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UNION OF INDIA & ORS.

v.

UTTAM STEEL LTD.

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(Civil Appeal No. 7449 of 2004)

MAY 05, 2015

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

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Central Excise Act, 1944 – s. 11B – Claim for refund of duty – Denial of – Barred by limitation – Assessee engaged in manufacture and export – Claims for rebate – Filed beyond the period of six months from the date of shipment u/s. 11B – Subsequently, s. 11B was amended on 12.5.2000 where the period of six months was substituted by a period of one year – Application of amended provision – Held: Effect of the amendment of s. 11B is that all claims for rebate pending on this date would be governed by a period of one year from the date of shipment and not six months – However, claim for rebate should not be made beyond the original period of six months – On facts, claims for rebate were made beyond the original period of six months, thus, assessee cannot avail of the extended period of one year on the subsequent amendment to s. 11B – Central Excise Rules – rr. 12, 13.

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Allowing the appeal, the Court

HELD: 1.1 A period of limitation being procedural or adjectival law would ordinarily be retrospective in nature. This, however, is with one proviso super added which is that the claim made under the amended provision should not itself have been a dead claim in the sense that it was time barred before an Amending

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Act with a larger period of limitation comes into force. [Para 10] [776-G-H; 777-A]

1.2 The effect of the amendment of Section 11B of the Central Excise Act, 1944 on 12th May, 2000 is that all claims for rebate pending on this date would be governed by a period of one year from the date of shipment and not six months. This, however, is subject to the rider that the claim for rebate should not be made beyond the original period of six months. On facts, since the claims for rebate were made beyond the original period of six months, the respondents cannot avail of the extended period of one year on the subsequent amendment to Section 11B. All claims for rebate/refund have to be made only u/s.11B with one exception-where a statute is struck down as unconstitutional. Further, the limitation period of six months has to be strictly applied. [Para 11] [779-D-E; 781-E-F]

1.3 It is clear from Section 11B (2) proviso (a) that a rebate of duty of excise on excisable goods exported out of India would be covered by the said provision. A reading of ****Mafatlal Industries* **case would also show that such claims for rebate can only be made under Section 11B within the period of limitation stated therefor. This being the case, the argument based on Rule 12 would have to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B. Equally, the argument that on a bond being provided under Rule 13, the goods would have been exported without any problem of limitation would not hold as the exporter in the instant case chose the route under Rule 12 which, is something that can only be done if the application for rebate had been made within six months. [Para 13] [787-H; 788-A-D]**

Mafatlal Industries Ltd. v. Union of India* **1996 (10) Suppl. SCR 585: (1997) 5 SCC 536 – relied on.

S.S. Gadgil v. Lal and Company **AIR 1965 S.C. 171: 1964 SCR 72;** *J.P. Jani, Income Tax Officer v. Induprasad Devshanker Bhatt* **AIR 1969 SC 778 : 1969 SCR 714;** *New India Insurance Co. Ltd. v. Shanti Misra* **1976 (2) SCR 266 : (1975) 2 SCC 840;** *T. Kaliamurthi v. Five Gori Thaikkal Wakf* **2008 (11) SCR 758 : (2008) 9 SCC 306;** *Thirumalai Chemicals Ltd. v. Union of India* **2011 (4) SCR 838: (2011) 6 SCC 739 – referred to.**

Case Law Reference

1964 SCR 72	**Referred to.**	**Para 10**
1969 SCR 714	**Referred to.**	**Para 10**
1976 (2) SCR 266	**Referred to.**	**Para 10**
2008 (11) SCR 758	**Referred to.**	**Para 10**
2011 (4) SCR 838	**Referred to.**	**Para 10**
1996 (10) Suppl. SCR 585	**Relied on**	**Para 11, 13**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7449 of 2004.

From the Judgment and Order dated 12.08.2003 of the High Court of Judicature at Bombay in Writ Petition No. 557 of 2003.

Pinky Anand, ASG, Ritesh Kumar, K. Subba Rao, B. Krishna Prasad for the Appellants.

