

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 10141 of 2019- DB

[Arising out of OIA-CCESA-AUDIT-SRT-VK-03-2018-19 dated 31/10/2018 passed by
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-
I(Appeal)]

Usv Ltd

H/16a,17,18,20,21 And
E22 Oidc Mahatma Gandhi Udyog Nagar Dabhel
DAMAN
GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T.-Daman

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi
Gujarat- 396191

.....Respondent

APPEARANCE:

Mrs. Nisha Bineesh, Advocate for the Appellant
Shri G. Kirupanandan, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL ORDER NO. A / 11100 /2022

DATE OF HEARING: 14.07.2022

DATE OF DECISION: 07.09.2022

RAMESH NAIR

The brief facts of the case are that the appellant is a manufacturer of medicaments falling under chapter 30 of Central Excise Tariff Act, 1985 and exporting their products under bond and also clearing excisable goods for home consumption. The appellant had filed a refund claim for Rs. 1,69,17,278/- on 05.06.2013 vide letter No. USV/CEX/Refund/01/2013-14 under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification NO. 27/2012-CE (NT) dated 18.06.2012, in respect of Cenvat credit remained to

be utilized on account of exports of excisable goods under bond procedure during the period from April 2012 to June 2012. The adjudicating authority found that the refund claim amounting to Rs.1,44,84,747/- is time barred for the period from 01.04.2012 to 05.06.2012 and therefore, the show cause notice F. No. V/18-08/13-14/R dated 31.12.2003 was issued to the appellant and after following the process of natural justice the said claim was rejected vide the order in original as time barred in view of provisions of Rule 5 of Cenvat Credit Rules, 2004 read with Section 11B of Central Excise Act, 1944. Being aggrieved with the above order in original, the appellant filed appeal before the Commissioner (Appeals) who vide impugned order dated 31.10.2018 rejected the appeal. Therefore, the present appeal filed by the appellant.

2. Mrs. Nisha Bineesh, Learned Counsel appearing on behalf of the appellant submits that in this case no time limit is prescribed under Rule 5 of Cenvat credit Rules, 2004 for filing refund and time limit prescribed under Section 11B of Central Excise Act 1944, is not applicable. She placed reliance on the following judgments:

- Tata Motors Ltd vs. CCE, - 2012 (284) ELT 583 (Tri-Kol),
- Amdocs Business Services Pvt. LTD vs. CC.Ex., - 2013 (31) S.T.R 496 (Tri-Bang).
- Quality BPO Services Pvt. Ltd vs. CST, - 2015 (39) S.T.R. 230 9 (Tri-Ahmd).
- The Bombay Dyeing & Mfg Co. Ltd vs. C..C.Ex. - 2015 (315) E.L.T. 312 (Tri.-Mumbai)
- Commissioner Of C. Ex. & Customs, Surat-I vs. Swagat Synthetics 2008 (232) E.L.T. 413 (Guj.)
- STI vs. CCE - 2009 (236) E.L.T 248 (MP).
- Global Energy Food Industries vs. Commissioner Of C. Ex., Ahmedabad - 2010 (262) E.L.T. 627 (Tri. - Ahmd.)
- Elcomponics Sales Pvt. Ltd. vs. Commissioner Of Central Excise, Noida - 2012 (279) E.L..T. 280 (Tri. - Del.).
- Deepak Spinners vs. CCE, - 2014(302) [E.L.T](#) 132 (Tri-Del.).

- CCE vs. JCT Ltd. - 2013 (296) 426 (Tri-Del).
- Good Year India Ltd. vs. C.C. Ex, Delhi - 2015 (326) 340 (Tri-Del).
- Comsol Energy Pvt. Ltd vs. State Of Gujarat - 2021 (55) G.S.T.L. 390 (Guj).
- Sun Pharmaceutical Industries Ltd vs. Commissioner Of Central Excise and Service Tax - 2022-TIOL-578-CESTAT-AHM).
- Commissioner of C. E, Indore vs. K.S. Oils Ltd.- 2017 (52) S.T.R. 261 (Tri.-Del.)

2.1 She further submits that the provisions of Rule 57 F of erstwhile Central Excise Rules, 1944 is para materia with Rule 5 of Cenvat credit Rule 2004, and in respect of the said old rule the Hon'ble Gujarat High Court in the case of Commissioner of C. Ex. & Customs, Surat –I Vs. Swagat Synthetics 2008 (232) ELT 413 (Guj.) held that the time limit under Section 11B is not applicable. She further submits that even if the limitation is applicable, it is a procedural aspect. which shall not come in the way of substantive law granting justifiable relief. In support, she placed reliance on the decision of Atma Steel vs. Collector 1984 (17) ELT 331. She also placed reliance in the case of Hindustan Motor Ltd. vs. Central Excise, Calcutta reported at 2008 (228) E.L.T. 133 (Tri. - Kolkata).

