



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(52)40/EA-2Ahd-I/2017-18
Stay Appl.No. NA/2017-18

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ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-010-2018-19
दिनांक Date : 20-04-2018 जारी करने की तारीख Date of Issue

26/6/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 318/Assistant Commissioner/2017-Reb दिनांक: 01/09/2017
issued by Assistant Commissioner, Div-IV, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Nandan Denim Ltd.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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) 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 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.

(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।



(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 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-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 ओ-20, न्यू मैटल हास्पिटल 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 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

This is an appeal filed by the department against Order-in-original No. 318/Assistant Commissioner/2017-Reb dated 01/09/2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, C.G.S.T., Division-IV, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the facts of the case are that M/s Nandan Denim Ltd., (formerly M/s Nandan Exim Ltd.), Saijpur – Gopalpur Pirana Road, Piplaj, Ahmedabad (hereinafter referred to as 'the respondent') had filed a rebate claim of Rs.4,10,992/- on 02/06/2017 under Rule 18 of the Central Excise Rules, 2002 for goods exported under Bill of Lading No. SUDUI 6664220Z74 shipped on board on 24/11/2015. As it appeared that the rebate claim filed on 02/06/2017 beyond one year from the date of export, the claim was time barred in terms of Section 11B of the Central Excise Act, 1944, a show cause notice F.No.Ch.52/18-231/17-R dated 06/07/2017 (hereinafter referred to as 'the SCN') was issued to the respondent, proposing to reject the rebate claim under Rule 18 of the Central Excise Rules, 2002 (CER, 2002) read with Section 11B of the Central Excise Act, 1944(CEA, 1944) on the ground that the rebate claim was not submitted within one year from the date of export of goods. This SCN was adjudicated by the adjudicating authority who has issued the impugned order allowing and sanctioning the rebate claim, holding that as per the ratio of the decision of Hon'ble Madras High Court in the case of Dy. CCE, Chennai vs Dorcas Market Makers Pvt. Ltd. – 2015 (321) E.L.T. 45 (Mad.), upheld by Hon'ble Supreme Court [Deputy Commissioner vs. Dorcas Market Makers Pvt. Ltd. – 2015 (325) ELT A104 (SC)], Rebate claim is not time barred as Rule 18 of CER, 2002 is self-contained and has to be construed independently and even otherwise in the present case the Export promotion (EP) copy of the shipping bill (SB) duly endorsed by Customs officials was issued on 27/02/2017 for the exports provisionally allowed on 24/11/2015 and the rebate claim filed on 02/06/2017 was within one year from the date of the endorsement by Customs on the EP copy of the SB.

3. The department has preferred the instant appeal mainly on the following grounds:

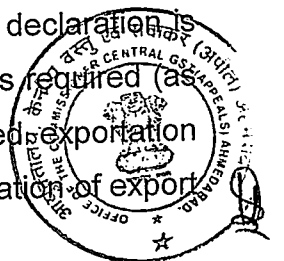
- 1) A refund claim under section 11B has to be filed within one year from the relevant date, which in the case of exports is: (a) when the ship or aircraft leaves India; (b) if the goods are exported by land, the date on which the goods leave Indian frontier; (c) if export is by post, date of dispatch of goods by post to a place outside India. The provisions of time limit are mandatory and a statutory authority cannot traverse beyond the confines of law and cannot grant relief by bypassing the bar of limitation as held in Miles India Ltd. vs ACC – 1987 (30) ELT 641 (SC) and reiterated in CCE vs Doaba Coop. Sugar Mills – 1988 (37) ELT 478 (SC); ACCE vs Kashyap Engg. – 2002 AIR SCW 437 (SC); Electronics P. Ltd. vs U.O.I. – 1996 (83) ELT 261 (S.C.); Escorts Ltd. vs U.O.I.



1998 (97) ELT 211 (SC); Porcelain Electrical Mfg. Co. vs CCE – 1998 (98) ELT 583 (SC); Ashwin Fasteners vs U.O.I. – 2010 (258) ELT 174 (Guj.). In ACC vs Anam Electrical Mfg. Co. vs CCE– 1997 (5) SCC 744 it has been clarified that any appellate court / Civil court/ High court cannot extent the period of limitation and such a direction will be illegal, even in case of illegal levy of duty. However, these provisions will not apply to duty recovered under 'unconstitutional provisions. In view of these decisions the refund claim sanctioned in respect of S.B. No. 4207404 dated 20/11/2015 amounting to Rs.4,10,992/- was not available to the respondent.

