Indian origin exported per vessel MV Diamond Stars under Shipping Bill No.F-19 dated 12.02.2013 from Okha port and subsequently opted to claim the benefit of exemption of Service tax paid by them on various services used in relation of export goods during the period from November 2012 to March 2013, as envisaged under Notification No.41/2012-ST dated 29.06.2012. Accordingly, the applicant filed refund claim of service tax of Rs.42,47,429/- on 18.02.2014. The adjudicating authority noticed certain deficiencies in the said claim which were communicated to the applicant vide letter dated 19.02.2014. In pursuance of same, the applicant vide their letter dated 20.02.2014 submitted compliance thereof. On scrutiny of refund claim, it was observed that the date of "Let Export Order" (LEO) was given on 15.02.2013.

3. In terms of clause (g) of Notification No.41/2012-ST dated 29.06.2012 read with Section 11B of the Central Excise Act, 1944 the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods. Further in terms of explanation to clause (g) of of Notification No.41/2012-ST dated 29.06.2012 "for the purpose of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962). As it appeared that in the instant case, the claim was required to be filed by the applicant on or before 14.02.2014 as the Let Export Order was given on 15.02.2013, a show cause notice dated 25.02.2014 was issued to the applicant proposing to reject the claim on the ground of limitation. After following due process of law, the Assistant Commissioner, Central Excise Division, Junagadh vide Order in Original No. Refund/83/A.C.JND/2014-15 dated 27.08.2014 rejected the claim filed by the applicant being time barred.

4. Being aggrieved, the applicant filed appeal against the aforesaid Order-in-Original before Commissioner (Appeals-III), Central Excise, Rajkot who upheld the Order in original and dismissed the appeal filed by the applicant observing as under:-

22. In view of above discussion and findings, it is amply clear that to avail exemption under any Notification, the conditions stipulated therein are required to be fulfilled and there was no scope of any liberal interpretation thereof. Thus, there is no force in the argument of the appellant that the time limit prescribed under Section 11B of the Central Excise Act, 1944 would prevail. I hold that the time limit as prescribed under the Noti. No.41/2012-ST dated 29.05.2012 for filing of refund (rebate) claim would prevail, which is the date of grant of Let Export Order, Accordingly, I uphold the impugned order passed by the lower adjudicating authority.

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

4.1 The Ld. Commissioner (Appeals) has erred in holding in para 8 that the refund claim was filed on 18.02.2014 when their representative had visited division office on 10.2.2014 and claim was not acknowledged. The visit of their representatives is admitted by Shri V.M. Morabia Superintendent.

4.2 The Ld. Commissioner (Appeals) in para 12 held that Section 11B of the Central Excise Act, 1944 by virtue of statute in case of dispute/deferment in Rules/ Notifications etc. governing the refund/rebate. The Ld. Commissioner in para 13 also agree with the case of dispute/ contradiction, the statute would prevail. However, this can be applied for general matters or where the clarification is not given in the Relevant Rules/ Regulations or when there is contradiction, Thus he erred in holding there is no contradiction regarding relevant date aspect in Section 11B of the Central Excise Act, they do not know on which such goods are loaded whereas as per Notification No 41/2012- ST and as per explanation to Sub Clause 3 the date of export of goods and date of export shall be the date on which proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under Section 51 of the Customs Act 1962. Thus in spite of clear contradiction Ld. Commissioner has erred in holding there is no contradiction and therefore the rebate claim is not filed within time.

4.3 The Ld. Commissioner (Appeals) in para 14 after referring the Customs Act, 1962 states that after completing all formalities which are recorded on the reverse side of shipping bills. i.e. Loading. Thus, Ld. Commissioner agrees that actual loading come after LEO and proper officer of the customs making order and clearance can come only after such endorsement. Therefore they requested for copy of duplicate of shipping bills and specific ground was taken before Ld. Commissioner. However Ld. Commissioner (Appeals) did not deal with the said ground therefore the order permitting clearance could be only when the vessel on board which is after 18.2.2014 and therefore Ld. Commissioner ought to have held that the rebate claim filed was in time.

