



आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065-

टेलिफैक्स 07926305136



DIN : 20210164SW000000B845

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)7/GNR/2020-21 / 285
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-051/20-21**
दिनांक Date : **13-01-2021** जारी करने की तारीख Date of Issue 27.01.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **OIO/13/REF/STAX/NRM/2019-20** दिनांक: **21.01.2020**,
issued by Assistant Commissioner, CGST and Central Excise, Division-Gandhinagar,
Commissionerate-Gandhinagar
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s PMC Project(India) Pvt. Ltd.
Ground floor 1st to 5th Floor AMDC Building,
Shantigram, Nr. Vaishnodevi Circle
S.G Road Ahmedabad-382421.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-; Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

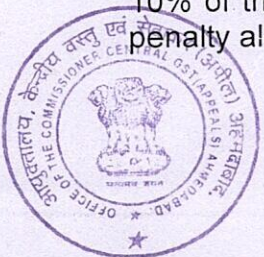
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. PMC Project (India) Pvt. Limited, 1st to 5th Floor AMDC Building, Shantigram, Near Vaishnodevi Circle, S.G Road, Ahmedabad-382421 (hereinafter referred to as 'appellant') against Order in Original No. OIO/13/REF/STAX/NRM/2019-20 dated 21.01.2020 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Central Tax, Division-Gandhinagar, Commissionerate-Gandhinagar (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant was holding Service Tax Registration Number AADCP5841LST001. They vide their letter dated 22.03.2019 (submitted on 08.04.2019) had filed refund claim application for an amount of Rs. 46,69,085/- with respect to Service tax inadvertently paid by them on 06.10.2010 on an advance amount of Rs. 5 Crores received on 29.09.2010 from M/s. Maharashtra Eastern Grid Power Transmission Company Limited (MEGPTCL) towards supply of materials for transmission lines and which was reflected in their Service Tax returns for the period from April to September 2010.

2.1 The application was pertaining to an earlier claim filed by the appellant on 03.10.2011 and also not accompanied with certain documents. Accordingly, a letter was issued by the department to the appellant seeking certain clarifications and further documents. The applicant vide their letter dated 19.06.2019 submitted their compliance.

2.2 The adjudicating authority vide the impugned order rejected the said refund claim filed by the appellant as the same is not found in compliance to the stipulated time prescribed under sub-section (1) of the Section 11 (B) of the Central Excise Act, 1944. The findings of the adjudicating authority are briefly reproduced below:

- (i) *The claim which is pertaining to the period of 2010 has been filed after a lapse of nearly 8 and half years. Even though assessee has submitted a copy of letter evidencing the submission of claim initially on 03.10.2011, the subsequent request was made on 29.10.2015 (after a period of 4 years). The refund application was returned to the assessee on 29.12.2015 by the then A.C, Service Tax, Division-I due to non-availability of the documents pertaining to the refund application. Subsequent to the said*



letter, the assessee again filed their refund claim on 20.10.2018 i.e after a lapse of nearly 3 years.

- (ii) In Central Excise Manual of Supplementary Instructions at Para-2.4 of Chapter 9 (Refund), it is clearly states that: 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. Consequently, submission of refund claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of documents not filed). The claim shall be taken as filed only when all relevant documents are available."
- (iii) As per the provisions of Section 11 B (1) of Central Excise Act, 1944 read with Section 83 of the Chapter V of the Finance Act, 1994, the refund application should be made before expiry of one year from the relevant time, which is in present case the date of payment of duty as per the explanation (B) (f) of the said provision.
- (iv) As regard the contention of the applicant that the provisions of Section 11 B of the Central Excise Act, 1944 cannot be invoked as the amount of refund claim pertains to an amount paid by them by mistake and not the tax levied as per Section 66 of the Finance Act, 1994, it is found that the refund they are seeking is the amount paid by the appellant as Service Tax, and accordingly, the subject claim will be very governed by the provisions of Section 11 B and the conditions imposed therein will be invoked while processing the refund claim. Under all circumstances, the refund claims will always pertain to such amount for which there is no statutory provisions to be retained by the department, or else there would not have been the need for refund. Therefore applicant cannot interpret the nature of the amount claimed as refund as tax or otherwise to suit their convenience and to avoid the statutory provisions, which in this case is the prescribed time limit to file the claim.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds that:

- (i) There was no objection or allegation as against the fact that the appellant had submitted a refund claim on 03.10.2011. Nowhere in the show cause notice or in the order-in-original or in any correspondences, it is found to have alleged that the appellant had not furnished required documents to the department on 03.10.2011. In absence of any allegation as against the fact of having submitted the refund claim on 03.10.2011 and in light



of the fact that the refund claim filed on 03.10.2011 was very well accepted by the department without issuing of defect memo or other notice, the adjudicating authority must not have taken the approach or laxity in the approach of Appellant into consideration while deciding the case on merit. The adjudicating authority failed to appreciate that once the refund claim was furnished by the appellant to the department, it was the statutory duty of the receiving office to process and pass necessary speaking order rejecting or allowing the refund claim, which the department had failed.