2) In a similar case, an appeal was filed by department to set aside the Order-in-original upto the extent of amount of refund claimed sanctioned I respect of M/s Bodal chemicals ltd., Unit-IV, Division-III, Ahmedabad amounting to Rs.8,219/- on the ground that the refund claim was filed beyond the period prescribed under para 3(g) of notification No. 42/2012-ST dated 29/06/2012, which was allowed vide OIA No. AHM-EXCUS-001-APP-114-2017-18 dated 03/10/2017 setting aside the O.I.O. to extent of refund sanctioned. Further in two cases that of Globe Technologies – 2016 (344) ELT 677 (GOI) and indo Rama Textiles Ltd. – 2015 (330) ELT 807 (GOI), government of India has set aside the impugned order-in-appeals and restored the order of the original authority rejecting the rebate claim on the ground that the rebate claims were filed beyond the prescribed period.

4. The respondent filed written cross objections on 21/03/2018 mainly contending that the adjudicating authority was justified in taking the view that Rebate claim was filed within one year of receiving the EP copy of Shipping Bill after export of the duty paid excisable goods; that allowing and sanctioning substantive benefits of rebate on export of excisable goods cleared on payment of duty and releasing the rebate to the respondent cannot be objected without any valid justified reasons. The respondent submits that it had cleared goods for export from factory against ARE-1 No. 397 dated 19/11/2015 on payment of duty from accumulated CENVAT credit of capital goods under Shipping Bill No. 4207404 dated 20/11/2015 but the customs officers at the port had suspected mis-declaration and decided to carry out investigations and allowed provisional export of goods on 24/11/2015. After due investigation / inquiry, Export promotion copy [EP copy] of the said Shipping Bill was issued after one year from the date of provisional export. Thereafter, on 02/06/2017, the respondent had filed claim of Rebate under rule 18 of CER, 2002 after receiving the said EP copy of Shipping Bill. The respondent draws attention to para 4 of C.B.E.C. Circular No. 1/2011-Cus dated 04/01/2011 and Circular No. 30/2013-Cus dated 05/08/2013 directing the file formations that in case the export goods are suspected of mis-declaration or where declaration is to be confirmed and further enquiry / confirmatory test or export opinion is required (as in case of chemicals or textile materials), the goods should be allowed exportation provisionally and in case exports are made under EP schemes, the finalization of export

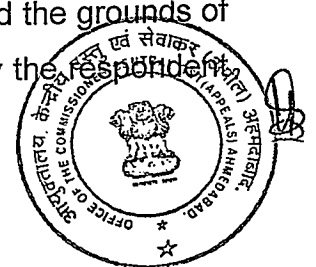


incentives should be done only after receipt of the test report / finalization of export incentives should be done only after receipt of the test report / finalization of enquiry and final decision in the matter. Hon'ble Madras High Court has held in the case of Dy. Commr. vs Dorcas Market Makers Pvt. Ltd. – 2015 (321) E.L.T. 45 (Mad.) that question of rebate of duty is governed separately by Section 12 of CEA, 1944 and the entitlement to rebate would rise only out of a notification under Section 12(1) ibid. Rule 18 of Central Excise rules, 2002 is to be construed independently. Notification No. 19/2004-CE dated 06/09/2004 does not contain the prescription regarding limitation and the assessee actually having exported the goods and in the absence of any prescription in the scheme, the rejection of application for refund as time-barred is unjustified. The departmental appeal against this order was dismissed by hon'ble Supreme Court after condoning the delay. The respondent also relies on (i) 2017 (349) ELT 90 (Raj.) – 2017 (349) ELT 90 (Raj.); (ii) 2009 (233) ELT 46 (Guj.) – Cosmonaut Chemicals vs UOI; (iii) 2015 (327) ELT 10 (Guj.) – Rollwell Forge Pvt. Ltd. vs U.O.I.; (iv) 2016 (334) ELT 321 9Raj.) – Gravita India Ltd. vs U.O.I.; (v) 2015 (321) ELT 45 (Mad) – DC vs Dorcas Market Makers Pvt. Ltd. and JSL Lifestyle Ltd. vs U.O.I. – 2015 (326) ELT 265 (P&H). The respondent also challenges the departmental appeal on the grounds of limitation contending that the provision under Section 35(1) of CEA, 1944 clearly provides that any person aggrieved by any decision or order passed may appeal to the concerned Commissioner of Central Excise (appeals) within sixty days from the date of communication of the order and the delay condonable is further thirty days by Commissioner (Appeals). The impugned order was issued on 01/09/2017 and the EA-2 was filed on 25/01/2018 after a time gap of 117 days. Section 35E does not have overriding effect over section 35 and hence order had to be reviewed and filed within 60 days condonable by 30 days i.e. within total of 90 days.

