



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय  
Office of the Commissioner (Appeals)  
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद  
Central GST Appeal Commissionerate- Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 :

टेलिफैक्स 26305136 - 079 :

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स्पीड पोस्ट

- क फाइल संख्या : File No :V2(32) 73/Ahd-I/2014-15 / 3576 ~ 3580
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-040/2022-23**  
दिनांक Date : 29.07.2022 जारी करने की तारीख Date of Issue : 06.09.2022.  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No.MP/619-621/Reb/08-09 dated 20.11.2008  
passed by the Deputy Commissioner, erstwhile Central Excise Division-III,  
Ahmedabad-II Commissionerate [now CGST Division-V, Ahmedabad South  
Commissionerate].
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Jay Chemicals Industries Ltd.,  
Plot No.44, GIDC Estate, Odhav,  
Ahmedabad-382415.

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, 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 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.



- (क) 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।
- (A) 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.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) 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।

- (c) 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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 adjudicating authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contained 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**

The present appeal has been filed by M/s. Jay Chemicals Industries Ltd., Plot No.44, GIDC Estate, Odhav, Ahmedabad-382415 (hereinafter referred to as '*the appellant*') against Orders-in- Original No. MP/619-621/Reb/08-09 dated 20.11.2008 (hereinafter referred to as '*the impugned orders*'), passed by the Deputy Commissioner, erstwhile Central Excise, Division-III, Ahmedabad - II (hereinafter referred to as '*the refund sanctioning authority*').

2. Facts of the case, in brief, are that the appellant had filed rebate claims in respect of goods exported under ARE -1s as per details given below:

Sl. No.	ARE - 1 Nos. and Date	Amount of Rebate Claim (in Rs.)	Date of Let Export Order	Date of filing Rebate Claim
1.	ARE.1 Nos. 1523, 1524, 1525, 1526, 1527 & 1528/06-07 dated 30.03.07	2,59,566/-	13.04.2007	14.07.2008
2.	ARE.1 No. 1521 & 1522 dated 30.03.07	2,49,757/-	13.04.2007	14.07.2008
3.	ARE.1 No. 1471/06-07 dated 24.03.07	1,43,737/-	19.04.4007	01.08.2008

On scrutiny of the rebate claim documents, it was observed that the rebate claims were filed after expiry of the prescribed period of one year provided under erstwhile Section 11B of Central Excise Act, 1944. Subsequently, the appellant were issued Show Cause Notice vide F. No. V.32/10-324/Reb/08-09-Pt.I/2046 dated 10.09.2008 asking them to explain as to why the rebate claims totally amounting to Rs. 6,53,060/- should not be rejected.

2.1. Thereafter, the rebate sanctioning authority has, vide the impugned orders, rejected the rebate claims filed by the appellant.

3. Being aggrieved by the impugned orders passed by the rebate sanctioning authority, the appellants have preferred the instant appeal on grounds which are elaborated in subsequent paragraphs.

3.1. The adjudication order has been passed without discussing the submissions of the appellant, made in his reply. The rebate claim has been rejected by adjudicating authority on the basis of grounds of the show cause notice only, without taking note of the reply filed by the appellant. In discussions and findings portion of the order, the learned Deputy



Commissioner has merely discussed as to what efforts could have been made by the appellant. However, the learned Deputy Commissioner has not given any findings on the contentions of the appellant for filing of rebate claim at earlier date. Thus, the order of the learned Deputy Commissioner suffers from established principles of the law inasmuch as the impugned order has been passed without considering the reply of the appellant. They refer and rely on the decision of the Hon'ble Tribunal in the case of **Richardson & Cruddas (1972) Ltd. V/s. CCE, Nagpur cited at 1999(107) ELT-386(T)**, wherein it is held that:

*"Whenever any assessee raises any question it is the duty of the adjudicating authority to meet those questions and give its finding with reasons. Such reasons may be acceptable to the assessee or may not be acceptable to the appellant, that is a different matter. It is the duty of the adjudicating authority to meet those questions and answer that in the impugned order. In the instant case the impugned order, nowhere those 11 cases have been discussed in the finding portions. Hence we feel that the impugned order suffers legally".*

Similar view has been expressed in the case of CCE, Chennai V/s. Bhanu Scientific Instrument Co. cited at 1999(108) ELT-702(T).

