



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

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> 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 :- DIN- 20200964SX000091.C8F7

क	अपील फाइल नम्बर Appeal File No	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/17/GDM/2020	2/Rebate/2019-20	10/01/2020

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

**KCH-EXCUS-000-APP-068-2020**

आदेश का दिनांक Date of Order:	24.09.2020	जारी करने की तारीख / Date of issue:	24.09.2020
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श्रीगोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri. Gopi Nath, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ मयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ मेवाकर/ वस्तु एवं सेवा कर,  
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूलित: /  
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 Appellant & Respondent :-

**M/s. Metenere Ltd., Survey No. 590, 591 & 593, Bhimasar, Anjar, District Kutch.**

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकार / 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) सामान्य शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलार्थ न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B के अंतर्गत एवं विनियम 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 से 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 ब्रजगण गण अपीलार्थ के अलावा शेष सभी अपीलार्थों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद-380016 को की जानी चाहिए। /

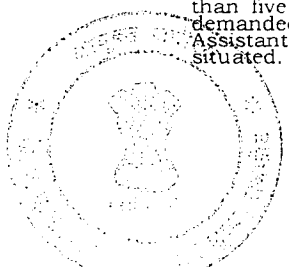
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए प्रपत्र EA-3 का 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 जुमाना, 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/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किमी भी मार्बजितक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्ट ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा। /

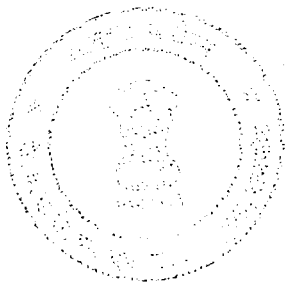
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund 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, विनियम अधिनियम, 1994 की धारा 86(1) के अंतर्गत मेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 जुमाना, 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/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किमी भी मार्बजितक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान 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 is 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/-



- (ii) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, मेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उनके 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 महायुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/मेवाकर, को अपीलिय 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.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलिय प्राधिकरण (सेस्टट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35EE के अंतर्गत, जो की विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत मेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलिय प्राधिकरण में अपील करने समय उत्पाद शुल्क/मेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि इस करोंड रुपय में अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं मेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
  - सेनवेट जमा की ली गई गलत राशि
  - सेनवेट 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 अपीलिय प्राधिकारी के समक्ष विचारार्थान 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 :
- amount determined under Section 11 D;
  - amount of erroneous Cenvat Credit taken;
  - 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 प्रथमपूरतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, विन मंत्रालय, राजस्व विभाग, चौथी मजिल, 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:
- यदि मान के किसी नुकसान के मामले में, जहां नुकसान किसी मान को किसी कारखाने से 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
  - भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिवेट) 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India:
  - 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.
  - मुनिश्चिन उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी कड़ी इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (सं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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.
  - उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रदान के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ 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.
  - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 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.
  - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस नथ्य के होने हुए भी की लिखा पत्री कार्य से बचने के लिए यथास्थिति अपीलिय नयाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers 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 lakh fee of Rs. 100/- for each.
  - 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 स्टिकिट 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-I in terms of the Court Fee Act,1975, as amended.
  - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलिय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित 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.
  - उच्च अपीलिय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbcc.gov.in](http://www.cbcc.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.cbcc.gov.in](http://www.cbcc.gov.in).



**:: ORDER-IN-APPEAL ::**

M/s. Metenere Ltd, Gandhidham (*herein after referred to as "Appellant"*) filed appeal No. V2/17/GDM/2020 against Order-in-Original No. 2/Rebate/2019-20 dated 10.1.2020 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, Central GST Anjar-Bhachau Division, Gandhidham Commissionerate (*hereinafter referred to as 'refund sanctioning authority'*).

2. The brief facts of the case are that the Appellant was engaged in the manufacture of excisable goods and was registered with Central Excise. The Appellant had filed rebate claim of Rs. 83,82,176/- before the refund sanctioning authority on 11.10.2019 under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 in respect of goods exported by them during the period from 2.3.2017 to 29.6.2017. The refund sanctioning authority, after following the principles of natural justice, rejected the rebate claim vide the impugned order on limitation by holding that rebate claim was filed beyond two years from date of export and hence, it was barred by limitation prescribed under Section 11B of the Central Excise Act, 1944.