2.2 She further submits that according to Clause 2(a) of Notification No. 27/2012-CE (NT) dated 18.06.2012 issued under rule 5 of Cenvat credit Rules, 2004 a manufacturer or provider of output service shall not file more than one refund claim under Rule for every quarter and it further says that a person exporting goods and services simultaneously, may submit two refund claim one in respect of goods exported and the other in respect of export services every quarter without mentioning the time limit. Going by this provision of law it can be interpreted that the refund claim can be filed at the end of each quarter without time bar. Accordingly, relevant date under

Section 11B (5) (b) (a) (i) of Central Excise Act, 1944, has no applicable in such cases.

3. Shri G. Kirupanandan, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that there is an explicit provision under Notification No. 27/2012- CE (NT) dated 18.06.2012 under para 3(b) that refund claim under this Notification shall be filed by the claimant before the expiry of the period specified in Section 11B of the Central Excise Act, 1944. Therefore, the time limit in terms of Section 11B is mandatory even for the refund under Rule 5 of Cenvat credit Rules, 2004. He placed reliance on the following judgments:

- Rangdhara Polymers vs. Commissioner of C.Ex., Ahmedabad-II- 2022 (379) ELT 382 (Tri. -Ahmd.)
- Commissioner of C.Ex., Coimbatore Vs. Engineering (i) Ltd.- 2012 (281) ELT 185 (Mad)
- Banswara Syntex Ltd. Vs. Commissioner of C. Ex., Jaipur-II-2017 (345) ELT 547 (Tri-Del.)
- Eagle Flask Industries Ltd., Vs. Commissioner of C. Ex., Pune- 2004 (171) ELT. 296 (S.C).

4. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present case the limited issue to be decided is that whether the refund claim under Rule 5 filed by the appellant on 05.06.2013 for the quarter April, 2012 to June, 2012 is time bar or otherwise. In terms of Rule 5 read with Notification No. 27/2012- CE (NT) dated 18.06.2012, an assessee is required to file one claim for each quarter that is at the end of the quarter. It is also provided under

Notification No. 27/2012-CE (NT) 18.06.2012 in para 3(b) regarding the time limit which reads as under:

"3(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944."

From the above it is clear that the time limit prescribed under Section 11B is clearly applicable in respect of the refund governed under Rule 5 of Cenvat credit Rules, 2004 read with Notification No. 27/2012-CE. However, the condition provided for filing the refund is an assessee has to file one refund claim at the end of the quarter for which refund is sought for. In the present case for the period April, 2012 to June, 2007, the refund claim has to be filed after completion of the quarter i.e in the month of July, 2012. In this case admittedly the refund claim was filed on 05.06.2013. It is clearly established that the refund claim was filed within 1 year from the due date even if it is taken as 1st July, 2012. Accordingly, in our considered view the refund was filed well within the time limit of 1 year as prescribed under Section 11B of Central Excise Act, 1944. This issue has been considered in the following judgments:

- Suretex Prophylactics India P. Ltd. – 2020 (373) ELT 481 (Kar.)

"13. In the instant case, the appellant has obtained registration under the provisions of Finance Act, 1994 in the category of service provider as "scientific and technical consultancy services". As the entire taxable services rendered by the appellant for exporting outside India and on account of appellant not having any domestic service tax liability, the input service credit availed by it on the taxable input services, received by it remained unutilized. Hence, appellant sought for refund of this unutilized input credit under Rule 5 of CENVAT Credit Rules, 2004 by submitting 16 refund claims. Said applications came to be rejected as not having been filed within the limitation prescribed under Section 11B of the Central Excise Act. While answering substantial questions of law (1), (3) & (4) hereinabove, we have already held that provisions of Section 11B of Central Excise Act would be applicable though Section 11B of the Act does not cover refund of Cenvat credit, Notification No. 5/2006 makes it explicitly clear that for the

purpose of relevant date for computing one year prescribed under Section 11B, it has to be determined by applying Rule 5 of Cenvat Credit Rules, 2004, necessarily the refund claims ought to have been filed within one year from the relevant date as specified in Section 11B. In other words, time-limit has to be computed from the last date of the last month of the quarter which would be the relevant date for the purposes of examining if the claim is filed within the limitation prescribed under Section 11B or otherwise. The details of the refund claims insofar as it relates to 12 claims was on 3-1-2014 had been filed beyond one year from the last date of the last month of the quarters and as such, they were clearly time-barred. Insofar as remaining 4 claims, matter has been remanded to the original authority, against which there is no appeal by the revenue. Hence, we answer the substantial question of law No. 2 that Tribunal was right in holding that the "relevant date for computation of time-limit will be the end of the quarter" in which FIRC's are received as per the extant Notification No. 27/2012-C.E. (N.T.), dated 18-6-2012."