5. Personal hearing in the appeal was held on 15/03/2018, attended by Shri P. P. Jadeja, Consultant. The learned Consultant reiterated the grounds of cross objection and emphasized para (6.1) thereof to state that the appeal is time barred.

6. A letter F.No.V.52/18-231/17-R dated 14/05/2018 was received from the Assistant Commissioner, Division-IV, Central G.S.T., Ahmedabad (South), who is authorized under section 35E (2) of the Central Excise act, 1944 to file the instant appeal, stating that the date of communication of the impugned order may be read as 31/10/2017 instead of 01/09/2017 mentioned in the Appeal memorandum in E.A.-2 format filed by the department. A copy of letter F.No.CGST/AHD/South/RRA/Misc/01/2017-18 dated 14/05/2018 issued by the Superintendent (R.R.A.), C.G.S.T., Ahmedabad (South) has also been enclosed, which states that as per records of R.R.A Cell, the actual date of receipt of the impugned order is 31/10/2017.

7. I have carefully gone through the facts of the case on records and the grounds of appeal filed by the department. Firstly, I take up the objection raised by the Respondent



with regards to limitation. The contention of the respondent is that the impugned order was issued on 01/09/2017 and the EA-2 was filed on 25/01/2018 after a time gap of 117 days, which is time barred in terms of Section 35 of CEA, 1944 that stipulates that an appeal has to be filed within 60 days of communication of the order appealed against and Commissioner (Appeals) can condone the delay by only 30 days. It is also argued that Section 35E *ibid* does not have overriding effect over section 35 *ibid*. I find that the date of communication shown in the Appeal memorandum is 01/09/2017, which is actually the date of issue of the impugned order. As per the correction letter received from the authorized officer discussed above in paragraph 6 above, the actual receipt of the order in R.R.A. section is not 01/09/2017 but it is 31/10/2017. As per this communication from the jurisdictional office, the date of communication of the impugned order stands corrected as 31/10/2017. While considering the aspect of limitation it is pertinent to note that a departmental appeal is filed with Commissioner (Appeals) subsequent to review under Section 35 E(2) of CEA, 1944, the contents of which are reproduced as follows:

Section 35 E

(2) **The Principal Chief Commissioner of Central Excise or Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Principal Chief Commissioner of Central Excise or Commissioner of Central Excise in his order.**

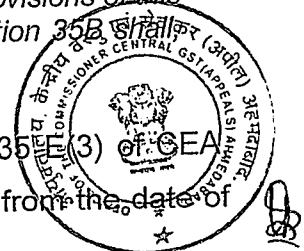
(3) **Every order under sub-Section (1) or sub-Section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.**

Provided that the Board may, on sufficient cause being shown, extend the said period by another 30 days.

Further, once the review order under section 35 E (2) is passed by the jurisdictional Commissioner, the application has to be filed with Commissioner (Appeals), in accordance with sub-section (4) of Section 35 E of CEA, 1944, by the authorized officer, within a period of one month from the date of communication of the order passed by the jurisdictional Commissioner under sub-section (2) of Section 35E of CEA, 1944. The contents of sub-section (4) of Section 35 E of CEA, 1944 are reproduced as follows:

(4) **Where in pursuance of an order under sub-Section (1) or sub-Section (2) the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under sub-Section (1) or sub-Section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-Section (4) of Section 35B, shall, so far as may be, apply to such application.**

From the above it is clear that the limitation stipulated under section 35E(3) of CEA, 1944 for review of an order under Section 35E(2) *ibid* is three months from the date of

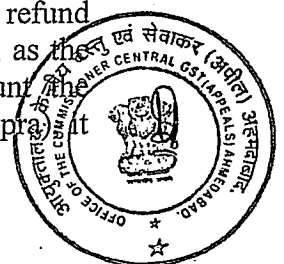


communication of the order. In the instant case, the impugned order was received in R.R.A. section on 31/10/2017 and the review order No. 23/2017-18 dated 17/01/2018 has been issued on 17/01/2018, which is well within three months from the date of communication. Further, on examining the instant appeal filed by the authorized officer, it is seen that the instant appeal has been received on 25/01/2010 in the office of Commissioner (Appeals), which is well within one month of the issue of the review order No. 23/2017-18 dated 17/01/2018. Therefore, the plea of limitation raised by the respondent in the cross-objection is not factually correct or valid and is accordingly rejected. Accordingly, I take up the departmental appeal on merits.