4.4 The Ld. Commissioner rely in para 15 of the procedure for clearance of exports goods has been prescribed by the Office of the Commissioner of Customs, Airport & Cargo, Chennai is in violation of natural justice when Section 51 of the Customs Act speak of giving not only loading but clearance.

4.5 The Ld. Commissioner (Appeals) conveniently did not deal with the following judgments which were specifically cited by them Copy of Bombay High Court Judgment Everest Flavours Ltd Vs. Union of India reported in 2012 (282) E.L.T 481 (Bom), Delhi High Court Judgment dt 16.4.2014 in Cus. A. 3/2014 & C.M. No. 829/2014 Sony India Pvt Ltd Vs. CC. New Delhi, 2006 (159) E.L.T 590 (Bom.) CCE Mumbai II Vs. Standard Drum and Barrel Mfg Co.

4.6 The Ld. Commissioner (Appeals) in para 16 relied upon Pundole Shahrukh & Co 2014 (313) ELT 573 (Tri- Mumbai.) where it was a case pertaining to and role of CHA and not a judgment on the interpretation of provision of Section 51 of Customs Act and accordingly erred in holding that relevant date 15.2.2015 on which loading was completed and shipment were allowed. The Ld Commissioner (Appeals) erred in not following the judgment of Supreme Court in the case of Babaji Kondaji Garad Vs. Nasik Merchants Co- Operative Bank Ltd Nasik and others (1984) 1 SCR 767 BOM by stating that the ratio of Hon'ble Supreme Court Judgment are not applicable to the present case. Further they relied upon the Judgment reported in 2012 (280) E L.T 313(G.O.I) in the case of Positive Packaging Industries Ltd , wherein Government of India held that the relevant date in case of the goods exported out of India as a date on which Ship/Aircraft in which goods are loaded leaves India and Learned Commissioner (Appeals) in para 17 of the impugned order erred in distinguishing the ratio laid down in the aforesaid judgment holding that said judgment discusses the relevant date for rebate under relevant Notification issued under Rule 18 of the Central Excise Rules 2002 whereas the instant case relates to rebate of service tax under Notification No 41/2012-ST dated 29/06/2012. The Hon'ble Supreme Court case Babaji Kondaji Garad Vs. Nasik Merchants Co-Operative Bank Ltd in para 16 it was held that if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-laws if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored.

4.7 The Ld Commissioner (Appeals) has erred in para 18 in holding that if there is no time limit/procedure/ safeguards etc. prescribed under a Rule or Notification, recourse of the provisions of the Act may be taken. The Ld Commissioner (Appeals) erred in relying upon various Judgment in para 19 as the said judgments pertain to claim a benefit of a notification whereas the present case was interpretation of statutory provisions which provided which date will prevail. Further in case of Vee Excel Drugs & Pharmaceuticals Pvt Ltd Vs. Union of India reported in 2014 (305) E.L.T 100(All) the issue was filing of ARE-I which is the basic on the Ld. Commissioner had erred in relying upon Judgment. The Ld. Commissioner (Appeals) in para 20, relied upon the judgment in the case of Raghunandhan Syntex reported in 2011 (272) E.L.T 465 (G.O.I) wherein the case the delay in export, the Commissioner rejected the condition of delay and in that case the Appellants were against Commissioner order.

4.8 The Ld. Commissioner (Appeals) in para 21 of the impugned order refers to Judgment of G.O.I in the case of Ramlaks Exports Pvt Ltd. This was the case of non-fulfillment of condition by not getting the required permissions from the jurisdictional Commissioner of Central Excise for exporting the goods beyond a

period of six month. Thus reliance placed on this Judgment by Ld. Commissioner (Appeals) show gross non application of mind and therefore Ld. Commissioner has erred in upholding the order passed by the lower adjudicating authority.

