



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एम टी भवन / 2nd Floor, GST Bhavan.
रेस कोर्स रिंग रोड, / Race Course Ring Road.

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील फाइल नम्बरा
Appeal File No

V2/9/RAJ/2020

मूल आदेश नं /
OIO No

02/REBATE/2019-20

दिनांक/
Date

18.11.2019

ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-068-2020

आदेश का दिनांक /
Date of Order:

21.05.2020

जारी करने की तारीख /
Date of issue:

15.06.2020

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त आयुक्त, केन्द्रीय उत्पाद शुल्क/ मेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश में मूजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-

M/s Shree Hari Industries, Survey no.233, Plot No. 1/4, Opp Rutvi Steel, Rajkot.

इस आदेश (अपील) में व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं विनं अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन में सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में ब्रताग गण अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय न्यायाधिकरण (मिस्ट्रेट) की पश्चिम क्षेत्रीय पीठिकां, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किसी भी मार्बजिन के क्षेत्र के बैंक द्वारा जारी खाकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा। /

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.5000/- Rs.10,000/- where amount of duty/demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, विन अधिनियम, 1994 की धारा 86(1) के अंतर्गत मेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां मेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किसी भी मार्बजिन के क्षेत्र के बैंक द्वारा जारी खाकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दम करोगे रूप में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) मंवेट जमा की ली गई गलत राशि
(iii) मंवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
बशर्ते यह कि इस धारा के प्रावधान विनियम (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
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
provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, समद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने में भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे गलत पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / 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.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई नगरेख अथवा समयाविधि पर या बाद में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रपण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्यम के तौर पर TR-6 की प्रति संलग्न की जानी 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.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रूपये 1000/- का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग में किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य में वचन के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



:: ORDER IN APPEAL ::

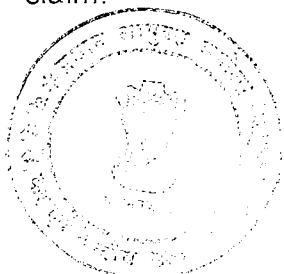
M/s. Shree Hari Industries, Survey No. 233, Plot No. ¼, Vikas Stove Road, Veraval (Shapar) Dist – Rajkot 360024 (hereinafter referred to as 'appellant') filed present appeal against Order-in-Original No. 02/REBATE/2019-20 dtd. 18.11.2019 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, CGST, Division – II, Rajkot (hereinafter referred to as "the adjudicating authority"). -

2. The brief facts of the case are that appellant had exported the Aluminum Utensils through ARE-1 under rebate claim with payment of duty of Rs. 1,36,916/- as procedure laid down in Notification No. 19/2004-CE(NT) dated 06.09.2004. Appellant had submitted the copy of ARE-1 along with copy of Invoice, Packing list and proof of duty payment to the jurisdictional Superintendent on 23.06.2017. The appellant had filed the refund claim of Rs. 1,36,916/- on 21.09.2017 supported by necessary documents. The department issued a query memo vide letter F.No. V/18-2571/Ref/2017 dated 20.10.2017 that original copy of ARE-1 is not attested by the Customs authority and Triplicate copy of ARE-1 is not submitted with refund claim. Accordingly, appellant had got back the original copy of ARE-1 and submitted to custom authority for attestation. Department vide letter F.No. V/18-2571/Ref/2017 dated 22.12.2017 returned the rebate claim.

2.1 The appellant resubmitted refund application on 26.08.2019 after receipt of original ARE-1 duly attested by the Customs authority. The adjudicating authority / refund sanctioning authority vide impugned order rejected the refund claim of Rs. 1,36,916/- on the ground of that the same is filed by the appellant beyond the time limit of one year.

3. Aggrieved, the Appellant has preferred the present appeal, inter alia, on the grounds that,

(i) The impugned order is a non-speaking order inasmuch as while passing the order, the adjudicating authority had not considered the main question of the case that what the relevant date to be considered as date of filing of rebate claim.



(ii) As per Rule 11E of Central Excise Act, 1944, any person claiming refund or any duty may make application for refund of such to the Assistant / Deputy Commissioner of Central Excise before expiry of one year for the relevant dated in such form accompanied by such documentary evidence. In present case, appellant has exported the goods under ARE-1 on 24.06.2017 i.e. Let Export Order date of shipping bill and file the rebate claim of such ARE-1 along with requisite documents on 21.09.2017 within stipulated time limit.

