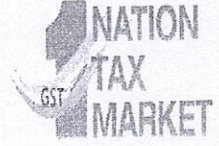




आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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क फाइल संख्या (File No.) : V2(85)179 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-191-18-19

दिनांक (Date): 28/02/2019 जारी करने की तारीख (Date of issue): 26/3/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 355-56/REBATE/2018 Dated: 10/03/2018

issued by: Deputy Commissioner-Central Excise (Div-IV), Ahmedabad North,

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Alfa Technologies Pvt. Ltd

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 ।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रक्रिया के दौरान हुई हो ।

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

(ख) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है ।



ध 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।

(d) 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 दिनोंक 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- ए0बी/35-इ के अंतर्गत:-

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

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 दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियों सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नागित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 अनुसूचि-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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This appeal has been filed by M/s Alfa Technologies Pvt Ltd., 22/A, Swastik Industrial Estate, Sari, Changodar, Sanand Taluka, Ahmedabad [hereinafter referred to as 'the appellant'] against Order-in-Original No.355-56/Rbate/2018 dated 03.10.2018 [hereinafter referred to as the 'impugned order'] passed by the Assistant Commissioner of CGST & CE, Division-IV, Ahmedabad North [hereinafter referred to as the 'adjudicating authority'].

2. Briefly stated, the appellant has filed two rebate claims on 04.07.2018 in respect of goods exported vide ARE-1 No.04/26.05.2017 and 03/29.04.2017. A show cause notice dated 24.07.2018 was issued to the appellant for rejecting the claims in terms of Section 11B of Central Excise Act, 1944 (CEA) that they have submitted the said claims after one year from the date of export. Vide the impugned order, the adjudicating authority has confirmed the allegations and rejected the rebate claims.

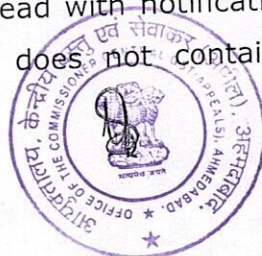
3. Being aggrieved, the appellant has filed the instant appeal on the grounds that limitation under Section 11B is not applicable to rebate claims filed under Notification 19/2004-CE; that the notification governed on this issue does not contain any specific time limit for filing of refund/rebate. They relied on decision of Hon'ble High Court of P & H in the case of JSL Lifestyle [2015 (326) ELT 265]; Hon'ble High Court of Madras decision [2015 (32) ELT 45] as confirmed by the Hon'ble Supreme Court's decision in the case of M/s Dorcas Market Makers Pvt Ltd [2015 (325) ELT].

4. Personal hearing in the matter was held on 13.02.2018. Shri Punit Prajapati, Chartered Accountant appeared for the same and reiterated the grounds of appeal and further requested for condonation in filing of rebate claim.

5. I have carefully gone through the fact of the case and submissions made by the appellant.

6. At the outset, I observe that the appellant had exported removed goods for export vide ARE-1 No.03/29.04.2017 and 04/26.05.2017 and the goods were finally exported on 19.05.2017 and 29.05.2017 respectively. The rebate claim against the said exports was filed by the appellant on 07.06.2018 (mentioned 04.07.2018 in the impugned order). Therefore, the adjudicating authority has rejected the said claims as per clause (B)(a)(i) of Section 11 B of CEA which stipulates that rebate claim should be filed within in one year from the relevant date i.e the date on which the ship in which the export goods are loaded, leaves India.

7. The appellant has mainly argued that the rebate claims in question are filed under Rule 18 of Central Excise Rules, 2002 read with notification No.19/2004-CE (NT) dated 06.09.2004 and the notification does not contain the prescription



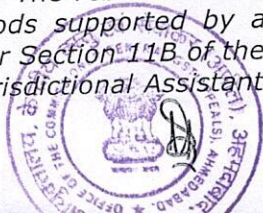
regarding limitation as held by the Hon'ble High Court and Hon'ble Supreme Court's decision *supra*.