5. A Personal hearing was held in this case on 13.01.2021 through video conferencing which was attended online by Ms. Kiran Doiphode, Counsel on behalf of the applicant. She reiterated the submissions made through Revision Application. She also stated that it is a settled position of law that in case of conflict between Statute and subordinate legislation, it is the Statute which shall prevail over subordinate legislation. In view of the same it was pleaded that the instant Revision Application be allowed and Order in Appeal be set aside.

6. 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. The issue before the Government for consideration is whether the rejection of rebate claims of the applicant as time barred, due to filing the same beyond one year from the date of Let Export Order [i.e. the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962) in terms of clause 3(g) of the Notification No. 41/2012-Service Tax dated 29.06.2012] is proper or not. In the instant case the date of Let Export Order is 15.02.2013 and the date of vessel leaving India is 20.02.2013 and the date of filing rebate claim by the applicant is 18.02.2014.

7. The applicant before the adjudicating authority had contended that as per explanation of the Notification No.41/2012-Service Tax dated 29.06.2012 the period of one year should be reckoned from the date of export and the claim is required to be filed only after completion of all export formalities and the goods can only be considered as exported when the goods leave India; that by mere granting of Let Export Order it cannot be considered that the goods have been exported; the goods should be loaded and leave India; that in the present case the loading was completed on 19.02.2013 therefore, the time limit of one year should be reckoned from 19.02.2013 i.e. the date of exportation of goods i.e. sailing of vessel in view of relevant provision governing refund /rebate under Section 11B of the Central Excise Act, 1944.

8. Commissioner (Appeals) after analyzing the provisions [clause 3(g)] of Notification No. 41/2012-ST dated 29.06.2012 as well as Section 51 of the Customs Act, 1962 has concluded that Section 51 ibid, gives permission for loading and has to be treated as the date on which such permission is granted and not on

the date on which loading of export cargo is completed as loading of goods is a continuous process and therefore the meaning assigned to the provision has to be stuck to and the same cannot be deviated.

9. It is not in dispute that the applicant has filed the refund/rebate claim on 18.02.2014 under Notification No.41/2012-ST dated 29.06.2012 towards Service Tax paid on services exported as per Shipping Bill No. F-19 dated 12.02.2013 for which Let Export Order was given on 15.02.2013. Therefore, the rebate claim filed by the applicant was rejected by the adjudicating authority as time-barred as the last date of filing of the claim was 14.02.2014.

10. Clause 3(g) of Notification No.41/2012-ST dated 29.06.2012 reads as under:-

> *(g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.*
>
> *Explanation.- For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);*

Further, Section 51 of the Customs Act 1962 provides that Customs Officer will verify the contents and after he is satisfied that goods are not prohibited for exports and that export duty, if applicable is paid, will permit clearance (by giving 'let ship' or 'let export' order).

11. From the above provisions of Notification No.41/2012-ST dated 29.06.2012, it is very much clear that in the case of export of goods, the relevant date for refund/rebate of service tax paid would be the date of export i.e. the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act the goods were exported i.e. 'Let Export Order' date. Further as per the said Notification, refund/rebate of the service tax paid on taxable services which are received by an exporter, can be claimed only if the exporter satisfied certain substantive conditions and the rebate would be admissible subject to fulfillment of these conditions.

12. Thus, the Notification No.41/2012-ST dated 29.06.2012 is a self contained Notification issued in exercise of power confirmed by Section 93A of the Finance

Act, 1994 and the said Notification itself provides the period for claiming the exemption by way of refund/rebate and it is one year from the date of export where date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962). Thus, the rebate / refund claiming the benefit of exemption of Service tax paid by the exporter on various services used in relation to export goods as envisaged under Notification No.41/2012-ST dated 29.06.2012 is required to be filed within one year from the date of export i.e. Let Export Date, as explained vide clause 3(g) of the said Notification.

13. It is a settled position in law that a Notification should be construed strictly, being in the nature of exception. It is also equally settled that while interpreting a Notification, no words should be read into a Notification or no words should be excluded from a Notification. The Notification should be interpreted as it is worded.

