



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 / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

| | | | |
|---|---|-----------------------------|------------------|
| क | अपील / फाइल संख्या / Appeal / File No. | मूल आदेश सं / O.I.O. No. | दिनांक / Date |
| | V2/225/RAJ/2017 | 76/R/AC/2016-17 | 14-03-2017 |

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

RAJ-EXCUS-000-APP-046-2018-19

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|------------------------------------|-------------------|--|-------------------|
| आदेश का दिनांक / Date of Order: | 24.04.2018 | जारी करने की तारीख / Date of issue: | 27.04.2018 |
|------------------------------------|-------------------|--|-------------------|

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

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

1. M/s. Anshul Exim P. Ltd., Plot No. G-2722-23, Kranti Gate Road GIDC Lodhika Metoda 360 021 , Dist : Rajkot

इस आदेश(अपील) से 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त 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 मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर 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 बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) 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, 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) नियमवली, 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 ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए 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, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी 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 सेवाकर की मांग ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए 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 fees 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) वित्त 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 For 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 वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा 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 दस करोड़ रुपए से 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) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/
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 को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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 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
(ii) 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 छुट (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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 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.
(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 संप्रेषण 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 साक्ष्य 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।
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.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने 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, not withstanding 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.
(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 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 as prescribed under Schedule-I 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 संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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. Anshul Exim Pvt. Ltd., Plot No. G-2722/2723, Kranti Gate Road, GIDC, Lodhika, Metoda-360 021, District-Rajkot (*hereinafter referred to as "the Appellant"*) has filed present appeal against Order-in-Original 76/R/AC/2016-17 dated 14.03.2017 (*hereinafter referred to as "the impugned order"*) passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (*hereinafter referred to as "the sanctioning authority"*).

2. The brief facts of the case are that the appellant filed, on 01.06.2016, five rebate claims under Rule 18 of the Central Excise Rules, 2002 (*hereinafter referred to as "the Rules"*) of duty paid on raw materials used in the manufacture of the exported goods, details thereof are as under:

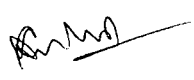
| Sr. No. | ARE-2 No. & Date | Date of shipped on Board | Last date for submission of claim |
|---------|-----------------------|--------------------------|-----------------------------------|
| 1 | 07/2015-16 23.06.2015 | 06.07.2015 | 05.07.2016 |
| 2 | 12/2015-16 16.08.2015 | 24.08.2015 | 23.08.2016 |
| 3 | 13/2015-16 23.08.2015 | 07.09.2015 | 06.09.2016 |
| 4 | 14/2015-16 29.08.2015 | 07.09.2015 | 06.09.2016 |
| 5 | 15/2015-16 02.09.2015 | 21.09.2015 | 20.09.2016 |

2.1 The appellant had filed above five rebate claims on 01.06.2016, but the same were returned by the sanctioning authority vide letter No. V.72(18)790/2016/Ref dated 29.08.2016 to the appellant stating that the rebate was claimed on gross quantity of raw material used in manufacture of exported goods, including the recoverable waste, which was not admissible and asked them to resubmit after necessary rectification. The appellant resubmitted the rebate claims on 22.09.2016 after rectifying the defects. Show Cause Notice No. V.84(18)1976/2016/Ref dated 02.12.2016 was issued on ground that

the above said rebate claims filed on 22.09.2016 beyond the time limit of one year in terms of Section 11B of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), which was adjudicated by the sanctioning authority vide the impugned order wherein he rejected all five rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant preferred present appeal, *inter-alia*, on the following grounds:

3.1 The department vide letter dated 29.08.2016 had admitted that all 5 rebate claims were filed on 01.06.2016 by them i.e. within one year from the relevant dates stated in Column No. 6 of the Table given in the impugned SCN, hence it cannot be rejected on the ground of time bar.

3.2 The sanctioning authority erred in relying upon Para 2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions, 2005 inasmuch as it is applicable to only those cases where refund claim is filed without requisite documents and not for any other reason. However, it is evident from the letter dated 29.08.2016 of the Division that the reason behind returning the claims was not absence of documents and therefore, reliance placed on CBEC's Excise Manual of Supplementary Instructions, 2005 for rejecting the rebate claims by citing time bar is completely misplaced. 