3.2. While rejecting the rebate claims, learned Deputy Commissioner has conveniently ignored the appellant's submission of earlier filing the rebate claim with available documents. It is submitted that application of rebate claim is required to be presented with relevant documents with the jurisdictional Division office of Central excise for necessary verification. The rebate claim application is taken by inward section only after necessary approval by the scrutiny officer. It would be vital to mention here that all rebate claim applications are subjected to scrutiny by Division office of central excise. The rebate claim application is not accepted by Inward Section without approval of the scrutiny officer of the Division. The rebate application after due scrutiny and approval by the Division office is accepted by inward section and acknowledged. In the backdrop of procedure set out for accepting the rebate claim, it is submitted that appellant had presented rebate applications along with triplicate copy of ARE-1, duplicate copy of invoice, photo copy of RG23A Pt. II and mate receipt before the rebate sanctioning officer. However, same were not acknowledged by inward section for want of copies of ARE-1 and shipping bill duly endorsed by customs authority. As such without making any inquiry into the submissions of the appellant to the effect that rebate claims were earlier presented and not accepted by Division office, the impugned order is not proper and legal.



3.3. Learned Deputy Commissioner in his order nowhere refuted the prevailing practice of accepting the rebate claim application by the Divisional office. As such the appellant's contention of his filing the rebate claim applications with available documents ought to have been taken into consideration. However, learned Deputy Commissioner has not given any findings on the contention of the appellant nor refuted the contention.

3.4. The learned Deputy Commissioner while rejecting the rebate claim has observed as under:

*“The assessee has neither submitted the rebate claim within the prescribed period of one year nor produced the complete rebate claim documents required as per the Section 11AB. The assessee has only produced evidence from the Customs Authority regarding the destruction of export documents in fire which broke out at export shed of Inland Container Depot, Sabarmati on 5-5-2007.”*

From the above findings of the learned Deputy Commissioner, it is revealed that vital documents for filing the rebate claim were not available with the appellant, as the same were destroyed in the fire. It is also established from the findings of the learned Deputy Commissioner that appellant was not in a position to file the rebate claim with all the relevant documents. Since, vital documents could not be filed along with the rebate claims, the scrutiny officer of the rebate claims at Division office had not accepted the application of rebate claims. In the circumstances, filing of rebate claim with reconstructed copies of documents to meet with the procedure of rebate sanctioning authority cannot be construed as filing the rebate claim after the expiry of one year from the relevant date. In fact appellant had presented the rebate claims within the prescribed time limit of one year, however, rebate claims were not accepted and acknowledged for want of export documents, which were destroyed in the fire at ICD, Customs, Sabarmati, Ahmedabad.

3.5. The learned Deputy Commissioner has rejected the rebate claims on the ground that appellant had not brought to the notice of rebate sanctioning authority about the fact that documents related to proof of export had been destroyed in the fire. In connection with the observation of the learned Deputy Commissioner, it is submitted that department was well aware of the fire, which broke out at ICD, Customs, Sabarmati, Ahmedabad. In fact Circular No. 02/2007 dated 21-7-2007 regarding fire broke out was issued and circulated to all the concerned. Copy of the Circular is enclosed at Annexure 'D'. In the situation it is not proper to state that rebate sanctioning authority at Division-III, Ahmedabad-11 was not aware of the fire. Further, Deputy Commissioner, In-charge of ICD, Customs, Sabarmati, Ahmedabad, who issued the circular about fire broke out had taken over the charge of Division-III, Ahmedabad-II as rebate sanctioning authority. Therefore, findings of the



learned Deputy Commissioner that rebate sanctioning authority was not aware about the loss of documents in fire are not sustainable.