- (ii) Expecting the appellant to approach the department or to blame the appellant for awaiting an action from the side of the department for 4 years must not be a factor in adjudging the eligibility of a refund claim filed on 03.10.2011. It requires no emphasis that the refund application lodged by the assessee with the jurisdictional office is required to be disposed off by passing a speaking order and the burden to pass necessary order is on the department once the application is lodged. The fact that neither the appellant was served with a show cause notice nor the refund claim was disposed off earlier, is no matter of dispute here and the adjudicating authority had not brought anything on record to prove contrary. This unequivocally states that the refund application filed on 03.10.2011 is pending for disposal and the appellant requested the same to be decided. Instead of deciding the said application dated 03.10.2011, the adjudicating authority had gone into the validity of the claim on the ground of time barring, which is completely misleading act and misguiding the entire process. Therefore, the order of the adjudicating authority is required to be set aside and the direction be given to allow the refund application filed on 03.10.2011.
- (iii) Further, the refund claim was involving refund of an amount paid in relation to the amount received as advance against the supply of materials/goods and supply of goods/materials was not the subject matter of Service Tax. Once it is established that the amount of Rs. 46,69,085/- paid by the appellant was not Service Tax in absence of subject matter of taxation i.e. provision of services, provisions of Section 11 B of the Central Excise Act, 1944 shall not be applied, for the same reasons for which the provisions of Section 11 B ibid does not apply to the cases involving payment under mistake of law.
- (iv) The refund application was filed in terms of Section 142 (5) of the Central Goods and Services Tax Act, 2017 as evident on the face of the impugned order. As per the provisions of Section 142 (5) ibid allows refund in respect of the services not provided under existing law. From the careful analysis of sub-section (5) of Section 142 ibid it can be clearly and undisputedly inferred that the refund claim shall be processed in accordance with the provisions of existing law which requires the procedures laid down in existing law shall be followed, however the



refund is being granted in substance of the sub-section (5) of Section 142 and hence, refund shall be allowed notwithstanding to any provisions of section 11B except sub-section (2) which deals with the transfer of refund to the Consumer Fund except otherwise provided therein. Accordingly, the bar of limitation provided under Section 11 B of the Central Excise Act, 1944 shall not be applicable in case the refund is filed under Section 142 (5) of the CGST Act, 2017. Following decisions of Hon'ble Apex Court are relied upon in fortification of submission of the appellant that plain reading of language employed in Section 11 B shall be taken into consideration while determining eligibility of refund claim in terms of Section 142 (5) of CGST Act, 2017.

- *Baidyanath Ayurved Bhawan (P) Ltd. Vs. Excise Commissioner, U.P-1999 (110) ELT 363 (SC)*
- *Oswal Agro Mills Ltd. Vs. Collector of Central Excise- 1993 (66) ELT 37 (SC)*
- *Bansal Wire Industries Ltd Vs. State of U.P- 2011 (269) ELT 145 (SC)*

4. The appellant was granted opportunity for personal hearing on 16.12.2020. Shri Rahul Patel, Chartered Accountant, appeared for personal hearing. He re-iterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in appeal memorandum and oral submissions made by the appellant at the time of hearing. The issue to be decided in the case is whether the adjudicating authority was right in rejecting the refund claim in question under Section 11 B of the Central Excise Act, 1944.

5.1 It is observed that the appellant has made the payment of Rs. 46,69,085/- inadvertently towards Service Tax on 06.10.2010 and initial refund application for the said amount was filed on 03.10.2011 before the Jurisdictional Divisional office at the relevant time. There is no objection or allegation made as regards the said fact either in the show cause notice or in the impugned order passed by the adjudicating authority. Accordingly, it undisputed fact that it is filed within a period of one year from the relevant date as required under the provisions of Section 11 B of the Central Excise Act, 1944.

5.2 It is further observed from the chronology of events detailed in the impugned order that the appellant was issued a letter dated 16.12.2015 by the Assistant Commissioner, Division-I, Service Tax seeking the original inward receipt of refund application filed on 03.10.2011 and related correspondence. Again vide letter dated 29.12.2015, the appellant was informed by the Assistant Commissioner, Division-I, Service Tax, Ahmedabad that the Assistant Commissioner, Service Tax, Division-IV,



Ahmedabad did not have any documents pertaining to the subject refund claim as per their letter dated 17.12.2015. Moreover, the Assistant Commissioner, Division-I, Service Tax, Ahmedabad also informed that they also does not possess any documents or case file and hence it is not possible to entertain the said refund claim. Further, as per the records available on file, it is observed that there is no documentary evidence or correspondence showing that the appellant has been issued any discrepancy memo or query memo by the department at any point of time in respect of the refund claim filed on 03.10.2011.

5.3 Further, it is observed that the appellant again vide their letter dated 20.10.2018 requested the Assistant Commissioner, Service Tax Division-I (CGST Division-7), Ahmedabad with a request to sanction/process refund claim dated 03.10.2011. However, the appellant was issued a letter by the Assistant Commissioner, CGST Division-7, Ahmedabad-South informing that they fall under the jurisdiction of CGST Division-7, Ahmedabad-North and the claim should be filed with the said jurisdictional authority. Subsequently, the appellant has vide their letter dated 08.04.2019 submitted their refund application with the office of the adjudicating authority on the ground that their present jurisdiction falls under this office.

