

REGISTERED
SPEED-POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 198/207/16-RA(CX) | 3689

Date of Issue 05.09.2022
~~08.2022~~

ORDER NO. 827/2022-CX(WZ) / ASRA / MUMBAI / DATED 29.08.2022
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: The Commissioner CGST & C Ex, Bhavnagar.
Respondent : M/s Steel Cast Ltd.
Subject : Revision Application filed, under Section 35EE of
the Central Excise Act, 1944 against the Order-in-
Appeal No. BHV-EXCUS-000-AP-040-16-17 dated
13-06-2016 passed by the Commissioner (Appeals-
III) Central Excise, Rajkot

ORDER

This Revision Application has been filed by the Commissioner, CGST & C Ex, Bhavnagar (hereinafter referred to as the department) against the Order-in-Appeal No BHV-EXCUS-000-APP-040-16-17 dtd 09-06-2016 passed by Commissioner (Appeal-III), Central Excise, Rajkot, pertaining to M/s Steel Cast Pvt. Ltd. (herinafter referred to as the respondent) situated at Ruvapari Road, Bavnagar, Gujarat-364005.

2. The Brief facts of the case are that the respondent had exported excisable goods and had filed two rebate claims totally amounting to Rs.6,55,761/- viz ARE-1 No 184 dated 31-12-2013 for Rs.5,72,117/- and ARE1 No 189 dated 8-01-2014 for Rs. 83,644/- before the adjudicating authority, along with relevant documents vide covering letter dated NIL and acknowledged by the office on 22.01.2015. On scrutiny of relevant documents filed with the rebate claims, it was observed that the rebate claims was filed after the prescribed limit of one year as the Bank Realization Certificate of the concerned rebate claim was bearing the printing date as 27.01.2015 and also the triplicate copy of ARE-1 No. 184/31.12.2013 was signed by the Sr. Sales Engineer whereas the original and duplicate copy were signed by the Manager (Marketing). Hence the respondent was issued Show Cause Notice F. No. V/18-295/Reb/Steelcast/14-15 and No. V/18-296/Reb/Steelcast/14-15 both dated 21.04.2015 proposing rejection of rebate claims and proposal for imposition of penalty under Rule 27 of the Central Excise Rules, 2002. The said show cause notices were adjudicated by the jurisdictional A.C. vide his Order-In-Original No. 01 & 02/D/Excise/2015-16 dated 14.05.2015 wherein he rejected both the rebate claims totally amounting to Rs.6,55,761/- filed by the appellant holding that the same as time barred.

3. Being aggrieved by the impugned order, the respondent preferred the appeal with the Commissioner Appeals who set aside the A.C's OIO and

allowed the Respondent's appeal vide his OIA No. BHV-EXCUS-000-APP-040-16-17 dtd 09-06-2016.

4. Aggrieved by the Commissioner Appeals Order, the department filed the present Revision Application on the following grounds:

4.1 The Appellate Authority in para 10 observed that the Respondent had cleared the excisable goods viz. un-machined steel castings for export vide ARE-1 Nos. 184/13-14 dated 31.12.2013 and 189/13-14 dated 08.01.2014 under claim of rebate. The certification made by the customs officer in Part-B on the reverse side of both the ARE-Is that the consignment left on 23.01.2014 and the Respondent filed the rebate claims on 22.01.2015. Therefore, the Respondent filed the rebate claims within the stipulated time limit of one year from the date of export of goods as envisaged in relevant Section 11B of the Central Excise Act, 1944. The Respondent had filed two separate claims of Rs. 5,72,117/ and Rs. 83,644/- vide letter dated Nil to this office and the same had appeared to be acknowledged by this office on 22.01.2015. But on the letter head of the party, endorsement of any officer was not found. Also on the letter head of the party, Inward Entry Number of Division office was also not found to be endorsed anywhere.

4.2 The Appellate Authority has erred in setting aside the Order-In Original No. 01 & 02/D/Excise/2015-16 dated 14.05.2015 and allowed the appeal of the respondent considering only the plea of the Respondent. The Appellate Authority has over looked the observation of the Pre-audit Cell as well as findings of the lower Adjudicating Authority that the rebate claim was filed after the prescribed time limit of one year, the BRC of the concerned rebate claim being the printing date as 27.01.2015.

4.3 On scrutiny of the rebate claims filed with reference to the statutory documents filed such as invoice/ARE-1, Pre-Audit Cell had observed that the rebate claim was filed after the prescribed time limit of one year because the BRC of the concerned rebate claim being the

printing date as 27.01.2015 has been shown attached with the rebate claim and there is no BRC prior to this date confirming the date of filing on or after 27.01.2015. In addition to this, the Respondent has also enclosed a document with their rebate claim named as "Verification Rebate claim in which date of filing claim is mentioned 30.01.2015. Therefore, it clearly establishes that the Respondent has failed to file their rebate claim within the prescribed time limit of one year as envisaged under Section 11B of the Central Excise Act, 1944.

