

- आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क \*  
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,  
पोलिटिकनिक के पास, आमबाबाडि,  
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/55/Ahd-I/2016-17 / 1011-15  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-071-2016-17  
दिनांक 28.02.2017 जारी करने की तारीख Date of Issue 21/03/2017

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Deputy Commissioner, Div-III केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं  
MP/1686/AC/2016-17 दिनांक: 28/06/2016, से सृजित

Arising out of Order-in-Original No. MP/1686/AC/2016-17 दिनांक: 28/06/2016 issued by Deputy  
Commissioner, Div-III Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Nepa Overseas  
Ahmedabad

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, 4<sup>th</sup> 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 प्रक्रिया 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.

(b) 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.

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



... 2 ...

(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

(b) 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.

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

(c) 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 हैं।

(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 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.

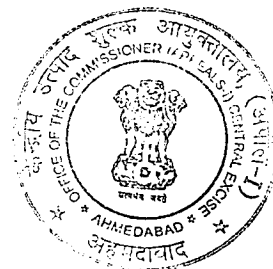
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



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 Appellate 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।

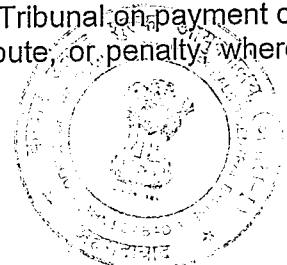
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

M/s Nepa Overseas, Plot No.5, Phase-II, GIDC, Vatva, Ahmedabad (hereinafter referred to "the appellant") has filed this appeal against Order-in-Original No.MP/1686/AC/2016-17 dated 28.06.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad (hereinafter referred to as "the adjudicating authority").

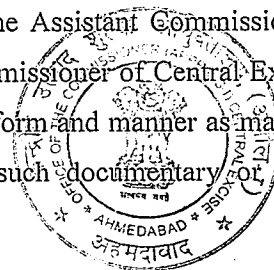
2. The appellant had filed a rebate claim for Rs.7,49,757/- under Rule 18 of Central Excise Rules, 2002 ( for short -CER) read with notification No.19/2004-CE (NT) dated 06.09.2004, on 25.04.2016 along with its relevant documents. On scrutiny, it was noticed that the said claim was filed after expiry of one year from the date of export dated 12.03.2015. Therefore, a show cause notice dated 12.05.2016 was issued to the appellant for rejecting the said claim as time barred under the provisions of Section 11 B of Central Excise Act, 1944 ( for short-CEA) which was later on rejected vide the impugned order.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that the final assessment of shipping bill was considered and released by the customs authority on 15.04.2016 and immediately they had filed the claim on 25.04.2016; that under Rule 18 of CER and notification No.19/2004-CE (NT) does not refers any time limit under the provisions of Section 11 B of CEA for filing rebate claim. The appellant has relied on case laws in the case of M/s Everest Flavours Ltd of Hon'ble High Court of Mumbai; M/s Cosmonaut Chemicals of Hon'ble High Court of Gujarat-2009(233) ELT 46 (Guj); Ford India Pvt Ltd of Hon'ble High Court of Madras [2011 (272) ELT 353].

4. Personal hearing in the matter was held on 16.02.2017 and Shri Patel Vishal, Prop. Of the appellant appeared for the same. He reiterated the grounds of appeal and further stated that EP copy of shipping bill and ARE-1 was released by the department on 15.04.2016.

5. I have gone through the facts of the case and submissions made in the appeal memorandum as well as during personal hearing. In the instant case, I observe that the appellant has removed the goods vide ARE-1 No. 29/27.02.2015 which was exported on 12.03.2015 under Rule 18 of CER and filed rebate claim on 25.04.2016. The adjudicating authority has rejected the rebate claim as time barred, in terms of provisions of Section 11B of CEA. While rejecting the claim as time barred, the adjudicating authority has relied on CBEC's supplementary instructions (para 2.4 of chapter 9) and GOI's decision in the case of M/s Vee Excel Drugs & Pharma Pvt Ltd [2012 (283) ELT 305].

6. Section 11B stipulates that any person claiming refund of any duty of excise and interest may make an application for refund to the Assistant Commissioner of Central Excise, or as the case may be, to the Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and that application shall be accompanied by such documentary or other evidence



establishing, inter alia, the duty paid character of the goods. Explanation (A) to Section 11B specifically provides that the expression '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. Since the statutory provision for refund in Section 11B brings within its purview, a rebate of excise duty on goods exported out of India or materials used in the manufacture of such goods, Rule 18 cannot be read independent of the requirement of limitation prescribed in Section 11B. Explanation (B) defines the expression 'relevant date which is as under:

(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, or*

(ii) *if the goods are exported by land, the date on which such goods pass the frontier, or*

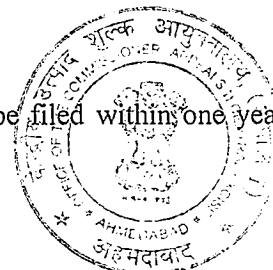
(iii) *if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India*

7. Further, in paragraph 2.4 (chapter 9) of CBEC's supplementary instructions states that "in case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim be received so that the claimant is not hit by limitation". The intention of the CBEC's instruction appears to be that an assessee can submit their claim before the authority within the stipulated time which cannot be ignored by the authority. However, in the instant case that the appellant has failed to take appropriate care to comply with the laid down statutory time limit.