13.1 The Hon'ble Apex Court in the case of Commissioner of Central Excise, Surat v. Favourite Industries - 2012 (278) E.L.T. 145 (S.C.) held as under:-

> ***14.*** *Before we deal with the contentions canvassed by the learned counsel for the parties to the lis, we deem it appropriate to notice the observations made by the Constitution Bench of this Court in the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors., (2011) 1 SCC 236 = 2010 (260) E.L.T. 3 (S.C.), insofar as the mechanism and interpretation of an exemption notification issued under a fiscal enactment. This Court has observed in the said decision:*
>
> > *"A provision especially a fiscal statute providing for an exemption, concession or exception has to be construed strictly. An exemption notification has to be interpreted in the light of the words employed by it and not on any other basis. A person who claims exemption or concession must establish clearly that he is covered by the provision(s) concerned and, in case of doubt or ambiguity, the benefit of it must go to the State."*
>
> ***15.*** *The observations made by the Constitution Bench of this Court are binding on us.*
>
> ***16.*** *Furthermore, this Court in Associated Cement Companies Ltd. v. State of Bihar & Ors., (2004) 7 SCC 642, while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held :*
>
> > *"12. Literally "exemption" is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When*

the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See Union of India v. Wood Papers Ltd. and Mangalore Chemicals and Fertilisers Ltd. v. Dy. Commr. of Commercial Taxes to which reference has been made earlier.)"

17. *In G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh, (2009) 2 SCC 90, this Court has held :*

"29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries (S.C.C. para 26); TISCO v. State of Jharkhand (SCC paras 42 to 45); State Level Committee v. Morgardshammar India Ltd.; Novopan India Ltd. v. C.C.E. & Customs; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and Reiz Electrocontrols (P) Ltd. v. C.C.E.]"

25. *The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous. In Commissioner of Customs, Kolkata v. Rupa & Co. Ltd., (2004) 6 SCC 408 = 2004 (170) E.L.T. 129 (S.C.), this Court has observed that the exemption notification has to be given strict interpretation by giving effect to the clear and unambiguous wordings used in the notification. This Court has held thus :*

"7. However, if the interpretation given by the Board and the Ministry is clearly erroneous then this Court cannot endorse that view. An exemption notification has to be construed strictly but that does not mean that the object and purpose of the notification is to be lost sight of and the wording used therein ignored. Where the wording of the notification is clear and unambiguous, it has to be given effect to. Exemption cannot be denied by giving a construction not justified by the wording of the notification."

13.2 The principle of interpretation of an exemption notification has been lucidly expressed by Rolatt, J, in the following words :

"In a taxing statute, 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." [Cape Brady Syndicate v. IRC (1921 1 KB 64 p.71)].

14. Government further observes that the Constitution Bench of the Honourable Supreme Court in "*Commissioner of Customs* v. *M/s. Dilip Kumar and Company & Ors* in Civil Appeal No. 3327 of 2007, dated 30.7.2018 - 2018 (361) E.L.T. 577 (S.C.), examined the correctness of the decision in Sun Export Corporation, Bombay v. Collector of Customs, Bombay (1997) 6 S.C.C. 564 - 1997 (93) E.L.T. 641 (S.C.), namely the question as to what is the interpretative rule to be applied,

while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied, was answered by the Constitution Bench on the following terms,

> *"(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*
>
> *(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*
>
> *(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands over-ruled."*

14.1 Hon'ble Supreme Court in *Ramnath* v. *CTO* - (2020) 108 CCH 0020 ISCC (Ramnath), relying on Constitution Bench's judgement supra concluded that all provisions for incentive, rebate or any form of concession should be interpreted in the same manner as an exemption provision. The relevant paras of the said judgment are as under:-

