
 <p>केंद्रीय कर आयुक्त (अपील)</p> <p>O/O THE COMMISSIONER (APPEALS) - CENTRAL TAX</p> <p>केंद्रीय कर भवन</p> <p>7th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015</p> <p>सत्यमेव जयते</p>	
<p>☎ : 079-26305065</p>	<p>टेलिफैक्स : 079 - 26305136</p>

7206 70710

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)105to108/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-079to082-2018-19
दिनांक Date : 30-10-2018 जारी करने की तारीख Date of Issue

27/11/2018

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

ग Arising out of Order-in-Original No. 11to14/AC/SKL/REB/2018 दिनांक: 16.07.2018 issued by
Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Prima Chemicals Unit II
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) 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 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।



(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.

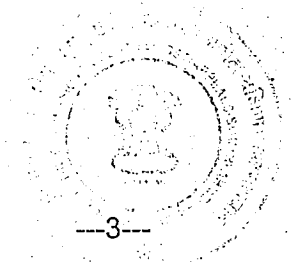
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैन्टल 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 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.

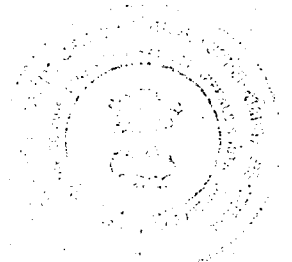
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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 Prime Chemicals (Unit-II), Plot No.1904, Phase- IV, GIDC, Vatva, Ahmedabad -382445 (hereinafter referred to "the appellant") has filed these appeals against Order-in-Original Nos. 13/AC/SKL/Reb/2018 dated 16.07.2018, 14/AC/SKL/Reb/2018 dated 16.07.2018, 12/AC/SKL/Reb/2018 dated 16.07.2018 and 11/AC/SKL/Reb/2018 dated 16.07.2018 (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, CGST, Division-II, Ahmedabad-South (hereinafter referred to as "the adjudicating authority). Since all these impugned orders contain similar matter so I take them up together for decision by this common order.

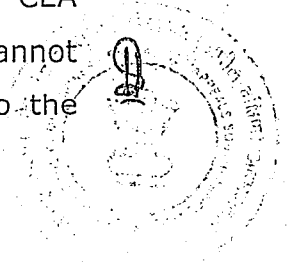
2. The appellant had filed four rebate claims for Rs. 2,52,000/-, Rs. 7,22,344/-, Rs. 1,47,520/- and for Rs. 6,03,419/- each respectively involved in above impugned orders under Rule 18 of Central Excise Rules, 2002 (for short -CER) read with notification No.19/2004-CE (NT) dated 06.09.2004. On scrutiny, it was noticed that the claims had been filed after expiry of more than year from the date of export. Therefore, four show cause notices all dated 07.05.2018 were 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). All the claims were rejected vide the impugned orders on the ground specified therein.

3. Being aggrieved, the appellant has filed the present appeals on the grounds that

- a) All the prescribed conditions as prescribed under the notification were fulfilled and it is the legislative intent that goods should be exported and not taxes;
- b) They have discharged the central excise duty in respect of all the claims and have submitted the proof of duty payment in respect of all the claims;
- c) The claim could not be filed in time limit of one year as the same was returned back to the appellant for want of BRC though the claims were at that relevant time presented within the prescribed time limit;



- d) The division office was following a practice of accepting the claims only when the claim is complete and does not provide any acknowledgement or deficiency memo;
- e) They rely on the case of M/s Gravita India Ltd. vs. Union of India -2016 (334) ELT- 321 (Raj.) wherein it was held that limitation is to be considered in the light of availability of requisite documents and should be taken to begin when necessary documents have been furnished and they also rely on the case of M/s JSL Lifestyle Ltd. vs. Union of India -2015 (326) ELT- 265 (P&H).
4. Personal hearing in the matter was held on 23.10.2018 and Shri Anil Gidwani, authorized representative appeared for the same. He reiterated the grounds of appeal. He sought reliance on the case law of Dorcas Market Makers Pvt. Ltd. Vs. Commissioner of Central Excise - 2012 (281) E.L.T. 227 (Mad.).
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 finished goods vide the four ARE-1s which were exported under Rule 18 of CER and filed rebate claims for each ARE after more than one year from the date of export. The adjudicating authority has rejected the rebate claim as time barred in terms of provisions of Section 11B of CEA.
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 under Section 11B of CEA brings rebate of excise duty within its purview, Rule 18 of CER cannot be read independently. Therefore, the explanation (B) given to the



said Section applies for rebate claim also. The said explanation 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*

In view above, for claiming rebate of duty, the relevant date of one year prescribed under Section 11 B of CEA is as per provisions (i) above.