3.6. Learned Deputy Commissioner, while rejecting the Rebate claim on the ground of the limitation, has held that appellant ought to have filed the rebate claim with the available documents or appellant ought to have submitted a letter. In this connection relevant portion of his findings is reproduced:

*" They (appellant) did not brought the same to the notice of the division office by filling claim with the available documents within the stipulated time period of one year as required under Section 11B of by submitting a letter."*

In connection with the above findings of the learned Deputy Commissioner, it is submitted that appellant had in fact presented the rebate claim along with triplicate copy of ARE-1, mate receipt and bill of lading. However, scrutiny officer at Division office had not accepted the rebate claims as the same were not presented with copy of shipping bill and copies of ARE-1. Here it may be submitted that rebate claim with incomplete documents are not accepted by the Division office. However, learned Deputy Commissioner has not given any findings on such practice. Therefore, at first place department does not accept the rebate claim application and at the same time it is expected from the appellant to file the rebate claim with available documents. In the circumstances, when documents were destroyed in the fire at ICD, Customs, Sabarmati, Ahmedabad, department ought to have formulated the procedure for sanctioning the rebate claim. However, when the appellant complied with the set procedure, the rebate claim has been rejected for no fault of the appellant.

3.7. Learned Deputy Commissioner has rejected the rebate claim as appellant has not submitted any letter, informing the rebate sanctioning authority about the fire which broke out at ICD, Customs, Sabarmati, Ahmedabad. In connection with the findings of the learned Deputy Commissioner it is submitted that department was well aware of the fire that broke out at ICD, Customs, as such no intimation could be expected from the appellant. Since, the fire broke out at export shed at ICD, was known to the department, the department ought to have accepted the rebate claims with available documents or alternative arrangements for accepting the documents ought to have been made. In the circumstances when documents were destroyed in the fire and department was not ready to accept the rebate claims with available documents, the conclusion of late filing of rebate claim is not sustainable.

3.8. Rebate sanctioning provisions are governed by Notification No. 19/2004-CE(NT) dated 6-9-2004. The notification stipulates that rebate claim shall be granted subject to the



condition specified in paragraph 2 and procedures specified in paragraph 3 of the notification. Since, the appellant had fulfilled all the conditions and complied with the procedure as stipulated under Not. No. 19/2004, such rebate claims cannot be rejected on the ground of limitation as held by Hon'ble High Court of Bombay in the case of Uttam Steel Ltd. V/s. UOI cited at 2003(158)ELT-274 (Bom.). In its order Hon'ble High Court has held that neither Rule 12 nor Section 11B contemplates that if the application for rebate of duty is not made within the period of limitation, the accrued right to the rebate of duty lapses. The relevant text of the order is reproduced herein below:

*"31. From the aforesaid provisions, it is clear that for availing the rebate of duty, the primary requirement is the export of excisable goods. Rule 12 specifically provides that once it is established that the goods have been actually exported, then even if some or all of the requirements set out in the notification issued under Rule 12 are not fulfilled, the exporter will be entitled to rebate of duty. Under Rule 12, the claim for rebate of excise limitation within which the claim for rebate of duty is required to be made. Neither Rule 12 nor Section 11B contemplates that if the application for rebate of duty is not made within the period of limitation, the accrued right to rebate of duty lapses. Therefore, if the application for rebate of duty is not made within the period of limitation prescribed under Section 11B only, the remedy is barred and not the substantive right to claim rebate of duty accrued under Rule 12. In other words, the limitation prescribed under Section 11B only deals with the procedural law and not the substantive law."*

In the present case, not only vital conditions have been fulfilled but all the conditions specified in the said notification have been complied with. In fact there is no dispute with regard to the conditions stipulated in the rebate sanctioning provisions. Therefore, rejection of rebate claim is against the order of Hon'ble High Court and thus needs to be quashed and set aside.