> *17.3. In view of above and with reference to several other decisions, in Dilip Kumar & Co., the Constitution Bench summed up the principles as follows:-*
>
> > *"66. To sum up, we answer the reference holding as under:*
> >
> > *66.1. **Exemption notification should be interpreted strictly**; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*
> >
> > *66.2. **When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.***
> >
> > *66.3. **The ratio in Sun Export case is not correct and all the decisions which took similar view as in Sun Export case stand overruled."***
> >
> > *(emphasis in bold supplied)*
>
> *17.4. Obviously, the generalised, rather sweeping, proposition stated in the case of Sun Export Corporation (supra) as also in other cases that in the matters of taxation, when two views are possible, the one favourable to assessee has to be preferred, stands specifically disapproved by the Constitution Bench in Dilip Kumar & Co. (supra). It has been laid down by the Constitution Bench in no uncertain terms that exemption notification has to be interpreted strictly; the burden of proving its applicability is on the assessee, and in case of any ambiguity, the benefit thereof cannot be claimed by the subject/assessee, rather it would be interpreted in favour of the revenue.*
>
> *18. It has been repeatedly emphasised on behalf of the appellant that Section 80-O of the Act is essentially an incentive provision and, therefore,*

needs to be interpreted and applied liberally. In this regard, we may observe that deductions, exemptions, rebates et cetera are the different species of incentives extended by the Act of 1961. In other words, incentive is a generic term and 'deduction' is one of its species; 'exemption' is another. Furthermore, Section 80-O is only one of the provisions in the Act of 1961 dealing with incentive; and even as regards the incentive for earning or saving foreign exchange, there are other provisions in the Act, including Section 80HHC, whereunder the appellant was indeed taking benefit before the assessment year 1993–94.

19. Without expanding unnecessarily on variegated provisions dealing with different incentives, suffice would be to notice that the proposition that incentive provisions must receive "liberal interpretation" or to say, leaning in favour of grant of relief to the assessee is not an approach countenanced by this Court. The law declared by the Constitution Bench in relation to exemption notification, proprio vigore, would apply to the interpretation and application of any akin proposition in the taxing statutes for exemption, deduction, rebate et al., which all are essentially the form of tax incentives given by the Government to incite or encourage or support any particular activity.

15. Government observes that the applicant has relied on judgment of Hon'ble Supreme Court (Three Judge Bench) in the case of Babaji Kondaji Garad Vs. Nasik Merchants Co- Operative Bank Ltd Nasik and others (1984) 1 SCR 767 BOM, wherein the Hon'ble Supreme Court observed as under :-

"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

Government in this regard observes that the Notification No.41/2012-ST dated 29.06.2012 issued in exercise of power confirmed by Section 93A of the Finance Act, 1994 is very much in conformity with the statute. Term "*Date when ship leaves India*" has been given specific meaning in the Notification. When Customs officer grants Let Export Order (LEO), the ship is ready to leave India as far as Customs Act, 1962 is concerned. Thus Notification is a complete code in itself and specifies the period within which rebate of service tax paid on the specified services used for export of goods can be claimed, in terms of the same. Also, in view of the Hon'ble Supreme Court Constitutional Bench's judgment dated 30.7.2018 discussed at para 14 supra, the reliance placed by the applicant is not applicable in the present case.

16. Cases involving facts similar to those in the instant case had received the attention of CESTAT Regional Bench Hyderabad in Appeal No. C/30219/2017 and

Service Tax Appeal No. 31016 of 2018 decided vide Orders dated 26.04.2018 and 05.07.2019 in the cases of M/s MMTC Limited [2019 (26) G.S.T.L. 248 (Tri. - Hyd.)] and M/s Gimpex Pvt Ltd, Andhra Pradesh [2020 (33) G.S.T.L. 236 (Tri. - Hyd.)] respectively. In both these cases Hon'ble CESTAT, Regional Bench Hyderabad has categorically held that, as clearly indicated under Notification No. 41/2012-S.T., the claim for rebate of service tax has to be filed within one year from the date of the LEO (Let Export Order).

