

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

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F.No.195/632/13-RA

7031

Date of Issue:

03.12.2021

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ORDER NO. 848/2021-CX (WZ)/ASRA/MUMBAI DATED 02.12.2021 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.

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Subject :- Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PJ/433/VDR-II/2012-13 dated 31.01.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara.

Applicant:- M/s AR-Chem Industries, 15, Nilkanth Society, New Sama Road, Vadodara-390008

Respondent :- Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara.

## ORDER

These Revision Applications have been filed by M/s AR Chem Industries (hereinafter referred as the applicant) against the Order-in-Appeal No. PJ/433/VDR-II/2012-13 dated 31.01.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara.

2. The brief facts of the case are that the applicant (a merchant exporter) purchased 'Sebacic Acid' from M/s Biotor Industries Ltd. (a manufacturer registered with JAC, C Ex & Cus., Div-II, and Vadodara 1) and exported the same under claim of rebate. The applicant filed a rebate claim of Rs. 1,64,800/- on 01.07.2009 with the Assistant Commissioner, C Ex & Cus, Div-II, Vadodara-1 after obtaining NOC/ disclaimer certificate from the manufacturer. The claim was subsequently received by City division, Vadodara -II on 25.08.2010. It was observed by the JAC, City Division, Vadodara -II that the goods were exported on 17.04.09 & 18.04.09 respectively and claim was received only on 25.08.2010 i.e. after a year from the date export which is beyond the time limit one year as prescribed under Section 11B of Central Excise Act, 1944 as amended. Show Cause Notice 15.12.2010 was issued to the applicant asking them as to why the rebate claim should not be rejected as time barred. Subsequently the rebate claim was rejected by the Assistant Commissioner, City Division, Vadodara-II on grounds of time-barred. Being aggrieved the applicant filed an appeal against impugned order with Commissioner Appeals. Commissioner Appeals vide his OIA No. PJ/433/VDR-II/2012-13 dated 31.01.2013 rejected the applicant's appeal holding that "*the appellant is well educated and supposed to know the relevant jurisdiction of filing rebate claim, provisions of the Act and the Rules enacted there under. It is a well settled principle of law that ignorance of law is not an excuse and it cannot be pleaded by a person until and unless the burden of proof of Mens rea is on the department, which is clearly not the case here. Accordingly, the appeal is liable for rejection being time barred*".

3. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:-

3.1) The applicants submitted that the Authorities have not denied the fact that the said excisable goods were cleared by the Applicants, in their status as a Merchant-Exporter, from the premises of the Original Manufacturer, namely, M/s. Biotor Industries Ltd., Padra. The same was cleared on payment of Central Excise Duty at appropriate rate of Transaction Value under the cover of ARE-1 and the corresponding Excise Invoice of the said Manufacturer evidencing the payment of Central Excise Duty on the said export goods by the said Manufacturer. The goods were cleared by the Applicants, from the premises of the Original Manufacturer, namely on

14.4.2009, under ARE-1 Nos., 1/2009-10 & 2/2009-10, both dated 14.4.2009 and as per the Export Documents, the same were exported on 15.4.2009 as evident from the certification by the concerned Customs Authorities, on ARE-1 as well as the Shipping Bill.

3.2) The Authorities, have also not denied the fact that the Applicants, in their status as a Merchant-Exporter, have exported the said duty-paid export goods, to a Foreign Country, under the corresponding Shipping Bills and Bills of Lading within six months, from the date of their clearance from the Factory of the Original Manufacturer.

3.3) The applicants submitted that they filed their Rebate Claims, under Rule 18 of the Central Excise Rules, 2002, read with, Notification 19/2004-C.E. (N.T.), dated 6.9.2004, initially with Division II, Vadodara-I Commissionerate. From the Records, it is also manifestly clear that the Rebate Claims, in question, dated 14.4.2009, were filed by the Applicants, inadvertently on 1.7.2009, with the Asstt./Deputy Commr., C. Ex., & Cus., Division-II, Vadodara-I.

