



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(30)/29to33/Ahd-I/2017-18 / 410-17
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-242to246-2017-18
दिनांक Date : 16-01-2018 जारी करने की तारीख Date of Issue 22/01/18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं
MP/5794to5798/AC/2016-Reb दिनांक: 30/3/2017, ने सृजित

Arising out of Order-in-Original No. MP/5794to5798/AC/2016-Reb दिनांक: 30/3/2017 issued by
Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Halewood Laboratories Pvt. Ltd.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि नीचे बताए गए सक्षम अधिकारों से
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) केन्द्रीय 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 :

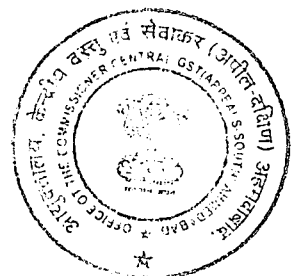
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल को प्रक्रिया के
दौरान हुई हो।

(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 है।

(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 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 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.

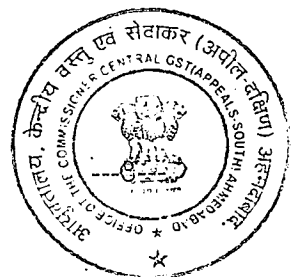
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 यथार्थिथि 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 यथार्थिथि 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 रु. करोड़ रूप में 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।

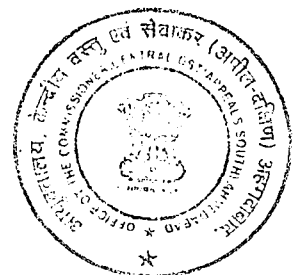
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Halewood Laboratories Pvt Ltd., Plot No. 319/320, Phase- II, GIDC, Vatva, Ahmedabad. (*hereinafter referred to as the 'appellant'*) has filed the present appeals against the following Orders-in-Originals (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Div-III, Central Excise, Ahmedabad-I Commissionerate. (*hereinafter referred to as 'adjudicating authority'*):

Sr. No.	OIO No.	OIO date	Appeal No.	Amount of rebate claims rejected in OIO (₹)
1	MP/5794/AC/2016-Reb	30.03.2017	V2(30)29/Ahd-I/2017-18	15,034/-
2	MP/5795/AC/2016-Reb	30.03.2017	V2(30)30/Ahd-I/2017-18	58,940/-
3	MP/5796/AC/2016-Reb	30.03.2017	V2(30)31/Ahd-I/2017-18	59,265/-
4	MP/5797/AC/2016-Reb	30.03.2017	V2(30)32/Ahd-I/2017-18	1,15,399/-
5	MP/5798/AC/2016-Reb	30.03.2017	V2(30)33/Ahd-I/2017-18	97,218/-

2. The facts of the case, in brief, are that the appellants are engaged in export of oral rehydration salts (ORS) on claim of rebate of duty under Rule 18 of Central Excise Rules, 2002 read with notification No.21/2004-CE (NT) dated 06.09.2004, the appellant had filed five rebate claims on 24.11.2016 along with its relevant documents. On scrutiny, it was noticed that :

- (i); one of the rebate claim was filed after 61 days from the expiry of one year from the date of export;
- (ii) three rebate claims were filed after 20 days from the expiry of one year from the date of export;
- (iii) one rebate claim was filed after 15 days from the expiry of one year from the date of export.

Therefore, show cause notices were issued to the appellant for rejecting the rebate claims as time barred under the provisions of Section 11 B of Central Excise Act, 1944 which was later on rejected vide the impugned orders.

3. Being aggrieved, the appellant has filed the present appeals on the grounds that they are claiming rebate of duty paid on excisable materials used in production of exported goods under Rule 18 of Central Excise Rules, 2002 read with notification



No.21/2004-CE (NT) dated 06.09.2004; that the Government has substituted the word "shall be lodged" by "Shall be lodged, before the expiry of the period specified under section 11B of the Central Excise Act, 1994" vide Notification No. 21/2016-CE (NT) dated 01.03.2016 and as all their exports had been made prior to 01.03.2016 so the limitation for presentation of rebate claim is not applicable in this case. The appellant has relied on case laws in the case of M/s Dorcas Market Makers Pvt Ltd [2015 (321) ELT 45] & [2012 (281) ELT 227], M/s. Gravita India Ltd [2016 (334) ELT 321] and M/s. Ruby Mills Ltd. [2015 (329) E.L.T. 621 (Tri.- Mumbai)] where in it has been held that rebate claim under Rule 18 of Central Excise Rules, 2002 is not subject to Section 11B of the Central Excise Act, 1994.

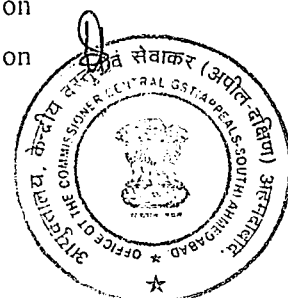
4. Personal hearing in the matter was held on 30.11.2017 wherein Shri R.R Dave, Consultant appeared on behalf of the appellant. He reiterated the grounds of appeal and further requested to allow the appeals.