7. The appellant by relying the judgment of M/s Gravita India Ltd. vs. Union of India (supra) contended that rebate claim under Rule 18 of CER is not subject to Section 11 B of the CEA. I have perused the case cited by the appellant and I quote the relevant part of the order for understanding:

"There is no quarrel with proposition that if Statute provided for limitation, it has to be adhered to. What however is being claimed by the petitioner is different. The question which arises in the present case is as to what should be the starting point for computation of this period of one year. We are persuaded to follow the view taken by the Gujarat High Court in *Cosmonaut Chemicals, supra*, that any procedure prescribed by a subsidiary legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. The claimant cannot be asked to tender deficient claim within limitation period and claim cannot be simultaneously treated as not filed till documents furnished, if the manual of supplementary instruction indicating that refund or rebate claim deficient in any manner to be admitted when delay in providing document is attributable to the Department. Where the lapse as to non-availability of requisite document is **on account of Central Excise**

Department or Customs Department, this would be mitigating circumstance flowing from the aforesaid legislative scheme. Limitation is to be considered in the light of availability of requisite documents and should be taken to begin when documents necessary for substantiating the claim of refund are furnished by the department, which, in our considered view, should be the starting point for computation of limitation" (emphasis provided)

From the reading of this important para of the order cited by the appellant, it is very clear that the Hon'ble High Court has clearly held that if the statute has provided any limitation, it has to be adhered to and in case any delay happens which is attributable to the department, then it can be a mitigating factor and the starting point for computation of limitation can be the time when documents necessary for substantiating the claim are furnished by the department. In the present case, no documents were required to be given by the department. I find that the appellant have claimed that they approached the department for submission of refund claim which was not having Bank Realisation Certificate so their claim was not accepted and was returned. From perusal of the impugned orders and the documents available, I find that the appellant have not submitted any proof of that declining of the refund claim by the department. There is no evidence of communication between the appellant and the department about it so I cannot accept the argument put forth by the appellant and the case cited by the appellant is not relevant here. In fact it clearly says the time limit prescribed by the statute has to be adhered to.

8. 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:

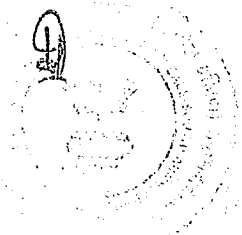
"9.2 As per Explanation (a) to Section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is

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. In the instant case, undisputed facts indicate that the said claim was not filed within the *statutorily prescribed time period.*

9. *I further observe that GOI'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 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 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."

I also rely on the case law of Pacific Exports Vs. Union Of India-2017 (346) E.L.T. 240 (Guj.) in which it has been held that:

"Petitioner filing rebate claim after more than two years of export of goods as against statutorily prescribed period of one year - Nothing on record to indicate that such delay attributable to any action of Department - Issue being identical in Special Civil Application No. 11990 of 2004, rebate claim barred by limitation and not admissible"

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 appeals filed by the appellant are rejected.

11. The appeal filed by the appellant stands disposed of in above terms.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

उमा शंकर

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

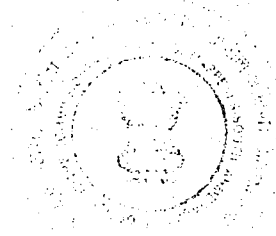
सत्यापित

अधीक्षक

(अधीक्षक उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद



V2(32)105/Ahd-South/18-19
V2(32)106/Ahd-South/18-19
V2(32)107/Ahd-South/18-19
V2(32)108/Ahd-South/18-19

BY R.P.A.D.

To,
M/s Prime Chemicals (Unit-II),
Plot No.1904,
Phase- IV,
GIDC,
Vatva,
Ahmedabad -382445

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Astt. Comm'r, CGST, Div.-II, Ahmedabad (South),
- (4) The Dy./Astt. Comm'r (Systems), CGST, Ahmedabad (South),
- ~~(5) Guard File,~~
- (6) P.A.File.