- Poona Brush Company operative Ltd.-2018 363 ELT 678 (Tri-Mum.)

"4. *The claims for refund of Cenvat credit is covered by Notification No. 27/2012-C.E. (N.T.), dated 18th June, 2012. The said procedure, though referring to Section 11B of Central Excise Act, 1944, has not elaborated any further application of the 'relevant date'. It is now well-settled that, the claim for each quarter being restricted to one, the relevant date should be taken to be the last date of the quarter during which the exports have taken place. It is, therefore, apparent that the lower authorities have adopted an incorrect 'relevant date' to the detriment of the appellant. This must be remedial.*

5. *To enable such an exercise, the impugned order is set aside and the refund application restored to the original authority for deciding afresh on the eligibility to refund considering the application to have been filed within the period of limitation. Appeal is accordingly disposed of."*

- Commissioner of Central Excise Pune- I vs. S.G. Analitics P .Ltd- 2016 45 STR 131 (T- Mum.)

"5. *Turning to the issue of bar of limitation of time, the procedure laid down in the notification restricts filing of claims to only once in every quarter. It is also settled law that limitation will become operative only with reference to date of FIRC. Harmonious reading of both these would extend the relevant date to be the last date of the quarter in which the FIRCs were received. Learned Authorised Representative placed reliance on the narrow definition of 'export' in the Export of Service Rules which is intended to provide*

exemption from tax on output services that are exported. Performance of the service and receiving consideration in convertible foreign currency are sufficient to secure that privilege. Refund under Cenvat Credit Rules, 2004, mandate production of FIRC's as proof evidence of receipt of foreign convertible currency. Date of export would be an impractical deadline to compute the permissible period for seeking refund. Hence, the settled law relating to the date of issue of FIRC's being acceptable for compliance to the procedure laid down in Notification No. 27/2012-C.E. (N.T.). The restrictions imposed on filing of refund claim cannot be further restricted by computing the deadline from the date of issue of FIRC's. Accordingly, there is no flaw in the findings of the first appellate authority that last date of quarter in which the FIRC's were issued should be the relevant date for computing the period within which the refund should be sought."

- John Kells BPO Solutions India P. Ltd vs. Commissioner of C. Ex (S.C) Gurgaon- 2016 43 STR 473 (Tri-Chandigarh).

"6. *On careful consideration of the submissions both the sides, I find that under Rule 5 of the Cenvat Credit Rules, 2004, the refund claim is required to be filed once in a quarter i.e. during the pendency to the quarterly if export has been completed, in that case also refund claims required to be filed within one year of the last date of the quarter. In this case, only one refund claim is required to be filed for the quarter, in that case, the relevant date is the last date of the quarter. In this case, for the quarter January, 2008 to March, 2008 the refund claim has been filed on 30-3-2009, which is within one year of the last date of quarter. Further, for the refund claim pertaining to October, 2008 to December, 2008, the refund claim has been filed on 30-11-2009 which is also within one year of the date of end of quarter. In that circumstances the refund claims filed by the appellant are within time as held by this Tribunal in case laws referred in Para 3 hereinabove, therefore refund claims cannot be rejected as time barred. With these observations, the impugned orders are set aside and the appeals are allowed with consequently relief, if any."*

From the above judgments, it can be seen that a consistent view has been taken by various benches that in respect of refund under Rule 5 wherein it is provided to file a refund claim for each quarter, the period of limitation shall be reckoned from the end of the quarter. In the present case the quarter ends on 30 June, 2012 from which the limitation prescribed under Section 11B expires on 30 June, 2013, whereas admittedly the refund claim for the quarter April, 2012 to June, 2012 was filed on 05.06.2013, which is well

within the stipulated time limit of 1 year. Therefore, the refund in the instant case is clearly not time bar. Hence, both the Lower Authorities have erred in holding that the refund claim of the appellant is time bar.

5. Accordingly, the impugned order is set aside, appeal is allowed with consequential relief.

(Pronounced in the open Court on 07.09.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)