



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CENTRAL EXCISE APPEAL NO.1/2024

Inventys Research Co. Pvt. Ltd.
K-38, Five Star Industrial Area,
MIDC, Butibori, Nagpur, through
Dy. General Manager,
Mr. H. N. Holennavar

...APPELLANT

..V E R S U S..

The Commissioner of Central Tax
and Central Excise, Nagpur GST Bhavan,
Civil Lines, Telangkhedi Road, Nagpur-01

...RESPONDENT

Mr. Y. Patki with Mr. V. S. Uberoi, Advocates for appellant.
Mr. S N. Bhattad, Advocate for respondent.

CORAM:- ANIL L. PANSARE AND NIVEDITA P. MEHTA, JJ.

DATE OF RESERVING THE JUDGMENT : 17.01.2026

DATE OF PRONOUNCING THE JUDGMENT : 23.01.2026

JUDGMENT (Per: Anil L. Pansare, J.)

Heard Mr. Y. Patki with Mr. V. S. Uberoi, learned counsel
for appellant and Mr. S N. Bhattad, learned counsel for respondent.

2. The appeal has been admitted on following substantial
question of law:

“(a) Whether in the facts and circumstances of the case and in law, the CESTAT was correct in holding that refund claim of cenvat credit pertaining to deemed export of goods under rule 5 of the Credit Rules for the quarter October to December, 2009 is hit by the bar of limitation under Section 11B of the Act?”

3. Appellant is a private limited company and is 100% Export Oriented Unit (“EOU”). During the period from October, 2009 to

September, 2010, appellant supplied goods to another 100% EOU namely Hikal Ltd. The appellant on 17.03.2011 filed application under Rule 5 of the Central Credit Rules, 2004 (“Credit Rules”) for refund of unutilized cenvat credit, in following manner.

Refund for the Quarter	Amount (Rs.)
October to December 2009	34,51,586/-
January to March 2010	7,37,880/-
April to June 2010	18,88,778/-
July to September 2010	2,39,512/-

4. The refund for the quarter, October to December, 2009 was disallowed having been filed beyond limitation, whereas refund for other quarters was allowed. The appellate authority, taking aid of Section 11B of the Central Excise Act, 1944 (“Act of 1944”), held that the application filed under Rule 5 of the Credit Rules for the quarter October, 2009 to December, 2009, was filed beyond the period of limitation.

5. The Appellate Tribunal, taking aid of the judgment of its Larger Bench in the case of *Span Infotech (India) Pvt. Ltd. [2018 (12) GSTL 200 (Tri.-LB)]*, held that relevant date in terms of Section 11B of the Act of 1944, will be the last day of the quarter for which refund is claimed. In the present case, refund was claimed for the quarter ending December, 2009 and, therefore, limitation commenced from last date of the said quarter i.e. 31.12.2009.

6. Section 11B provides a period of one year from the relevant date to make an application for refund. Explanation (b) of clause (B) to Section 11B provides for definition of 'Relevant Date', which reads thus:

"(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;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;

(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of

appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction; (f) in any other case, the date of payment of duty.”

7. Argument is that since the appellant company is 100% EOU and since the goods were supplied to another 100% EOU, its case is not covered under any of the clauses of sub clause (B) of Section 11B. This position has been not disputed by the respondent.

8. Argument of respondent is that the relevant date, in such case will have to be decided based on the notification issued by the Central Government under Rule 5 of the Cenvat Credit Rules, 2002. At the relevant time, notification issued on 01.03.2002 was in place. The procedure for refund of Cenvat Credit is prescribed in the notification. Clause (2) provides that the EOU can submit/claim refund for each calendar month. Clause (6) provides that application seeking refund should be filed before expiry of period specified in Section 11B of the Act of 1944.

9. Thus, the procedure then existing for claiming refund enabled EOU to claim refund for each calendar month, meaning thereby that appellant could have claimed refund for unutilized input credit services within one month from December 2009, rather within one month for each calendar month. Thus, the claim of refund is relatable to the last day of preceding month or at the most preceding quarter for which the refund is claimed.

10. In the present case, refund is claimed for the quarter from October, 2009 to December, 2009. Last date of quarter is 31.12.2009. The petitioner could have claimed refund within one month therefrom. If for some reason, the refund is not claimed, the same can be claimed in extended period. The extended period for filing refund as stipulated in Section 11B of the Act of 1944 will have to be considered on the touchstone of notification prescribing procedure for claiming refund. In that sense, we find that relevant date for the purpose of Section 11B will be the last day of period for which refund is claimed.

11. Learned counsel for the appellant submits that when a statutory provision does not prescribe a time period, the Court may not read limitation in it. In such cases, the concept of reasonable period of time will be applicable and what is reasonable period of time would depend on the facts of each goods. In support, he has relied upon the judgment of the Punjab and Haryana High Court in Malwa Industries Ltd. Vs. Union of India; [2018 (361) E.L.T. 81 (P&H)] as also of the Supreme Court in Commissioner of C.Ex. Ahmedabad Vs. Gujarat Ambuja Exports Ltd. [2016 (338) E.L.T. 481 (SC)]. Argument is that application filed in March, 2011 can be said to be application made within reasonable time.

12. We are not impressed with the argument. As stated earlier, application for refund could have been filed in the first month

immediately after expiry of quarter for which refund was claimed. Thus, the earliest possible opportunity available to the appellant was to file refund in January, 2010, failing which the concept of extended period will come into play. The procedure then existing had a provision that the application for refund of input credit should be made within the time stipulated under Section 11B of the Act of 1944. Undisputedly, Section 11B provides for period of one year from relevant date which, in our view, is more than a reasonable time. The relevant date, in the present case, will be 31.12.2009. The period of one year will conclude by 31.12.2010. The application is filed in March, 2011. The same is, therefore, barred by limitation. Appellate Tribunal has correctly held that refund claimed on cenvat credit pertaining to deemed export of goods under Rule 5 of the Credit Rules for the quarter October to December, 2009 is hit by bar of limitation under Section 11B of the Act of 1944. The substantial question of law is accordingly answered in the affirmative.

13. Having said so, there is no merit in the appeal. The appeal is accordingly dismissed.

(Nivedita P. Mehta, J.)

(Anil L. Pansare, J.)

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