3.4) They further submitted that Division-II, Vadodara-I Commissionerate vide letter dated 23.07.2009 raised certain Query, after having scrutinised the said Rebate Claims, without speaking about the jurisdiction under which the Applicants had filed the Rebate Claims. They replied to the queries vide their letter dated 18.08.2009. The said divisional office vide letter dated 9.9.2009 raised further Query about Part-B of ARE-Is and N.O.C., issued by M/s. Biotor Industries Ltd., Padra. Subsequently vide their letter dated 17.09.2009 they informed that the Rebate Claims, should have been filed by the Applicants, with the Asstt. Commr., C. Ex., & Cus. (Exports/Technical), Vadodara-II Commissionerate and accordingly, the said Rebate Claims, were returned back by the Division-II of Vadodara-I Commissionerate to the Applicants.

3.5) The Applicants, further filed their Communication dated 30.9.2009 with Division-II, Vadodara-I Commissionerate, stating that in the past, when they had approached the A.C. /D.C., C. Ex., & Cus. (Exports/Technical), they were directed to file such Rebate Claims with the Jurisdictional A.C./D.C., C. Ex., & Cus. Division-II, Vadodara-I Commissionerate. The divisional office after having corresponded to the Applicant for seven months from the date of filing the rebate claim informed vide letter dated 10.11.2009 that as the Registered Premises of the Applicants, being within the jurisdiction of Vadodara-II Commissionerate, Rebate Claims should be filed with the proper Officer of Vadodara II Commissionerate and accordingly returned back the two Rebate Claims, which were again returned back by the Applicants to Division-II, Vadodara-I Commissionerate. Both the Rebate Claims were lying with Division-II, Vadodara-I Commissionerate and only on enquiring

the status of the case by the applicant vide their letter dated 02.08.2010 they were informed that the rebate claims were forwarded to City Division of Vadodara-I on 12.08.2010 which are said to have been received in City Division, Vadodara-II Commissionerate on 25.8.2010.

3.6) They then received Show cause notice, dated 15.12.2010, which maintained that as the export was performed on 15.4.2009 and as the Rebate Claims have been received in the City Division, Vadodara-II Commissionerate on 25.8.2010, the Rebate Claims being filed beyond the limitation of one year, the same are time-barred and therefore, liable to be rejected.

3.7) The applicant submitted that the Rebate Claims are to be taken as having filed within one year, that is, with date of export as 25.4.2009 and the date of filing of Rebate Claim as 1.7.2009 with Division-II, Vadodara-I Commissionerate. Instead of forwarding the said two Rebate Claims on 12.8.2010, which reached the City Division, Vadodara-II Commissionerate, on 25.8.2010, the said Division-II of Vadodara-I Commissionerate, should have forwarded the said Rebate Claims to City Division of Vadodara-II Commissionerate on 10.11.2009 itself. This means that the delay is caused by the Excise Authorities, who did not act with responsibility as if the Money paid by the Applicants to the Central Government as Central Excise Duty on export goods had no Value at all. With this representation, the applicant requested to direct the concerned Central Excise Authority, to grant Rebate, to the Applicants, without any further delay, with Interest at appropriate rate, payable by the Department to the Applicants, under Section 11-BB of the Central Excise Act, as the Applicants.

3.8) The current case, is fully covered by the decision of the Honourable CESTAT Tribunal, in case of GUJARAT ALKALIES AND CHEMICALS LTD., VERSUS, COMM., OF C. EX., & CUS., ORDER NO A/1112/WZB/2005/C-III, DATED 14.6.2005, which is replica of the current case and accordingly, Rebate cannot be rejected and should be paid to the Applicants with Interest at appropriate rate.