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

(i) The impugned order was passed in violated of the principles of natural justice; that the impugned order has been passed without issuing any show cause notice or granting any opportunity of personal hearing before rejection of rebate claims; that it is a settled law that no adverse order can be passed against any person without affording opportunity of hearing to said person. Therefore, the impugned order deserves to be set aside on this ground alone.

(ii) That the refund sanctioning authority has not disputed about export of goods on payment of duty and all relevant documents were filed before the department at appropriate time. Therefore, there is not dispute about admissibility of claim on merits.

(iii) As regard rejection of claim on time bar, it is on record that while filing ARE-1, they had categorically declared therein about the export of goods under claim for rebate of duty. Once that was so, the department was required to sanction the same on its own without waiting for any application in some format; that there are two aspects about eligibility of a rebate claim (a)



admissibility of export under the provisions of Central Excise and (b) procedural requirement; that there is no dispute over the admissibility of rebate on the exports made by them; that being the substantial requirement, the claim could not be rejected on procedural ground; that even if procedure was not followed i.e. claim was not filed within one year, still the same could not be denied as the department cannot get benefit out of some technical/procedural lapse on the part of assessee.

4. Hearing in the matter was conducted in virtual mode through video conferencing with prior consent of the Appellant. Shri Rajesh Chhiber, Advocate appeared on behalf of the Appellant and reiterated the grounds of appeal and requested to allow their appeal.

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submission made by the Appellant at the time of hearing. The issue to be decided in the present appeal is whether the impugned order rejecting rebate claim on the grounds of limitation is correct, legal and proper or not.

6. On going through the records, I find that the Appellant had filed rebate claim in respect of goods exported by them on payment of duty. The refund sanctioning authority rejected the rebate claim on the ground of limitation by holding that rebate claim was filed beyond two years from date of export and hence, it was barred by limitation prescribed under Section 11B of the Central Excise Act, 1944.

7. I find that the Appellant had filed rebate claim under Section 11B of the Central Excise Act, 1944, which required that the claim should be filed within one year from the relevant date. The term 'relevant date' has been defined under Section 11B as under:


“(B) “relevant date” means, -

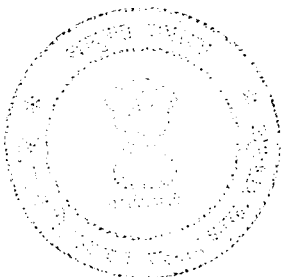
(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(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;”

  
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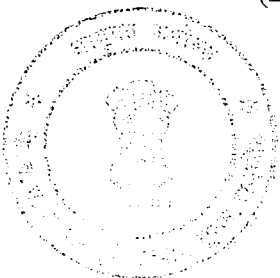
7.1 In view of above definition, relevant date in the present case was one year from the date of export. It is not under dispute that the Appellant had exported goods during the period from 2.3.2017 to 29.6.2017. Hence, the Appellant was required to file rebate claim within one year from date of export i.e. on or before 29.6.2018. However, the Appellant had filed rebate claim on 11.10.2019 i.e. after more than 2 years from the relevant date. Their claim was clearly barred by limitation prescribed under Section 11B of the Act. I, therefore, hold that the refund sanctioning authority correctly rejected their claim on limitation.

8. Regarding contention of the Appellant that the refund sanctioning authority had violated the principles of natural justice, I find that the refund sanctioning authority granted opportunity of personal hearing to the Appellant before deciding their rebate claim and Shri Rakesh Keshavlal Modi, authorized person of the Appellant also appeared for personal hearing on 4.12.2019 and submitted written submission as narrated in para 3 of the impugned order. I, therefore, discard this contention of the claimant as contrary to facts.