4. Personal hearing in the case was held on 21.07.2009. Shri P. G. Mehta, Advocate, appeared on behalf of the appellant. However, as the department had preferred an appeal by way of filing Revision Application before the Joint Secretary (Revision Application) in the case of rebate claim of the appellant decided by the Commissioner (Appeals), Ahmedabad vide OIA No. 53/2009 (Ahd. - I)CE/ID/Commr (A) dated 27.02.2009 in similar facts, the appeal was transferred to call book. Subsequently, the case has been taken up for adjudication after the matter was decided by the Joint Secretary (Revision Application).





5. Personal hearing in the case was held on 21.06.2022 in virtual mode. Shri P. G. Mehta, Advocate, appeared on behalf of the appellant. He re-iterated the submissions made in appeal memorandum. He further submitted a written submission, as stated during the hearing, vide e-mail on 21.06.2022. In the written submission, the appellant submitted that in identical issue in the appellant's own case, the Hon'ble Commissioner (Appeals) under his OIA No.53/2009 (Ahd-I)CE/ID/Commr(A)/Ahd dated 27.02.2009 set aside the order of the adjudicating authority and allowed the appeal of the appellant by following the ratio of the decision of the Hon'ble High Court of Gujarat in the case of Cosmonaut Chemicals Vs. UOI cited at 2009 (233) ELT-46 (Guj.). It is their submission that in light of the above referred Order-in-Appeal passed by Hon'ble Commissioner (Appeals) and the decision of the Hon'ble High Court of Gujarat in the case of Cosmonaut Chemicals Vs. UOI supra and the judgement of Hon'ble High Court of Rajasthan in the case of Gravita India Ltd. Vs. UOI reported at 2016 (334) ELT-321 (Raj.) which followed the decision of the Hon'ble High Court of Gujarat in the case of Cosmonaut Chemicals, the order of the rebate sanctioning authority may please be quashed and set aside.

6. I have gone through the case records, the impugned orders passed by the rebate sanctioning authority, and the submissions made by the appellant, both oral as well as written. The issue to be decided in the case is whether the impugned orders passed by the rebate sanctioning authority rejecting the rebate claims of the appellant on grounds of limitation is legal and proper or otherwise.

7. It is observed that the appellant had filed rebate claims totally amounting to Rs.6,53,060/- before the rebate sanctioning authority as per details given in Para 2 above. The rebate claims were rejected by the rebate sanctioning authority on grounds of limitation contained under erstwhile Section 11B of the Central Excise Act, 1944 as being filed after one year of date of export. The appellant has contended that they could not file the rebate claims in time as there was a fire in the ICD, Sabarmati in which the documents of customs, including those of appellant, were destroyed. The same were subsequently obtained from the department and claims were filed. It has also been contended that the jurisdictional Division office had not accepted their earlier application for want of relevant documents.

8. It is further observed that the Commissioner (Appeals), Ahmedabad vide OIA No. 53/2009 (Ahd.- I)CE/ID/Commr (A) dated 27.02.2009 passed in the case of appellant had, in similar sets of facts, allowed the rebate claim. The department had preferred appeal before the Joint Secretary (Revision Application) against the said order-in-appeal. The Joint Secretary (Revision Application) has vide Order No. 61/2011-CX dated 24.01.2011 decided the departmental appeal wherein the Revisionary Authority had set aside the said



order-in-appeal and upheld the order-in-original. The relevant portion of the order passed by the revisionary authority is as under:

"8. From the perusal of the records, Govt. observes that the goods were exported on 14.04.07 and the rebate has been filed on 30.09.08 i.e. after the stipulated period as prescribed in Section 11B of the Central Excise Act, 1944. Accordingly, the rebate claim was rejected by the original adjudicating authority. However, the impugned order in-original was set aside by Commissioner (Appeals) while allowing appeal of respondents. Department has filed revision application against the impugned order-in-appeal on the grounds discussed para 4 above. The respondent has also submitted reply and made submission stated in the para 5 above.