8. On considering the facts of the case as forthcoming from the impugned order and the cross objections filed by the respondent, the main ground of the departmental appeal is that the rebate claim was barred by limitation as the same was not filed within one year of the relevant date under section 11B of CEA, 1944 i.e. the claim was not filed within one year of the date of export on 24/11/2015. A reference has been made in the instant grounds of appeal to OIA No. AHM-EXCUS-001-APP-114-2017-18 dated 03/10/2017, where the appeal filed by department was allowed in a similar matter. In this regard, I find that in the matter of *Indian Chain Pvt. Ltd. vs. Commissioner of C.E. & S.T., Kolkata* – 2017 (357) ELT 993 (Tri.-Kolkata), Hon'ble Tribunal had upheld the decision of the Commissioner (Appeals) relying on the Apex court decision in the matter of *Mafatlal Industries Ltd. v. U.O.I.* – 1997 (89) ELT 247 (SC), holding that all claims for refund except where levy is held to be unconstitutional are to be preferred and adjudicated upon under section 11B of Central Excise Act, 1944 and time limit is very much applicable to such a refund claim. Further, in the case of *Indian Oil Corporation vs U.O.I.* – 2016 (342) E.L.T. 48 (Guj.), it has been clearly laid down by the Hon'ble High Court of Gujarat that there is no indication in section 11B of CEA, 1944 that the limitation period of one year for filing a refund claim could be extended on sufficient cause being shown. The relevant portion of this ruling is reproduced as follows:

13. We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11B, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.

14. Secondly, we find that the Apex Court in the case of *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536 = 1997 (89) E.L.T. 247 (S.C.) had the occasion to deal with the question of delayed claim of refund of customs and central excise. Per majority view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of *Kirloskar Pneumatic Company* (supra) at



would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.

Further, in the case of Union of India vs Uttam Steel Ltd. – 2015 (319) E.L.T. 598 (S.C.), it has been laid down that a reading of the Apex court decision in Mafatlal Industries decision would show that claims of rebate can only be made under section 11B within the period of limitation and filing of a bond cannot alter the effect of limitation. The relevant portion is reproduced as follows:

13. Shri Bagaria's argument based on the proviso to rule 12(1) would obviously not have any force if Section 11B were to apply of its own force. It is clear from Section 11B(2) proviso (a) that a rebate of duty of excise on excisable goods exported out of India would be covered by the said provision. A reading of Mafatlal Industries (supra) would also show that such claims for rebate can only be made under Section 11B within the period of limitation stated therefor. This being the case, the argument based on Rule 12 would have to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B. Equally, the argument that on a bond being provided under Rule 13, the goods would have been exported without any problem of limitation would not hold as the exporter in the present case chose the route under Rule 12 which, as has been stated above, is something that can only be done if the application for rebate had been made within six months. We, therefore, allow the appeal and set aside the Bombay High Court judgment dated 12-8-2003.

From the above it is clear that the limitation contained in Section 11B is absolute and there is no scope of breaching it in view of catena of judgments. Commissioner (Appeal) cannot go beyond the Act as held in D.K. Mishra vs Commissioner of Central Excise, Allahabad – 2009 (243) E.L.T. 420 (Tri.-Del.). The appeal is allowed.

9. रेवेन्यू द्वारा दर्ज किया गया अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by Revenue is disposed of in the above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 20 / 04 / 2018

Attested

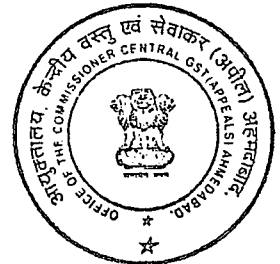
(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s Nandan Denim Limited,
Survey No. 198/1, 203/2, Saijpur – Gopalpur,
Pirana Road, Piplaj, Ahmedabad – 382405.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (South).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (South).
4. The A.C / D.C., C.G.S.T Division: VI, Ahmedabad (South).
5. Guard File.
6. P.A.



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