9. The Appellant has contended that eligibility of rebate claim on merit is not under dispute and non filing of claim within limitation period of one year should be considered as procedural lapse and that while filing ARE-1, they had declared therein about the export of goods under claim for rebate of duty; that the department was required to sanction the rebate on its own without waiting for any application in some format when export of goods was not under dispute. I do not agree with the contention of the Appellant. When any time limit is prescribed under the Act, then it has to be complied in letter and spirit as it is substantial requirement to be fulfilled. Further, Notification 19/2004-C.E. (N.T.) has prescribed detailed procedure to be followed for claiming rebate on export of goods. Hence, filing of ARE-1 and filing of rebate claim are different and the Appellant cannot get away by merely filing ARE-1. I rely on the decision rendered by the Hon'ble Delhi High Court in the case of Orient Micro Abrasives Ltd. reported in 2020(371) ELT 380 (Del.), wherein it has been held that,

“14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, the rebate claim of the petitioner was required to be filed within one year of the export of the goods.

15. In *Everest Flavours Ltd. v. Union of India* [2012 (282) E.L.T. 481 (Bom.)], the High Court of Bombay, speaking through Dr. D.Y. Chandrachud,



J. (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree.

16. ... ..

17. We are also unable to subscribe to the submission, vehemently urged by Mr. Sachdev, that the date of submission of the ARE-1, to the Customs Officer, ought to be treated as the date of filing of the rebate claim. "ARE-1" expands to "Application for Removal of Excisable Goods". The ARE-1 is, therefore, an application which accompanies the removal of the excisable goods, and its submission is necessarily anterior, in point of time, to the export of the goods. Indeed, this is apparent from Clauses 3(a)(vii), (xii), (xiv) and 3(b) of Notification 19/2004-C.E. (N.T.) (supra), which deal with the procedure for sealing of goods, examination thereof and presentation of rebate claim, and may be reproduced thus :-

"(3) Procedures :-

(a) Sealing of Goods and examination at the place of dispatch and export :-

(vii) The triplicate copy of application shall be -

(a) sent to the office with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(b) sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Interchange system of Customs;

(xii) In case of self-sealing, the said Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars -

(a) send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

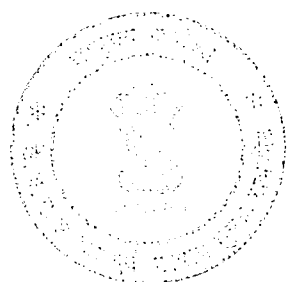
(b) send to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Interchange system of Customs;

(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export :

Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export.

(b) Presentation of claim for rebate to Central Excise

(i) 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;



(ii) 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, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

18. Clearly, the submission of the ARE-1 is anterior to the filing of the rebate claim and the date of submission of the said application cannot, therefore, be treated as the date of filing of the rebate claim. Mr. Sachdev was unable to draw our attention to any statutory provision, or judicial authority, enabling the date of submission of the ARE-1 application to be treated as the date of filing of the rebate claim.

19. Periods of limitation, stipulated in taxing statutes, are sacrosanct. It is settled, as far back as in *Cape Brandy Syndicate v. Inland Revenue Commissioners* (1921) 2 K.B. 403, thus :

"... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

20. Section 11B(1) of the Act read with the Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of the goods, where against rebate is claimed. There is no provision which permits relaxation of this stipulated one year time-limit.

21. We, therefore, find no reason to disturb the concurrent view of all three authorities below i.e. the AC, the Commissioner (Appeals) and the Revisionary Authority, that the rebate claim of the petitioner merited rejection, as it was barred by time.

(Emphasis supplied)

10. In view of above, I uphold the impugned order and reject the appeal.
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the Appellant stand disposed off in above terms.

(GOPI NATH)

Principal Commissioner(Appeals)

Attested

(V.T.SHAH)

(V.T.SHAH)  
Superintendent(Appeals)



By RPAD

To, M/s. Metenere Ltd, Survey No. 590,591 & 593, Bhimasar, Anjar, District Kutch.	सेवा में, मैसर्स मेटिनेरे लिमिटेड सर्वे न. 590,591,593, भीमासर, अंजार जिल्ला कच्छ ।
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प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अंजार भचाउ मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फाइल।