9. The respondent has given various reasons for filing rebate claim after a stipulated period of one year. In addition, he contended that delay in filing rebate claim is a procedural lapse and same may be condoned as the substantial benefit cannot be denied to them due to procedural infractions. In this regard, Government observes that filing of rebate claim within one year is a statutory requirement which is mandatory to be followed. The statutory requirement can be condoned only if there is such provision under Section 11B. Since there is no provision for condonation of delay in terms of Section 11B, the revision application has to be treated as time barred. The Commissioner (Appeals) Central Excise has erred in allowing the appeal filed by the applicant following the ratio of order of Hon'ble High Court of Gujarat in case of Cosmonaut Chemicals vs. UOI-2009 (233) ELT 45 (GUJ). The Commissioner (Appeals) findings were not correct that the order of Hon'ble High Court of Gujarat appeared to be accepted by the department. The department had already preferred an appeal before the Hon'ble Supreme Court of India. In the case before Hon'ble High court of Gujarat pertaining to Cosmonaut Chemicals Vs. Union of India, copy of the Shipping Bill itself was given to the exporter after expiry of statutory time limit, while in the present case, this is not so. In this goods were exported on 13.04.07 and copy of the Shipping Bill was given by Customs Authority on 08.01.08. Thus exporter could have filed the rebate claim within the statutory time limit. Thus ratio of Cosmonaut's judgement of Gujarat High Court cannot be applied in the present case.

10. The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 (Tri.Chennai) held that the "Tribunal, acting under provisions of



*Central Excise Act, 1944 has no equitable or discretionary jurisdiction to allow a rebate claim de hors the limitation provisions of Section 11B ibid- under law laid down by Apex Court that the authorities working under Central Excise Act, 1944 and Customs Act, 1962 have no power to relax period of limitation under Section 11B ibid and Section 27 ibid and hence powers of Tribunal too, being one of the authorities acting under aforesaid Acts, equally circumscribed in regard to belated claims Section 11B of Central Excise Act, 1944- Rule 12 of erstwhile Central excise Act, 1944 - Rule 18 of the Central Excise Rules, 2002. - Contextually, in the case of Uttam Steel Ltd. also, the Hon'ble Bombay High Court allowed a belated rebate claim in a writ petition filed by the assessee. This Tribunal, acting under the provisions of the Central Excise Act, has no equitable or discretionary jurisdiction to allow any such claim de hors the limitation provisions of Section 11B."*

11. Further, it has been held by the Hon'ble Supreme Court in the case of *Collector Land Acquisition Anantnag & Others vs. Mst. Katji & Others* reported in 1987 (28) ELT 185 (SC) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgement. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

12. Hon'ble Supreme Court has also held in the case of *UOI vs. Kirloskar Pneumatics Company* reported in 1996 (84) ELT 401 (SC) that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of the said Section. In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. The ratio of this Apex Court judgement is squarely applicable to this case. As Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision to extend this time limit. As such the revision application is clearly time barred as it was filed after the time limit specified under Section 11B of Central Excise Act, 1944.

9. I find that the aforementioned order of the Joint Secretary (Revision Application) passed in the case of the appellant in similar sets of facts is binding upon me under judicial discipline. Hence, it is held that the refund sanctioning authority has correctly rejected the rebate claims in question and that the impugned order does not warrant any interference.



10. Accordingly, the impugned order passed by the adjudicating authority is upheld as legal and proper and the appeal filed by the appellant is rejected being devoid of merits.

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

The appeal filed by the appellant stand disposed off in above terms.

*Akhil Kumar*  
 29 July, 2022.  
 (Akhil Kumar)  
 Commissioner (Appeals)  
 Date: 29.07.2022.

Attested

*Anilkumar P.*

(Anilkumar P.)  
 Superintendent,  
 CGST (Appeals),  
 Ahmedabad.



**BY R.P.A.D. / SPEED POST TO :**

To

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 Ahmedabad-382415.

**Copy To:-**

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST & Central Excise, Ahmedabad-South.
3. The Deputy / Assistant Commissioner, CGST & Central Excise, Division-V,  
 Ahmedabad-South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South.  
 (for uploading the OIA)
- ✓ 5. Guard file
6. P.A. File