3.3 Reliance placed by the sanctioning authority on decision in case of Jain Grani Marmo P. Ltd. reported as 2014 (314) ELT 936 (G.O.I.) is also misplaced inasmuch as the appellant, unlike in that case, has not withdrawn the original for removing deficiency and decisions in case of Indian Oil Corporation Ltd. reported as 2016 (342) ELT 48 (Gu) and Vikram Knittex Pvt. Ltd. reported as 2014-TIOL-333-HC-AHM-CX are also misplaced inasmuch as the said decisions do not deal with submission, return and re-submission of

refund claim on the ground involving calculation of refund amount.

3.4 The appellant placed reliance on decision of the Hon'ble CESTAT in case of Balmer Lawrie & Co. Ltd. reported as 2015 (315) ELT 100 (Tri. Kol) wherein it is held that claim refiled after removal of defects cannot be rejected on the ground of time bar and the original date when refund claim was filed for the first time must be reckoned as date of filing of refund.

3.5 The sanctioning authority was required to sanction whatever amount admissible to the appellant. The letter dated 29.08.2016 was issued even after expiry of time limit for submission of original claim, in respect of rebate claims mentioned at Sr. No. 2 and Sr. No. 3 of the table shown in the impugned SCN and hence, the appellant could not have complied with the same in any eventuality, therefore, rejection of rebate, ^{is} liable to be quashed and set aside.

4. Personal hearing in the matter was attended to by Shri Vikas Mehta, Consultant who reiterated the grounds of appeal and submitted that all 5 claims were originally made in time; that department instead of issuing SCN returned claims on 29.08.2016 (received by them in 1st/2nd week of September, 2016), they rectified defects and re-submitted on 22.09.2016 i.e. within 2 weeks of receipt from the department; that holding it time barred is not correct, legal and proper in light of CESTAT decision reported as 2015 (315) ELT 100 (Tri. Kol) in the case of Balmer Lawrie & Co. Ltd.; that CESTAT also decided similarly in another case of Siddhanatha Textiles Pvt. Ltd. reported as 2010-TIOL-136-CESTAT-MAD.

Findings:

5. I have carefully gone through the facts of the case, impugned order and submissions made by the appellant in grounds of appeal, written as well oral submissions during the course of personal

hearing. The issue to be decided in the present appeal is that whether the impugned order rejecting five rebate claims filed by the appellant on the ground of limitation as provided under Section 11B of the Act, is correct or not?

6. I find that the appellant had filed all five claims initially on 01.06.2016 for rebate of duty paid on raw materials used in manufacture of goods exported on 06.07.2015; 24.08.2015; 07.09.2015; 07.09.2015 and 21.09.2015 vide ARE-2 No. (i) 07/2015-16 23.06.2015; (ii) 12/2015-16 dated 16.08.2015; (iii) 13/2015-16 dated 23.08.2015; (iv) 14/2015-16 dated 29.08.2015 and (v) 15/2015-16 dated 02.09.2015 respectively. However, the said rebate claims were subsequently returned to appellant for removal of defects vide letter No. V.72(18)790/2016/Ref dated 29.08.2016 of the Department. The appellant had resubmitted all rebate claims on 22.09.2016 after rectifying the defects in less than a month.

6.1 I find that the appellant had originally filed all 5 rebate claims on 01.06.2016 for rebate of duty paid on raw materials used in manufacture of exported goods within the time stipulated under Section 11B of the Act. In the instant case, the sanctioning authority vide letter dated 29.08.2016 directed appellant for rectification of quantity of raw materials used in the manufacture of goods exported, which were corrected and rebate claims were re-submitted on 22.09.2016. In the face of these facts, it cannot be said that the refund claims were filed on 22.09.2016 or require to be treated as having been filed on 22.09.2016. Hence, I am of the considered view that 01.06.2016 is required to be considered as date of filing of rebate claims even if rebate claims were resubmitted on 22.09.2016 after correction as desired by the sanctioning authority. Therefore, I hold that appellant has filed all these rebate claims in time as stipulated under Section 11B of the Central Excise Act, 1944 and rebate claims cannot be rejected on the ground of time bar.