3.9). The Applicants have submitted that when they are in possession of the Original copies of ARE-Is; Duplicate copies of ARE-1s; Export Promotion copy of Shipping Bill; Bill of Lading; Excise Invoice of M/s. Biotor Industries Ltd., rebate claim cannot be rejected on the grounds of non-furnishing of Triplicate copy of ARE-1. They relied on the following judgement:

- a) The Government of India's Order No., 15-16/99, dated 26.2.1999 in case of STEELCO GUAJRAT LTD., Palej, Dist.; Bharuch.
- b) CESTAT Order C.C.E., CALICUT, VERSUS, AMBADI ENTERPRISES LTD., reported in (2007(219) E.LT. 917 (Tri-Bang.)), which manifestly

maintains that if, procedure under Rule 18 or Rule 19 of the Central Excise Rules, 2002, is not followed, the procedural lapses are condonable and the Proof of Export, is acceptable, if, in fact, the factum of export is not denied.

c) In the case titled as, EVES FASHIONS, VERSUS, C.C.E., DELHI-II, [2006 (205) E.L.T. 619 (Tri.-Del.)], even if, Bond was not furnished or UT-1, was not executed by the Exporter, no duty can be demanded if, the factum of export, is not denied.

d) In the case of C.C.E., KOLKATA-I, VERSUS, KRISHNA TRADERS, [2007 (216) E.L.T. 379 (Tri.-Kolkata)], the Honourable Tribunal, observed that export itself is non-dutiable under the Central Excise Law and therefore, once factum of export is not denied, no duty, can be demanded if, duty was not paid while exporting the goods or Rebate is to be granted if, duty-paid goods are exported.

e) A similar view, has been taken by the Honourable Tribunal, in case of KOLKATA-I, VERSUS, RAHUL COMPUTEX PVT. LTD., [2007 (208) E.L.T. 296 (Tri. Kolkata)],

3.10. The Applicant submitted that the Authorities while rejecting the Rebate Claims of the Applicants, has also canvassed the argument that the Triplicate copy of both the ARE-1s were sent originally by the Applicants to the City Division, Vadodara-II Commissionerate by Registered Post Acknowledgement which means that the Applicant knew that they were required to file both the Rebate with the City Division, Vadodara-II Commissionerate. It was the prime duty of the department to inform the Applicants, immediately on their having filed the said two Rebate Claims with Division-II, Vadodara-I Commissionerate that the same should be filed with City Division, Vadodara-II Commissionerate. However, instead of informing the same, Division-II, Vadodara-I Commissionerate, entered into Correspondence with the Applicants, for about seven months and transferred both the Rebate Claims to City Division of Vadodara II Commissionerate, after expiry of period of one year, for claiming Rebate under Section 11-B of the Central Excise Act..

3.11. In view of the above, the applicants requested to dismiss the OIA and the prayers of the Applicants, may please be taken accordingly, in respect thereof.

4. Personal hearing in this case was held on 26.04.2018, 03.10.2019, 07.11.2019, 09.02.2021 or 23.02.2021, 18.03.2021 or 25.03.2021. No one appeared for the hearing on behalf of the applicant or the respondent.

5. Government has carefully gone through the relevant case records, written submissions and perused the Order-in-appeal, Order in Original and the Show cause notice.

6. Government observes that the applicant had filed two separate rebate claims on 01.07.2009, claiming rebate of Central excise duty paid on goods exported vide ARE-1 No 1 & 2/09-10 dated 14.04.2009, in terms of Rule 18 of Central Excise Rules 2002. These claims were filed with A.C. Dn-II, Vadodara-I on 29-06-2009 though they had mentioned in the ARE-1 that the rebate claim will be filed with City Division, Vadodara-II. After a lapse of nearly one year A.C., Division -II, Vadodara-I vide letter dated 12.08.2010 forwarded the rebate claims to City Division (which they received on 25-08-2010) stating that the claims pertain to City Division of Vadodara-II Commissionerate. The claims were rejected by the A.C. City Division, Vadodara Commissionerate on the grounds that the applicant filed the claim with the wrong authority, inspite of the applicant being aware of the office to which the claim had to be filed and hence the claim was filed beyond the stipulated period of one year and hence time barred.

7. Government finds that in this case, on receiving the claims, AC, Dn-II had raised certain queries to the applicant but did not raise the query of jurisdiction. The said authority failed to guide the applicant to file these rebate claims before the proper authority and forwarded the claim to the proper authority after a considerable time. If the applicant has failed to file the claim with the proper rebate sanctioning authority, the department have equally failed to properly scrutinise the rebate claims and guide the applicant to file their rebate claim before the proper officer. It stands to reason that the Department has an equal responsibility to guide the trade in matters of jurisdiction.