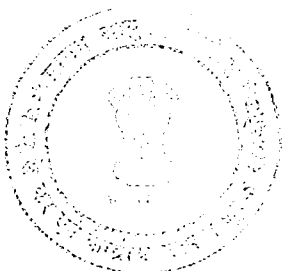
(iii) A query memo issued on 20.10.2017 that appellant has submitted the original ARE-1 is not attested by the Customs Authority and handover the same for the attestation of Custom Authority. Department have ignored the fact that duplicate copy of the ARE-1 submitted by the appellant was endorsed by the customs authority and returned the refund claim.

(iv) As regard to the non-submission of triplicate copy of ARE-1, the appellant had exported the goods under self-sealing from the factory and submitted the triplicate & quadruplicate copy of ARE-1 to the jurisdictional Superintendent along with copy of factory invoice, packing list and RO 23 Part-II as proof of duty payment. Thus, non-submission of Triplicate copy of ARE-1 does not arise.

(v) The appellant re-submitted the refund claim on 27.08.2019 after receipt of original ARE-1 duly endorsed by Custom Authority. Hence, the date of filing of the claim was 21.09.2017 in terms of Section 11B of Central Excise Act, 1944.

(vi) The appellant relied upon following decisions in support of their view:

- (i) UOI Vs. Suksha International & Nuten Gems & Anr – 1989 (39) ELT 303 (SC).
- (ii) CCE Ahmedabad Vs. Prananta Foods & Shreeji Colours Chemicals Industries – 2008 (233) ELT 387 (Tri.Ahmad)
- (iii) Goodyear India Ltd. Vs. CC, New Delhi – 2002 (150) ELT 331 (Del)
- (iv) CCE, Bhopal Vs. Chandigarh Tea Estate – 2001 (134) ELT 116 (Tri.Kol)
- (v) M/s. Angiolast Pvt. Ltd. Vs. CCE, Ahmedabad – 2010 (19) STR 838 (Tri.Ahmad)
- (vi) CCE Delhi-I Vs. Arya Export and Industries – 2005 (192) ELT 89 (Del)



4. Personal hearing in the matter was attended by Shri Chetan Dethariya, Chartered Accountant, who reiterated the grounds of appeal and requested to consider their written submission and allow the appeal on merit.

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal and the submissions made by the appellant. The issue to be decided in the present appeal is as to whether the impugned order rejecting refund claim is correct, legal and proper or otherwise.

6. Ongoing through the records, I find that appellant has exported the goods under ARE-1 on 24.06.2017 i.e. Let Export Order date of shipping bill and file the rebate claim of such ARE-1 along with requisite documents on 21.09.2017. A query memo issued on 20.10.2017 by the department that appellant has submitted the original ARE-1 is not attested by the Customs Authority and handover the same for the attestation of Custom Authority and thereafter, returned the claim. The appellant re-submitted the refund claim on 27.08.2019 after receipt of original ARE-1 duly endorsed by Custom Authority.

7. As per Section 11B of the Central Excise Act, 1944:

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or 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 the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act;



Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

Explanation - For the purposes of this section,-

(A) "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;

(B) "relevant date" means,-

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

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

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

7.1 As per Explanation to Section 11B of Central Excise Act, 1944, 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 the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B.

7.2 Rule 18 of the Rules of 2002 provides that where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification. The Notification dated 6-9-2004 has been issued by the Central Government in this behalf laying down in its Clause (2) the conditions and limitations for grant of rebate. Clause 3(b) of the notification provides that claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner. It is thus clear that the claim would be maintainable only when the original documents are produced.

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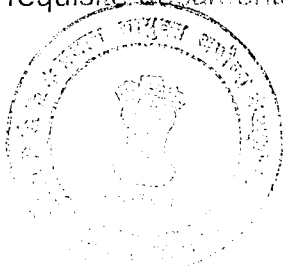
8. Further, the provisions of para 2.4 of Chapter 9 of C.B.E.C.'s Excise Manual of Supplementary Instructions are very clear which state that in case any document is not available for which Central Excise or Customs is accountable the claim may be received so that the claim is not hit by time limitation period. The same is reproduced below:

2.4 It may not be possible to scrutinize the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department. Consequently, submission of refund claim without supporting documents will not be allowed. Even if post or similar mode files the same, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case of non-availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted that the claimant is not in disadvantageous position with respect to limitation period.