4.4 Looking to the facts narrated herein above, the Order-in-Appeal No. BVR-EXCUS-000-APP-040-16-17 dated 09.06.2016 passed by the Commissioner (Appeals-III), Central Excise, Rajkot does not appear to be legal and proper and is required to be set aside. The orders of the lower Adjudicating Authority, is required to be restored and any other relief as deemed fit, may be granted in the facts and circumstances of the case.

5. Personal Hearing was granted on 16-05-2022 or 30-06-2022. Shri P. N. Shah, General Manager (Marketing) appeared for the hearing and submitted a written submission. He requested to maintain Commissioner Appeal's Order. In his written submission he submitted that they have already received the refund and requested to close the case.

6. Government has carefully gone through the relevant case records, the impugned Orders-in-Original, Order-in-Appeal, Revision Application, oral and written submissions of the Respondent.

7. Government finds that the issue to be decided in this case is whether the rebate claim filed by the respondent is hit by time bar limitation.

8. Government observes that the main points in this case with respect to the aforesaid rebate claim are as follows:

A) the Rebate claims were rejected by the Jurisdictional DC as time barred on the basis of following:

- a) BRC submitted along with the covering letter was bearing the date 27-01-15, though the acknowledgement stamp shown on the letter bears the date 22-01-2015;
- b) Pre-Audit cell's observation that the claim is time barred based on the BRC.

B) Commissioner Appeals has set aside the Order in Original holding that the respondent had filed the rebate claim within the time limit on the grounds that the certification made by the Customs Authorities that the goods were exported on 23-01-2014 and the rebate claim was filed on 22-01-2015.

C) The contention of the department's Revision Application is as follows:

- a) The covering letter bearing Nil number dated Nil of the respondent appears to be acknowledged by the office on 22-01-2015, but without either any officer's endorsement or Inward Entry Number of the Division;

- b) The BRC enclosed along with the rebate claim shows the printing date as 27-01-2015;

- c) 'Verification-Rebate claim' Document enclosed with the Rebate claim (supposed to be made by the department) by the Respondent shows the date of filing as 30-01-2015.

9. Government finds that the provisions of Section 11B of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-CE (NT) dated 06.09.2004, as amended governs export under rebate.

Section 11B of the Central Excise Act, 1944 reads as under.

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the

Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date.....

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (1) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette [Explanation. - For the purposes of this section,

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means,

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods:

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

10. Government observes that in this case the goods were exported on 23-01-2014 which is clearly seen from the endorsement made in the ARE-1 by the Customs Authorities. Therefore the relevant date for filing rebate claim would be 22-01-2015 i.e within one year from the relevant date.

11. In this case Government observes that the Commissioner Appeal has held that the respondent has filed the rebate claim within time limit, on the basis of the date mentioned on acknowledgement stamp i.e. 22-01-2015 on the covering letter submitted by the respondent. While going through the covering letter it is seen that the respondent have submitted that they are forwarding therewith the Rebate claim and other documents which included 'Bank Realised Certificate'. The BRC submitted along with the covering letter shows the 'Date & time of printing' as '**27 Jan, 2015 9:11:43 AM**'. Attaching the said BRC along with the covering letter asserts that the Rebate claims have been filed only on or after 27th Jan, 2015 and the office stamp affixed on the covering letter has been obtained in a deceitful manner by the

respondent. This has been corroborated by the department by submitting that there is neither any officer's endorsement on the covering letter nor any Inward Entry number of this letter on that date. In view of the same, by no stretch of imagination it can be claimed that they had filed the rebate claim on 22-01-2015. Therefore the Rebate claim in this case has been filed undoubtedly beyond one year from the date of export and it is hit by time limitation and it cannot be relaxed by the Government under Section 11B as there is no legal provision for doing so. Thus, the Commissioner Appeal's Order holding that rebate claim is filed within time limit is not legal.

12. In view of above discussions, Government holds that in the instant case rebate claim filed is time-barred and allows the departmental appeal. The Order-in-Appeal No. BHV-EXCUS-000-APP-040-16-17 dtd 09-06-2016 passed by Commissioner Appeal, Rajkot is set aside.

13. This Revision application is disposed off on the above terms.

Shrawan
29/8/22
(SHRAWAN KUMAR)

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

ORDER No 827/2022-CX (WZ)/ASRA/

DATED 29.08.2022

To,
Principal Commissioner of CGST & C.Ex, Bhavnagar,
Siddhi Sadan Plot No.67-76/B-1,
Narayan Bhai Updhyay Marg, Kalubha Road,
Bhavnagar-364001

Copy to:

1. M/s Steel Cast Ltd, Ruvapari Road, Bhavnagar-364002.
2. The Assistant Commissioner, Central CGST Division, Bhavnagar-I, Plot No. 43, Hariyala Plot, Near Telghani Kendra, Bhavnagar-364002, Gujarat.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File.
5. Spare Copy.