6. As per the records available on file, I find that the first letter issued by the department to the appellant in respect of their refund claim filed on 03.10.2011 was issued on date 18.12.2015 (i.e. after a period of more than 4 years) vide which original inward receipt and related correspondence were asked from the appellant. Further I find that there is no other correspondence or documents available on records showing that any discrepancy memo or query memo has been issued to the appellant in respect of the said refund claim by the department. Accordingly, under such circumstances, rejection of the subject refund claim at any subsequent stage merely on the ground of limitation (as not filed within one year from the relevant date) in term of Section 11 B of Central Excise Act, 1944 is neither justifiable nor legally proper.

7. Further, I find that in case of Revisions Application filed by M/s. Saurabh Steel Udyog, Delhi under Section 35 EE of the Central Excise Act, 1944 against the Order-In-Appeal No. 137/CE/DLH/10 dated 05.08.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-I, the similar issue was taken up for consideration. The relevant portion of the findings of the Order No. 1746/12-CX dated 10-12-2012 issued in respect of the said revision application is re-produced below:

"8. Government observes that the applicant initially filed rebate claim on 19.04.2007 and there is no dispute about it. The applicant inadvertently took back original documents with them. Government finds that the



department did not issue any discrepancy memo calling original documents. When the applicant resubmitted original documents of impugned case along with dated acknowledgement of rebate claim having filed on 19.04.2007, the department raised the issue of time bar. There are catena of judgements wherein it has been held that time limit to be computed from the date on which refund/rebate claim was originally filed. High Court and CESTAT, have held in following cases that original refund/rebate claim filed within prescribed time limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time barred as the time limit should be computed from the date on which rebate claim was initially filed.

- (i) CCE Delhi-I Vs. Aryan Export & Ind. 2005 (192) ELT 89 (DEL.)
- (ii) A Tosh & Sons Pvt. Ltd. Vs. ACCE 1992 (60) ELT 220 (Cal.)
- (iii) CCE Bolpur Vs. Bhandiguri Tea Estate 2001 (134) ELT 116 (T.Kol.)
- (iv) Good Year India Ltd. Vs. CCE Delhi 2002 (150) ELT 331 (T.Del.)
- (v) CCE Pune-I Vs. Motherson Sumi Systems Ltd. 2009 (247) ELT 541 (T. Mum.)

Government of India has also held in a case of M/s. IOC Ltd. reported as 2007 (220) ELT 609 (GOI) as under:-

"Rebate limitation-Relevant date-time limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944."

In view of the above, the said rebate claim cannot be treated as time barred since it was originally filed before department on 19.04.2007 which was well within the limit period of one year stipulated in Section 11B of Central Excise Act, 1944."

8. In the present case, I find that there is no dispute raised or any contrary facts produced by the adjudicating authority as regards the fact that the appellant has initially filed refund application on 03.10.2011, which was filed well within the limit period of one year stipulated in Section 11B of the Central Excise Act, 1944. Further, it is observed from the chronology of events detailed in the impugned order that the department has not issued any discrepancy memo or query memo in respect of the said refund application dated 03.10.2011. The first correspondence made by the department with the appellant was the letter dated 16.12.2015 asking for the exact details of their address to decide their respective jurisdictional authority. Further, I find that the findings of the Order No. 1746/12-CX dated 10-12-2012 issued in respect of Revisions Application filed by M/s. Saurabh Steel Udyog, Delhi as discussed in foregoing para and the judicial pronouncements relied upon in the said order are squarely applicable in the present case.



9. In view of the above discussion, the findings of the adjudicating authority in the impugned order that "the claim is not in compliance to the stipulated time prescribed under sub-section (1) of the Section 11B of the Central Excise Act, 1944" is not legally sustainable and proper. Further, it is observed that the adjudicating authority has vide the impugned order rejected the refund claim of the appellant only on the grounds of limitation under sub-section (1) of the Section 11B of the Central Excise Act, 1944 and hence, I do not find it proper to go into the merits of the claim.

10. Accordingly, I set aside the impugned order passed by the adjudicating authority to the extent of rejection of the refund claim on the ground of limitation of stipulated time in terms of sub-section (1) of Section 11B of the Central Excise Act, 1944 and also remand back the case to him for fresh consideration, after examining the relevant documents submitted in support of the refund claim and decide the same on merits.

11. The appeal filed by the appellant stand disposed off in above terms.

Akhil
 13th January, 2021
 (Akhil Kumar)
 Commissioner (Appeals)

Attested

M.P. Sisodiya

(M.P. Sisodiya)
 Superintendent (Appeals)
 CGST, Ahmedabad



By Regd. Post A. D
 M/s. PMC Project (India) Pvt. Limited,
 1st to 5th Floor, AMDC Building,
 Shantigram, Near Vaishnodevi Circle,
 S.G Road, Ahmedabad-382421

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner CGST and Central Excise, Commissionerate-Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division-Gandhinagar, Commissionerate-Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File