8.1 Government observes that CESTAT, Chennai in a similar situation in case of:

(1) *Symbio Generics Vs Commissioner of Customs, Chennai [2019(369)E.L.T.972(Tri-Chennai) held that "Claim though originally filed within time but before wrong authority who neither returned the same nor rejected for almost six months and transferred to proper authority only after such a long delay - Department having slept over the refund claim for almost six months and thereafter transferring same to the jurisdictional authority who rejected it as time barred, not justified - Matter remanded for deciding refund claim as per law - Section 27 of Customs Act, 1962."*;

(2) *Dalmia Cements (Bharati) Ltd. Vs Commissioner of C.Ex, Trichurapalli [2020(374)E.L.T.106(Tri-Chennai) held that "Filing of claim before a different Commissionerate - Limitation period has to be computed from date of clearance of goods to the date of first presentation of claim before the authorities - Refund claim subsequently filed before jurisdictional*

*Commissionerate cannot be held as time-barred when same initially filed within time though before a wrong Commissionerate”;*

8.2. CESTAT, Ahmedabad in case of Welspun Trading Ltd. Vs Commissioner of C.Ex & S.T. Rajkot [2018(363)E.L.T.710(Tri-Ahmd)] held that *“Relevant date whether to be considered the date on which claim initially filed before Commissionerate not having jurisdiction or the date on which it was filed before jurisdictional Commissionerate - Officer of Commissionerate not having jurisdiction was duty bound not to receive refund application but once it is accepted it was his duty to transfer it to the jurisdictional Commissionerate - Not having done so, the date on which claim filed before him to be considered for limitation and not the date on which it was filed before the jurisdictional Commissionerate after its return”*

8.3. Government also finds that Hon'ble High Courts, GOI and Tribunals vide following judgements/orders, held that time-limit is to be computed from the date on which refund/rebate claim was originally filed and that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim then resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held as time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

(i) CESTAT, Mumbai's Order No. A/262/2009-WZB/C-IV/SMB dated 10.06.2009 in case of CCE, Pune-I Vs Motherson Sumi Systems Ltd. - [2011 (22) S.T.R.496 (Tri-Mum)]

(ii) GOI's Order in case of TATA BLUESCOPE STEEL LTD [2018 (364) E.L.T. 1193 (G.O.I.)]

(iii) Gujarat High Court Order in case of Apar Industries (Polymer Division) Vs Union of India [2016 (333) E.L.T. 246(Guj.)]

9. Relying on various case laws discussed above, Government holds that the time limitation in the instant cases is to be computed from the initial date of filing of such rebate applications. Since the said rebate applications are initially filed within stipulated time limit by the applicant, the same are to be treated as filed in time. However, these applications are required to be decided on merits in accordance with law on verification of documents/records.

10. In view of above discussion, Government sets aside the Order-In-Appeal No. PJ/433/VDR-II/2012-13 dated 31.01.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara and remands the case back to original authority to decide the rebate claims

afresh in view of above observations and for taking appropriate decision on these rebate claims in accordance with law after giving adequate opportunity to the respondent

11. Revision application is disposed off on the above terms.

  
21/12/21  
(SHRAWAN KUMAR)

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

ORDER No. ~~SHS~~8/2021-CX (WZ) /ASRA/Mumbai Dated 02.12.2021

To,

M/s AR- Chem Industries,  
15, Nilkanth Society,  
B/H Swati Society,  
New Sama Road,  
Vadodara-390008

Copy to:

1. The Commissioner of CGST, Vadodara-II, GST Bhavan, Subhanpura, Vadodara-390023.
2. Commissioner (Appeals), Vadodara, Central Excise Building, 1<sup>st</sup> Floor, Race Course Circle, Vadodara-390007
3. Sr. P.S. to AS (RA), Mumbai
4. Spare Copy.
5. Notice Board.