16.1 While rejecting the appeal filed by M/s Gimpex Pvt Ltd, Andhra Pradesh vide Final Order No. A/30618/2019 dated 05.07.2019 [2020 (33) G.S.T.L. 236 (Tri. - Hyd.)] referred above, the CESTAT, Hyderabad Bench observed as under:-

> *" It is clear from the above that the appellant had filed a refund claim after one year from the date of let export order in respect of exported goods. The relevant date to be considered for one year for filing refund claim under Notification No. 41/2012-ST is the date of 'let export order'. I have also considered the reliance placed by the appellant on the order of Tribunal in the case of Ashok Granites Vs Commissioner of Central Excise and Service Tax, Salem [2016 (046) STR 0875 (Tri-Mad)] = 2016- TIOL-2167-CESTAT-MAD. It has been held therein that since Section 11B of the Central Excise Act prescribes the relevant date for the purpose of that section to be, interalia, "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 the excisable materials used in the manufacture of such goods, if the goods are exported by sea or air, the date on the which ship or aircraft in which such goods are loaded, leaves India", this "relevant date" prevails over the "date of LEO" prescribed in the notification." It was, therefore, reasoned that refund is admissible within one year from the date of sailing of the ship. I respectfully disagree with this view. The entire benefit of refund accrues to the appellant only from the notification but for which no refund is admissible in this case. Any notification, being an exception to the general rule, must be strictly construed. If the notification prescribes any time limit it must be complied with. It is not open to this Bench to change the notification to enlarge, constrict or otherwise modify it. The vires of the notification has not been questioned or tested nor has any portion of it been declared ultra vires. In this case, the refund application was filed more than one year after the export. Accordingly, the refund is not admissible as per the Notification No. 41/2012-ST. I therefore, find no infirmity in the order of the First Appellate Authority in partly rejecting the refund claim to the extent it is time barred. The impugned order is upheld and the appeal is rejected".*

17. Therefore, when the applicant seeks rebate by way of refund under Notification No. 41/2012-ST dated 29.06.2012 which governs refund (rebate) of service tax paid on export goods, the relevant date for dealing with date in respect of export mentioned therein [Clause 3(g)] is the date of Let Export Order. This is the plain and simple reading of the Notification. Government, therefore observes that in

the instant case, (for Let Export Order given on 15.02.2013) the applicant has filed the refund/rebate claim under Notification No.41/2012-ST dated 29.06.2012 towards Service Tax paid on services exported as per Shipping Bill No. F-19 dated 12.02.2013 on 18.02.2014 which is beyond the relevant date stipulated under the said Notification.

18. Relying on case laws discussed at paras 13, 14 & 16 supra, as well as in view of discussion in foregoing paras, Government holds that rebate of service tax paid on the specified services used for export of goods claimed by the applicant under Notification No. 41/2012-ST dated 29.6.2012 is rightly held inadmissible by the Commissioner (Appeals). Government, therefore does not find any reason to interfere with or modify the Order in Appeal BHV-EXCUS-000-APP-69-14-15 dated 31.03.2015 passed by the Commissioner (Appeals-III), Central Excise, Rajkot and upholds the same.

19. The revision application is rejected being devoid of merits.

Shrawan
10/02/2021
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 78 /2021-CX (WZ) /ASRA/Mumbai Dated 10.02.2021

To,

M/s. Thanky's Export Pvt. Ltd.,
Jeevan Jyot, Near Diamond Cinema,
M.G.Road, Porbandar- 360575

Copy to:

1. The Commissioner of GST & CX,Bhavnagar Commissionerate, Siddhi Sadan Building, Narayan Bhai Upadhyay Marg, Kalubha Road, Bhavnagar 364 001.
2. The Commissioner (Appeals), Central Excise & Customs, 2nd floor, GST Bhavan Race Course Ring Rpad, Rajkot- 360 001.
3. The Deputy Commissioner GST & CX, Junagadh Division: 2nd Floor, Sardar Patel Bhavan, Near Jayshree Talkies, Junagadh-362001.
4. Shri V.M. Doiphode & Co., Advocate, Chamber No.45, 5th Floor, Sucheta Niwas, 285, S.B. Road, Fort, Mumbai 400 001.
5. Sr. P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई-इकाई, मुंबई
Mumbai