5. I have gone through the facts of the case and submissions made in the appeal memorandum as well as during the personal hearing. In the instant case, the appellant had exported oral rehydration salts on claim of rebate of duty paid on excisable materials used in manufacturing of exported goods under Rule 18 of Central Excise Rules, 2002 read with notification No.21/2004-CE (NT) dated 06.09.2004 and filed five rebate claims on 24.11.2016. The adjudicating authority has rejected the rebate claim as time barred, in terms of provisions of Section 11B of Central Excise Act, 1994. While rejecting the claim as time barred, the adjudicating authority has relied on Government of India's decision in the case of M/s Vee Excel Drugs & Pharma Pvt Ltd [2012 (283) ELT 305].

6. In the instant case, I observe that the appellant delayed in filing the above appeals by 1 day. In terms of proviso to Section 85(3A) of the Finance Act, 1994, I condone the delay in filing the appeals.

7. The appellant in their grounds of appeal has argued that the Government substituted the words "*shall be lodged*" by "*shall be lodged, before the expiry of the period specified under section 11B of the Central Excise Act, 1994*" vide notification No. 21/2016-CE (NT) dated 01.03.2016 and as in their case, all their exports were made prior to 01.03.2016 when the substitution was made, the limitation for presentation of rebate claim, is not applicable to in their case. This argument is not tenable mainly because, of the following:

7.1. 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 of the Central Excise Rules, 2002, cannot be read independent of the requirement of limitation, prescribed in Section 11B. Explanation (B) defines the expression 'relevant date which is as under:

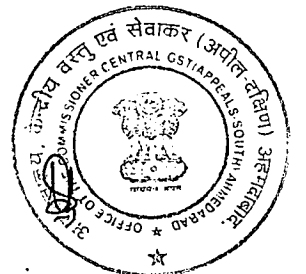
- (a) *in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -*
- (i) *if the goods are exported by sea or air, the date on which the ship or 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*

Thus in view of the foregoing, as is evident from para 2, the rebate claims were filed after one year from the date on which the goods were exported and therefore, the adjudicating authority was correct in holding that the rebate claim is hit by limitation.

7.2 Even otherwise, I find that the Government's intention has been clearly spelt out. Notification No. 21/2016-CE (NT) dated 01.03.2016, amending the notification No. 21/2004-CE (NT) dated 06.09.2004, clearly shows the intention of the Government that the claim shall be lodged before the expiry of the period specified under section 11B of the Central Excise Act, 1944. In view of the conscious decision taken by the Government to adhere to the time limit prescribed under section 11B of the Central Excise Act, 1994, the argument of the appellant that because his exports were prior to the date of the substitution, the time period would not be applicable, is not a tenable argument. The substitution though prospective, would be of no help to the appellant since, Section 11B, which governs all rebates, clearly specified the time limit under which the rebate claims were to be filed. In view of the foregoing reasoning, I do not find any reason to interfere with the Order - in- Originals passed by the adjudicating authority, rejecting the rebate claim on the aspect of limitation.

8. I find that the appellant has relied on case laws of M/s Dorcas Market Makers Pvt Ltd. [2015 (321) ELT 45] & [2012 (281) ELT 227], M/s. Gravita India Ltd [2016 (334) ELT 321] and M/s. Ruby Mills Ltd. [2015 (329) E.L.T. 621] (Tri.- Mumbai)] where in it has been held that rebate claim under Rule 18 of Central Excise Rules, 2002 is not subject to Section 11B of the Central Excise Act, 1994. However, I observe that the Government of India in the case of M/s Indo Rama Textiles Ltd, reported at [2015 (330) ELT 807] held that for filing rebate claim under Rule 18, it is subject to compliance of provisions of Section 11B Central Excise act, 1994 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.

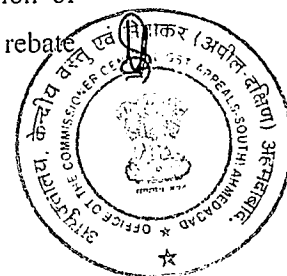
Therefore, as per the statute, the rebate claims were required to be filed within one year from the date of export.

9. I observe that Government of India's decision in the case of M/s Vee Excel Drugs & Pharma Pvt Ltd [2012 (283) ELT 305] has upheld 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 Government of India, 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. Katji & Others [1987 (28) ELT 185] and UOI v Kirloskar Pneumatics Company [1996 (84) ELT 401]. The judgment in the case of Collector Land Acquisition Anantnag & others v Mst. Katji & 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.* Further, the judgment in the case of UOI v Kirloskar Pneumatics Company [1996 (84) ELT 401] 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 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 merely a procedural requirement. In this regard, the Hon'ble court held that Section 11 B of the Central Excise Act, 1994 is clear and there is no indication in it that limitation period of one year, could be extended on sufficient cause being shown.

11. 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 Government of India, I am in agreement with the adjudicating authority that the rebate



claims in question are hit by limitation of time. In the circumstances, the appeals filed by the appellant are rejected.

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

उमा शंकर

(उमा शंकर)
आयुक्त (अपील्स)

Attested

Vinod

(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY R.P.A.D.

To,
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Phase- II, GIDC,
Vatva, Ahmedabad.

Copy to:

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