8. I find that the Government of India, vide its order in respect of M/s DSM Sinochem Pharmaceuticals India Pvt Ltd [2018 (15) G.S.T.L. 476 (G.O.I.)] has distinguished the Hon'ble High Court of Madras in case of M/s Dorcas Market Makers Pvt Ltd *supra*. The relevant portion of the said order is as under:

5. Coming to the applicant's contention that the time limitation of one year is not applicable to the rebate claims filed under Rule 18 and Notification No. 19/2004, the Government finds no legal force in this argument as for refunds and rebate of duty [under] Section 11B of the Central Excise Act is directly dealing statutory provision and it is clearly mandated therein that the application for refund of duty is to be filed with the Assistant/Deputy Commissioner of Central Excise before expiry of one year from the relevant date. Further in explanation in this Section, it is clarified that 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. In addition to time limitation, other substantive and permanent provisions like the authority who has to deal with the refund or rebate claim, the application of principles of undue enrichment and the method of payment of the rebate of duty, etc., are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation of rebate duty need not be repeated in Rule 18 and the areas over and above already covered in Section 11B have been left to the Central Government for regulation from time to time. But by combined reading of both Section 11B [of Central Excise Act, 1944] and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that Rule 18 is independent from Section 11B of the Act. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of filing rebate claim within 1 year is squarely applicable to the rebate of duty when dealt [with] by Assistant/Deputy Commissioner of a Division under Rule 18. Thus Section 11B and Rule 18 are interlinked and Rule 18 is not independent from Section 11B. This issue regarding application of time limitation of one year is dealt [with] by Hon'ble High Court of Bombay in detail in the case of M/s. Everest Flavour v. Union of India, 2012 (282) E.L.T. 481 wherein it is held that since the statutory provision for refund in Section 11B specifically covers within its purview a rebate of Excise duty on goods exported, Rule 18 cannot be independent of requirement of limitation prescribed in Section 11B. In the said decision the Hon'ble High Court has differed from the Madras High Court's decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. [2015 (321) E.L.T. 45 (Mad.)] and even distinguished Supreme Court's decision in the case of M/s. Raghuvar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.)]. Hence, the applicant's reliance on the decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. is not of much value. The above averment of the applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed at any time without any time-limit which is not only against Section 11B of the Central Excise Act but is also not in the public interest as per which litigations cannot be allowed for infinite period.

9. I also find further that the Government of India in the case of M/s Synco Industries Ltd [2018 (362) E.L.T. 190 (G.O.I.)] has held that the rebate claim should be filed within one year from the relevant date as prescribed under Section 11B of CEA. By deciding a similar issue, the Government India has held that

"On examination of the Revision Application and the Commissioner (Appeals)'s order, it is noticed that the applicant has admittedly filed rebate claim on 5-9-2011 even when the goods had been exported on 7-1-2010 as per Custom Officer's endorsement on the back of the ARE-I. The rebate claim could be submitted by the applicant only after export of the goods supported by all relevant documents to establish export of the goods and as per Section 11B of the Central Excise Act, 1944, it should have been lodged with the jurisdictional Assistant Commissioner within one



year of the relevant date which is 7-1-2010 in this case. Thus the rebate claim should have been filed by the applicant by 6-1-2011. But the applicant has filed the rebate claim on 5-9-2011 which is undisputedly beyond the prescribed period of one year."

In para 4 of the decision, the Hon'ble Court has further held that:

"The contention that the time limitation is merely a procedural issue and not a substantive law is also not having any force as under Section 11B of the Central Excise Act, 1944, the time-limit of one year is a crucial condition and is not just a procedural requirement. Even the Apex Court in the case of Union of India v. Kirloskar Pneumatics, 1996 (84) E.L.T. 401 (S.C.) has held that the High Court under Writ Jurisdiction cannot direct the Customs authorities to ignore time-limit prescribed under Section 27 of the Customs Act, 1962. Section 11B of the Central Excise Act, 1944 being peri materia with Section 27 of the Customs Act, 1962, the aforesaid decision is squarely applicable to the present case. Several decisions of the High Court and the Tribunal relied upon by the applicant in the Revision Application are not found relevant to the present case as all the relied upon decisions have dealt with the cases where the incomplete rebate/refund claims were filed earlier and the required documents were submitted later on. But in none of the cases, it is held that mere submission of ARE-I can be considered as filing of rebate claim or rebate claim can be filed even after one year from the export of goods.

10. By applying the ratio of the decision of Government of India supra, I find that the adjudicating authority has rightly rejected the rebate claims in question, vide the impugned order and I uphold the same.

11. In view of above discussion, I reject the appeal filed by the appellant. The appeal stands disposed of in above terms.

उमा शंकर

(उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date : .2 .2019

Attested

Mohanan V.V
(Mohanan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.

By RPAD.

To,
Alfa Technologies Pvt Ltd.,
22/A, Swastik Industrial Estate,
Sari, Changodar, Sanand Taluka, Ahmedabad



Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad-Noroth.
3. The Assistant Commissioner, System, Central Tax, Ahmedabad North.
4. The Assistant Commissioner, CGST, Div-IV, Ahmedabad North
5. Guard File.
6. P.A.