(Emphasis supplied)

9. I find that in present case the appellant had filed refund claim along with requisite documents on 21.09.2017 within stipulated time limit. A query memo issued on 20.10.2017 that appellant has submitted the original ARE-1 is not attested by the Customs Authority and hand-over the same for the attestation of Custom Authority. A duplicate copy of the ARE-1 submitted by the appellant was endorsed by the customs authority; that the non-endorsement of original ARE-1 by the Customs authority was not a fault on appellant's part. The appellant re-submitted the refund claim on 27.08.2019 after receipt of original ARE-1 duly endorsed by Custom Authority. Hence, the date of filing of the claim should be taken as 21.09.2017 in terms of Section 11B of Central Excise Act, 1944 read with the provisions of para 2.4 of Chapter 9 of C.B.E.C.'s Excise Manual of Supplementary Instructions.

10. For my above view, I rely upon Order passed by a Division Bench of Hon'ble Gujarat High Court in Cosmonaut Chemicals, supra, while interpreting Section 11B of the Act of 1944, observed that a claim has to be accompanied by requisite documents in case of an assessee, who has exported duty paid goods,



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being copy of shipping bill duly endorsed by the Customs Authorities. It was held that if the Customs Authorities delay pering with a copy of shipping bill bearing necessary endorsement, an assessee cannot be put to disadvantage on the ground of limitation when the assessee is not in a position to make a claim without accompanying documents. The court further clarified that mitigating circumstance as flowing from the legislative scheme is one and one only viz., an assessee cannot be penalized, where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs Department. The legislative scheme does not provide for any other exception or mitigating factor and there can be no other circumstance under which a claimant would be entitled to prefer a claim beyond the statutorily prescribed period of limitation. Then, this would be delay occasioned owing to such reason and circumstance, which is beyond control of the claimant. Paras 20, 21 and 22 of the judgment read as under :-

20. Thus, considering the matter from any angle it becomes apparent that the interpretation placed by Revenue on provisions of section 11B of the Act read with paragraph No. 2.4 of the CBEC Manual cannot be accepted the same being contrary to the object and purpose of the scheme. It cannot be held that the petitioner was at fault in making the claim belatedly, because in fact the period of limitation has to be considered in light of availability of the requisite documents, i.e., from the said point of time.

21. The view adopted by the Revisional Authority that a departmental authority is bound by the prescribed period of limitation and cannot condone any delay also does not merit acceptance in light of what is stated hereinbefore. The Adjudicating Authority and the Revisional Authority have read the period of limitation divorced from sub-paragraph No. 2.4 of the CBEC Manual which has provided for a circumstance to mitigate the unwarranted hardship resulting from reading the provision of limitation in absolute terms. In other words, however limited, an exception has been carved out in cases where the delay has occurred due to circumstances beyond control of the claimant assessee. In other words, in a case where the so called delay is on account of the lapse on part of the Central Excise Department or the Customs Department.

22. It is necessary to state and clarify here that mitigating circumstance as flowing from the aforesaid legislative scheme is one and one only viz. where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs



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Department. The legislative scheme does not provide for any other exception or mitigating factor and in the circumstances on a conjoint reading of the provision and the instructions in the CBEC Manual there can be no other circumstance under which a claimant would be entitled to prefer a claim beyond the statutorily prescribed period of limitation."

11. I also rely upon Order passed by the Hon'ble Rajasthan High Court in the case of M/s. Gravita India Ltd. V. Union of India, supra, in which claim petition was dismissed as barred by limitation, having been filed beyond one year and the dismissal was sought to be supported by Section 113 of the Act of 1944, held that:

17. *"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".*

12. Thus, in view of the above settled case laws, I set aside the impugned order and allow the appeal.



13. अपीलकर्ता द्वारा दर्ज की गई अपील का निराकरण उपरोक्त शर्तों में किया जाता है।

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

Attested



(S.D. Sherah)

Superintendent

By ~~Handwritten~~

By Speed Post



To,

M/s. Shree Hari Industries,

Survey No. 203,

Plot No. 14,


Vikas Stave Road,

Veraval (Sihapar) Dis. - Rajkot 360024

Copy to:

1. The Principal Officer, Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & Central Excise Division-II, Rajkot
4. Guard File.

Guard file


(Gopi Nath) 21/5/2020
Commissioner (Appeals)