S. K. Bagaria (A.C.), K. A. Singh, Prity Kunwar, George Thomas, Ejaz Maqbool for the Respondent.

The Judgment of the Court was delivered by A

R.F. NARIMAN, J. 1. The respondent herein was engaged in the manufacture and export of steel products. They exported galvanized corrugated sheets. The goods were shipped on board on 25.5.1999 and 10.6.1999 respectively B in two lots. As per the law prevailing at the relevant time, the respondent had to file claims for rebate within six months from the date of shipment i.e. on or before 20.11.1999 and 10.12.1999 respectively. However, claims for rebate on both counts were filed only on 28.12.1999 beyond the period of C six months under Section 11B of the Central Excise Act, 1944 as it stood at the relevant time.

2. On these facts, a show cause notice dated 7.3.2001 was issued and by an order dated 4.10.2001, the Deputy D Commissioner (Rebate) rejected the claim for rebate on the ground that they were time barred.

3. Section 11B was amended on 12.5.2000 where the period of six months was substituted by a period of one year. E Since the rebate application was filed within the period of one year from the date of the two shipments, the respondent contended that they were within time.

4. By an order dated 15.2.2002, the appellate authority F allowed the respondent's appeal holding that the extended period of one year was available to the respondent, the period prescribed for limitation being procedural law and, therefore, retrospective in nature.

5. Against this order, the Central Government by an order G dated 16.8.2002 allowed the revision applications of the Union holding that the extended period of limitation of one year was not available to the assessee.

6. The assessee's writ petition being Writ No.557 of 2003 H

A was allowed by the impugned judgment dated 12.8.2003 stating:

"41. As stated hereinabove, right to rebate of duty accrues under Rule 12 on export of goods. That right is B not obliterated if the application for rebate of duty is not filed within the period of limitation prescribed under Section 11B. In fact, Rule 12 of the Excise Rules empowers the excise authorities to grant rebate of duty even if some of the procedural requirements are not C fulfilled. Even proviso (a) to Section 11B (2) clearly provides that in the case of rebate of duty, the rebate will be granted to the exporter even if the duty element is passed on by the exporter. Thus, under Section 11B the amount of excise duty is refunded to the exporter D even if the duty element is passed on by the exporter. Thus, reading Rule 12 with Section 11B of the Act it becomes abundantly clear that the limitation prescribed under Section 11B is only procedural and does not affect the substantive right to claim rebate of duty under E Rule 12. Moreover, there are no consequences set out in the statute, if the application for rebate of duty is not made within the period of limitation. Thus the right to rebate of duty which flows from Rule 12 is not destroyed F by failure to apply for rebate of duty within six months time prescribed under the statute. Thus Section 11B merely debars the remedy if the claim is not filed within the period of limitation set out therein, if there is alteration in the procedural law, if there is no reason to presume G that the amendment was not intended to apply retrospectively. In other words, where the amended statute alters the existing practice and procedure of enforcing the substantive rights, then the amended procedure would apply for enforcement of the H substantive rights existing on the date when the

amended provisions came into force. Accordingly, we hold that the limitation of one year provided by amendment to Section 11B with effect from 12th May 2000 would apply retrospectively and would cover exports made one year prior to 12th May 2000. To put it differently the amended limitation of one year with effect from 12th May, 2000 would apply to all exports made after 12th May 1999. In the present case, the exports were effected on 20th May 1999 and 10th June 1999 i.e. within one year from 12th May 2000 and hence, the amended limitation period of one year would apply to the case of the petitioners.

45. Alternatively, once it is held that the limitation under Section 11B is procedural, then any amendment to such procedural law can be said to have retroactive effect, if not the retrospective effect. The amended Section 11B, without affecting the existing substantive right, merely enables an expanded remedy period. In other words, even if the amendment is not to have retrospective effect, it would nevertheless have retroactive effect and in that view of the matter, the case of the petitioners would be covered within the amended period of limitation and thus the petitioners would be entitled to rebate of duty. In the light of the view taken, for the reasons recorded, we do not think it necessary to dwell upon other contentions raised by the petitioners."

7. Ms. Pinky Anand, learned Additional Solicitor General, argued that Section 11B was squarely attracted and as the original claim was itself time barred being beyond the period of six months, an amendment to Section 11B later made would not apply to revive a claim that was already made out of time. She cited a number of judgments in support of this argument.