6.2 My view is strengthened by the final order of Hon'ble CESTAT in the case of Balmer Lawrie & Co. Ltd. reported as 2015 (315) ELT 100 (Tri. Kolkata). Para 5.1 of the said judgment is reproduced as under:-

"5.1 Now, reverting to the dispute whether the refund claim is filed beyond the period of one year from the relevant date, we find that the Applicant had filed the refund claim initially on 11-12-2002, for an amount of Rs. 9,06,932/- involving the period, 13-2-2001 to 30-4-2002. The said refund claim was subsequently returned to the Appellant for removal of defects by the Assistant Commissioner on 5-3-2003. Accordingly, the defects were removed and the refund claim was again submitted on 12-6-2003. It is the contention of the Appellant that the date of refund claim be considered as 11th December, 2002, whereas the Revenue submits that it was complete in all respects, when filed on 12th June, 2003, hence that should be taken as the filing date. In rejecting the refund claim as time-barred, both the authorities below had observed that the date on which refund claim was filed only after removal of defects, be considered as the date of filing of the refund claim. We do not find force in the observation/reasoning of the Department, inasmuch as the refund of duty was sought, after having been paid in excess at the time of removal/clearance of the goods from the factory and the same was filed on 11th Dec., 2012. The cause of action arose on the date of payment of duty, and the claim had been filed within the time stipulated under Section 11B of the CEA, 1944, as prescribed on 11-12-2002. The mandate of sub-section (2) of Section 11B of CEA, 1944 is that the Asst. Commissioner should accept it



in full or in part or may reject it. However, instead of rejection of the claim, it was directed by the Department on 5-3-2003, to file more documents/removal of defects, which the Appellant had carried out the said direction by removing the defects. In such circumstances, it cannot be said that the refund claim was filed for the first time on 12th June, 2003 and hence, barred by limitation. In our view, the date of claiming the refund of duty paid in excess, be the date when the claim was launched with the department i.e. on 11th December, 2002."

6.3 I also rely on Para 9 of the order of the Hon'ble CESTAT, Hyderabad in case of Abhedya Industries Ltd. reported as 2016 (340) ELT 398 (Tri. Hyd.), which is reproduced as under:

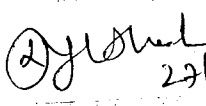
"9. Coming to the appeal filed by Revenue, we find that their grievance is with regard to Commissioner (Appeals) setting aside the finding of original authority with regard to time-bar and unjust enrichment. In this regard, we are of the view that the Commissioner has correctly relied upon settled case laws which have laid down that the date of initial submission of the refund claim shall be the actual date of submission for the purpose of limitation under Section 11B of Central Excise Act, 1944 and not the date of resubmission. With regard to the second issue of unjust enrichment, the said appellate authority's order clearly indicates that he has perused copies of invoices and other documents, declaration of Ravi Foods that they had not availed Cenvat credit endorsed by jurisdictional Superintendent, ledger extracts of the appellants and Ravi Foods, etc.; and has found payments were made only to the extent of value of goods excluding duty amount involved and that in each invoice duty amount has been deducted from the gross value to arrive at the

amounts payable. We, therefore, are of the opinion that the appellate authority's decision with regard to unjust enrichment and time-bar is fair and judicious."

7. In view of above, I set aside the impugned order and allow the appeal with consequential benefit.

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

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

हस्ताक्षरित,

 23/04/2018
 आयुक्त (अपील्स)
 (कुमार संतोष)
 24/4/2018

BY R.P. A.D.

To,

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|--|--|
| M/s. Anshul Exim Pvt. Ltd., Plot No. G-2722/2723, Kranti Gate Road, GIDC, Lodhika, Metoda-360 021, District-Rajkot. | मेसर्स अंशुल एक्सिम प्रा. ली., प्लॉट नो. जी-२७२२/२७२३, क्रांति गेट रोड, जीआईडीसी, लोधीका, मेटोडा-३६० ०२१, डिस्ट्रिक्ट-राजकोट. |
|--|--|

Copy for information and necessary action to:

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for favour of kind information.
2. The Commissioner, CGST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, CGST & Central Excise Division-II, Rajkot.
4. Guard File.

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