8. The appellant has relied on case laws of Honble High Court Mumbai in the case of M/s Everest Flavours Ltd and M/s Dorcas Market Makers Pvt Ltd [2012 (281) ELT 227 and Ford India Pvt Ltd of Hon'ble High Court of Madras [2011 (272) ELT 353], where in it has been held that rebate claim under Rule 18 of CER is not subject to Section 11 B of the CEA. However, I observe that the Government of India in the case of M/s Indo Rama Textiles Ltd, reported at 2015 (330) ELT 807- GOI held that for filing rebate claim under Rule 18, it is subject to compliance of provisions of Section 11B CEA as refund includes rebate as per Explanation (a) thereof. The relevant para is reproduced below:

*"9.2 As per Explanation (a) to Section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. The Explanation 'A' of Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refunds claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date.*

Therefore, as per the statute, the rebate claim was required to be filed within one year from the date of export.

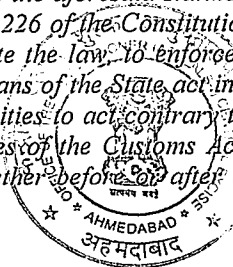


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8. In the instant case, undisputed facts indicate that the said claim was not filed within the statutorily prescribed time period. The appellant submits that the delay was due to delay on part of concerned departmental authority in handing over E P copy of shipping bill and ARE-1 to them; that the EP copy of shipping bill and ARE-1 was released by the Customs authority only on 15.04.2016 and since the rebate claim is required to be filed with all documents, they could not file the same but filed on 25.04.2016. The appellant has cited decision of Hon'ble High Court of Gujarat in the case of M/s Cosmonaut Chemicals *supra*, where in it has been decided the issue relating to rebate claim filed beyond time limit of one year on the ground that export promotion copy of shipping bill provided by customs belatedly. While deciding the issue, the Hon'ble High Court hold that "*the provisions of Section 11 B of the Act stipulates that a claim has to be accompanied by requisite documents, requisite documents in case of an assessee who has exported duty paid goods being copy of shipping bill duly endorsed by the Customs Authorities. Hence, Customs authorities delay parting with a copy of shipping bill bearing necessary document, an assessee cannot be put to disadvantage on the ground of limitation when the assessee is not in a position to make a claim without accompanying documents.*" The Hon'ble Court further held that "*considering matter from any angle it becomes apparent that the interpretation placed by Revenue on provisions of Section 11 B of the Act read with para No.24 of the CBEC Manual cannot be accepted the same being contrary to the object and purpose of the scheme. It cannot be held that the petitioner was at fault in making the claim belatedly, because in fact the period of limitation has to be considered in light of availability of the requisite documents i.e from the said point of time.*"

9. I observe that GOI's decision in the case of M/s Vee Excel Drugs & Pharma Pvt Ltd [2012 (283) ELT 305] has uphold that *the rebate claim is required to be filed within one year of the relevant date as stipulated in Section 11B and there is no provision under Section 11 B to condone any delay.* The GOI, while pronouncing the said decision, relied on the judgment of Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag & others V Mst.Kaji & Others [1987 (28) ELT 183] and UOI v Kirloskar Pneumatics Company [1996 (84) ELT 401]. The judgment in the case of Collector Land Acquisition Anantnag & others V Mst.Kaji & others has been held that *the delay is to be condoned when it is within the limit of the statute and when there is no such condonable limit prescribed in the statute, then there is no discretion to any authority to extend the time.* The judgment in the case of UOI v Kirloskar Pneumatics Company reads as under:

"10..... Yet the question is whether items permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the



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*High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr. Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law."*

10. I further rely on Hon'ble High Court of Gujarat's decision in case of M/s Indian Oil Corporation Ltd [2016 (342) ELT 48-Guj], wherein it has been held that limitation for filing refund claim is not mere procedural requirement. In this regard, the Hon'ble court held that Section 11 B of the CEA is clear and there is no indication in it that limitation period of one year could be extended on sufficient cause being show. The said order also distinguished the decision of Hon'ble High Court of Gujarat in case of Cosmonaut Chemicals [2009 (233) ELT 46-Guj].

10. In view of above discussion and following the decision of Hon'ble Supreme Court of India in the case of UOI v Kirloskar Pneumatics Company supra and decision of GOI, I am bound to uphold that the rebate claim in question hits by limitation of time bar. In the circumstances, the appeal filed by the appellant is rejected.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/02/2017

Attested

*28/2/17*  
(Mohanah V.V)  
Superintendent (Appeal-I)  
Central Excise, Ahmedabad

BY R.P.A.D.

To,  
M/s Nepa Overseas,  
Plot No.5, Phase-II, GIDC,  
Vatva, Ahmedabad

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner,(Systems) Central Excise, Ahmedabad - III
4. The Dy./Asstt. Commissioner, Central Excise, Division - Gandhinagar, Ahmedabad-III
- ✓ 5. Guard file
6. P. A. file.