8. Ms. Prity Kunwar, appeared on behalf of the respondent. As interesting questions of law arose, we appointed Shri S.K. Bagaria to be *Amicus Curiae* to assist the Court. We must record our satisfaction at the level of assistance received from Shri Bagaria.

9. The learned *Amicus Curiae* argued before us that a rebate claim can only be made under Rule 12 of the Central Excise Rules which in turn referred such claims to a notification dated 22.9.1994. The said notification allowed rebate of duty on certain conditions, one of them being that a rebate claim must be made within the time limit specified in Section 11B of the Central Excise Act. Shri Bagaria then argued that Rule 12 proviso allowed the Commissioner of Central Excise for reasons to be recorded in writing to allow the whole or part of the claim for rebate even if all or any of the conditions laid down in the notification were not complied with if he is satisfied that the goods have, in fact, been exported. There is no doubt whatsoever that the goods have, in fact, been exported in the present case. Therefore, it was open to the Commissioner to waive the requirements of Section 11B of the Central Excise Act. He further argued that the goods could also have been exported under Rule 13 in which case no question of any period of limitation would arise. This being the case, it is clear that the present is a case where there is a small delay beyond six months which could easily be overlooked.

10. We have heard learned counsel for the parties and Shri Bagaria, the learned *Amicus Curiae* at some length. There is no doubt whatsoever that a period of limitation being procedural or adjectival law would ordinarily be retrospective in nature. This, however, is with one proviso super added which is that the claim made under the amended provision should not itself have been a dead claim in the sense that it

was time barred before an Amending Act with a larger period of limitation comes into force. A number of judgments of this Court have recognized the aforesaid proposition. Thus, in **S.S. Gadgil v. Lal and Company**, AIR 1965 S.C. 171, this Court stated:-

> "13. As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income Tax Act before it was amended, ended on March 31, 1956. It is true that under the amending Act by Section 18 of the Finance Act, 1956, authority was conferred upon the Income Tax Officer to assess a person as an agent of a foreign party under Section 43 within two years from the end of the year of assessment. But authority of the Income Tax Officer under the Act before it was amended by the Finance Act of 1956 having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The legislature has given to Section 18 of the Finance Act, 1956, only a limited retrospective operation i.e. up to April 1, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income Tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided, become barred."

A To similar effect is the judgment in **J.P. Jani, Income Tax Officer v. Induprasad Devshanker Bhatt,** AIR 1969 SC 778. The Court held:

> "6. In our opinion, the principle of this decision applies in the present case and it must be held that on a proper construction of Section 297(2)(*d*)(*ii*) of the new Act, the Income Tax Officer cannot issue a notice under Section 148 in order to re-open the assessment of an assessee in a case where the right to re-open the assessment was barred under the old Act at the date when the new Act came into force. It follows therefore that the notices dated 13-11-1963 and 9-1-1964 issued by the Income Tax Officer, Ahmedabad were illegal and ultra vires and were rightly quashed by the Gujarat High Court by the grant of a writ."

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In **New India Insurance Co. Ltd. v. Shanti Misra,** (1975) 2 SCC 840, this Court said:

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> "The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation."

F Similarly in **T. Kaliamurthi v. Five Gori Thaikkal Wakf,** (2008) 9 SCC 306, this Court said:

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> "40. In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to

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proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right."

For the latest exposition of the same Rule see: **Thirumalai Chemicals Ltd. v. Union of India,** (2011) 6 SCC 739 at para 29.

11. The effect of the amendment of Section 11B on 12th May, 2000 is that all claims for rebate pending on this date would be governed by a period of one year from the date of shipment and not six months. This, however, is subject to the rider that the claim for rebate should not be made beyond the original period of six months. On the facts of the present case, since the claims for rebate were made beyond the original period of six months, the respondents cannot avail of the extended period of one year on the subsequent amendment to Section 11B.

The effect of Section 11B, and in particular, applications for rebate being made within time, has been laid down in **Mafatlal Industries Ltd. v. Union of India,** (1997) 5 SCC 536, thus:

"108. The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must

A be had to the discussion and propositions in the body of the judgment.

(*i*) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff — B whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter — by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs C Act, 1962 read with Customs Tariff Act *or* by misinterpreting or misapplying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions D of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 — and of this Court under Article 32 — cannot be E circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions F of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.

G The said enactments including Section 11-B of the Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any H tax collected, retained or not refunded in accordance

with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are self-contained enactments providing for levy, assessment, recovery and refund of duties imposed thereunder. Section 11-B of the Central Excises and Salt Act and Section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a claim of refund and cannot form a basis for maintaining a suit or a writ petition. All refund claims except those mentioned under Proposition (*ii*) below have to be and must be filed and adjudicated under the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be. It is necessary to emphasise in this behalf that Act provides a complete mechanism for correcting any errors whether of fact or law and that not only an appeal is provided to a Tribunal — which is not a departmental organ — but to this Court, which is a civil court."

From the law laid down by this decision it is clear that all claims for rebate/refund have to be made only under Section 11B with one exception – where a statute is struck down as unconstitutional. Further, the limitation period of six months has to be strictly applied.

12. And now to Shri Bagaria's argument. In order to understand the argument, we will set out Rules 12 and 13 of the Central Excise Rules together with the notification dated 22.9.1994.

"12. **Rebate of duty.-** (1) The Central Government may, from time to time, by notification in the Official Gazette, grant rebate of— (a) duty paid on the excisable goods;

A (b) duty paid on materials used in the manufacture of goods;

if such goods are exported outside India or shipped as provision or stores for use on board a ship proceeding B to a foreign port or supplied to a foreign going aircraft, to such extent and subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, destination, mode of C transport and other allied matters as may be specified in the notification:

Provided that if the Commissioner of Central Excise or as the case may be the Maritime Commissioner of D Central Excise is satisfied that the goods have in fact been exported, he may, for reasons to be recorded in writing, allow, the whole or any part of the claim for such rebate, even if all or any of the conditions laid down in any notification issued under this rule have not been E complied with.

(2) Where the Central Government does not grant under clause (a) of sub-rule (1) either wholly or partially any rebate of duty paid on goods exported to a country F outside India, it may, in order to promote exports or fulfil obligations arising out of any treaty entered into between India and the Government of that country, provide, by notification in the Official Gazette, for payment to the Government of that country an amount not exceeding the G duty paid on such goods which are exported out of India to that country.

(3) No rebate of duty in respect of excisable materials used in the manufacture of goods exported out of India H under clause (b) of sub-rule (1) shall be allowed, if the

exporter avails of drawback of the said duty under the Customs and Central Excise Duties Drawback Rules, 1995 or avails of credit of said duty under section AA of Chapter V of the Central Excise Rules, 1944.

Explanations—In this rule, the expressions,—

(i) “manufacture” includes the process of blending of any goods or making alterations or any other operation thereon;

(ii) “materials” includes raw materials, consuamables (other than fuel) components, semi-finished goods, assemblies, sub-assemblies, intermediate goods, accessories, parts and packaging materials required for manufacture of export goods but does not include capital goods used in the factory in or in relation to manufacture of export goods.

(iii) Omitted.

(4) The provisions of this rule shall not apply to such excisable goods, export of which are prohibited under any law for the time being in force.

13. Export in bond of goods on which duty has not been paid.-

(1) The Central Government may, from time to time, by notification in the Official Gazette—

(a) permit export of specified excisable goods in bond without payment of duty in the like manner, as the goods regarding which the rebate is granted under sub-rule (1) of rule 12, from a factory of manufacture or warehouse or any other premises as may be approved by the Commissioner of Central Excise;

A (b) specify materials, removal of which without payment of duty from the place of manufacture or storage for use in the manufacture in bond of export goods, may be permitted by the Commissioner of Central Excise;

B (c) allow removal of excisable material without payment of duty for the manufacture of export goods, as may be specified, to be exported in execution of one or more export orders; or for replenishment of duty paid materials used in the manufacture of such export goods already C exported for the execution of such orders, or both;

subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, D destination, mode of transport and other allied matters as may be specified in the notification which the exporter undertakes to abide by entering into a bond in the proper form with such surety or sufficient security, and under such conditions as the Commissioner E approves.

(2) The Central Government may, from time to time, by notification in the Official Gazette, permit export of specified excisable goods in bond, without payment of F duty from a factory of manufacture or warehouse, to Nepal or Bhutan, subject to such conditions or limitations as regards the class of goods, destination, mode of transport and other matters as may be specified therein.

G Explanation I. — In this rule, the expression "manufacture" includes the process of blending of any goods or making alterations or any other operation thereon.

H Explanation II. — In this rule, the term "materials" shall

include raw materials, consumables (other than fuel), components, semi-finished goods, assemblies, sub-assemblies, intermediate goods, accessories, parts and packaging materials used in the manufacture of export goods but does not include capital goods used in the factory in or in relation to manufacture of export goods."

"Notifications and Procedures under Rule 12

[I] **Rebate of duty on export of all excisable goods except ship's stores and mineral oil products exported as stores for consumption on board an aircraft on foreign run.** — In exercise of the powers conferred by clause (a) of sub-rule (1) of rule 12 of the Central Excise Rules, 1944, the Central Government hereby directs that rebate of duty paid on the excisable goods as specified in the Table annexed hereto, shall on their exportation out of India to any country except Nepal and Bhutan, be made to the extent specified in column (3) thereof:

Provided that -

(i) except as otherwise permitted by the Central Board of Excise and Customs by a general or a special order, the excisable goods shall be exported after payment of duty directly from a factory or a warehouse;

(ii) the excisable goods are exported by the exporter in accordance with the procedure set out in Chapter IX of the Central Excise Rules, 1944;

(iii) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of

A Central Excise may in any particular case allow;

(iv) the claim or, as the case may be, supplementary claims, for rebate of duty is lodged with the Maritime Commissioner of Central Excise or the Commissioner of
B Central Excise having jurisdiction over the factory of manufacture or warehouse, as mentioned in the relevant export documents; together with the proof of due exportation within the time limit specified in section 11B of the Central Excise Act,1944(1 of 1944);

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(v) the market price of the excisable goods at the time of exportation is, in the opinion of the Commissioner of Central Excise not less than the amount of rebate of duty claimed;

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(vi) the amount of rebate of duty admissible is not less than five hundred rupees;

(vii) the exporter undertakes to refund any rebate of duty erroneously paid, to the Commissioner of Central
E Excise sanctioning such rebate in accordance with provisions of section 11A of the Central Excise Act, 1944(1 of 1944);

(viii) if the excisable goods are not exported or the proof
F of export thereof is not furnished to the satisfaction of the Commissioner of Central Excise or, as the case may be, the Maritime Commissioner of Central Excise in the manner and within the prescribed time limit, the said officer on an application being made by the exporter or
G otherwise, shall cancel the export documents;

(ix) if exported -

(a) by land, the export shall take place by such routes
H or such land Customs Stations or Border Check Posts

as have been approved by the Central Government; A

(b) by parcel post, the parcel is delivered by the exporter at the Post Office of despatch within six months of the payment of duty"

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At the relevant time, Section 11B(2) read as follows:-

"(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund: C

Provided that the amount of duty of excise as determined by the Assistant Commissioner of Central excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to – D

(a) 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; E

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"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." G

13. Shri Bagaria's argument based on the proviso to rule 12(1) would obviously not have any force if Section 11B were to apply of its own force. It is clear from Section 11B(2) proviso H

A (a) that a rebate of duty of excise on excisable goods exported out of India would be covered by the said provision. A reading of Mafatlal Industries (supra) would also show that such claims for rebate can only be made under Section 11B within the period of limitation stated therefor. This being the case, the B argument based on Rule 12 would have to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B. Equally, the argument that on a bond being provided under Rule 13, the goods would have been exported without any problem of limitation would not hold C as the exporter in the present case chose the route under Rule 12 which, as has been stated above, is something that can only be done if the application for rebate had been made within six months. We, therefore, allow the appeal and set aside the Bombay High Court judgment dated 12.8.2003.

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Nidhi Jain Appeal allowed.