REGISTERED SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
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Mumbai- 400 005

F.No. 195/107/WZ/2018-RA / 98 Date of issue: 10.01.23

ORDER NO. 01 /2023-CX (WZ)/ASRA/MUMBAI DATED 04.01.2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. AAM India Manufacturing Corporation Private Limited

Respondent: Commissioner of CGST, Nashik

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NSK-EXCUS-000-APP-247-2017-18 dated 23.02.2018 passed by the Commissioner (Appeals), CGST & CX, Nashik.

ORDER

This Revision Application has been filed by M/s. AAM India Manufacturing Corporation Private Limited, Gat No. 787 & 788, Opp. Supa MIDC, Village – Hanga, Tal.- Parner, Ahmednagar (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. NSK-EXCUS-000-APP-247-2017-18 dated 23.02.2018 passed by the Commissioner (Appeals), CGST & CX, Nashik.

2. Brief facts of the case are that the applicant is engaged in manufacturing of excisable goods falling under Ch.87. The applicant had filed supplementary rebate claim applications, under Section 11B of the Central Excise Act, 1944, totally amounting to Rs.3,41,278/- in respect of differential Central Excise duty paid due to upward price revision with retrospective effect on the export goods. However, the rebate sanctioning authority vide Order-in-Original No. 90/Reb/AC/ 2016 dated 01.03.2017, rejected the rebate claims on the ground that they had been filed beyond the period of one year from the date of export. Aggrieved, the applicant filed an appeal against the said OIO which was rejected by the Appellate authority vide the impugned Order-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) It is amply clear that the rule 18 does not prescribe any time limit for filing of rebate claim during the period in dispute nor the said rule makes reference of the provisions of section 11B of CEA, 1944.

(b) That the rebate of duty paid on export goods to all the countries other than Nepal and Bhutan is governed by notification No. 19/2004-CE(NT) dated 06.09.2004. This notification specifies certain conditions and limitations and procedure for submission of rebate claim.

(c) On perusal of the Rule 18 of the Central Excise Rules, 2002 and on perusal of Notification No.19/2004-C.E. (N.T.) dated 06.09.2004, it is clear that the Applicants have followed all the conditions of the said notification. Further, when goods are taken outside the territorial boundaries of India, rebate is to be granted of the excise duty paid on such goods. Therefore, although the tool was brought back into India after rebate of the excise duty is not deniable because there is no specific provision in the Rule Or the said Notification which states that if the duty paid goods were exported and were imported after modification on the same, then rebate claim of the duty cannot be granted to the assessee.

(d) That the Hon'ble Madras High Court in the case of Dy. Commissioner of Central Excise, Chennai Vs. Dorcas Market Makers Pvt. Ltd. - 2015(321) ELT 45 (Mad) has examined the question whether rebate claim filed beyond expiry of one year as prescribed in section 11B of CEA, 1944 was maintainable under the provisions of rule 18 of CER, 2002. The Hon'ble Madras High Court after comparing the provisions of rule 18 of CER, 2002 r/w enabling notification No. 19/2004-CE(NT) dated 06.09.2004 vis.a.vis old rule 12 of CER, 1944 and its enabling notification No. 41/94-CE(NT) dated 22.9.1994 held that the time limitation prescribed in section 11B for refund of excise duty cannot be read into the rebate provisions of rule 18 which are self contained provisions. The High Court in para 12 and 13 observed that the question of rebate of duty is governed separately by rule 18 and the entitlement to rebate would arise only out of notification issued under the said rule. Therefore the definition of expression "relevant date" u/s 11B(5) does not take care of this contingency.

(e) That the against the Madras High Court judgment, the Department filed an SLP before the Hon'ble Supreme Court challenging the said judgment. However, the Apex Court dismissed

the SLP of the Department as devoid of merit. The report is published in 2015 (325) ELT A-104 (S.C.).

(f) That by reaffirming the Madras High Court judgment in the case of Dorcus Market Makers (supra), the Hon'ble Punjab & Haryana High Court in the case of JSL Lifestyle Ltd. vs. Union of India reported at 2015 (326) ELT 265 (P&H) held that notification No. 19/2004-CE(NT) dated 06.09.2004 did not prescribe any period of limitation in respect of claim for rebate filed u/r 18 of CER, 2002. The High Court also observed that neither in conditions and limitations nor in procedure part of the notification, the Govt. has made any specific provision for prescribing any period within which the rebate ought to have been claimed by the assessee. Therefore, in absence of any such limitation provision, the High Court held that the orders of the lower authorities rejecting the rebate claims only on the ground of limitation as prescribed in section 11B of CEA, 1944 are not maintainable and hence set aside.

(g) That subsequently the Hon'ble Allahabad High Court in the case of Camphor and Allied Products Ltd. Vs. Union of India reported in 2019 (368) ELT 865 (All) has confirmed that there is no room to add the limitation period of section 11B into the conditions and limitations of the notification No. 19/2004-CE(NT) dated 06.09.2004.

(h) That the appellate authority failed to appreciate that it is only on issuance of notification No. 18/2016-CE(NT) dated 01.03.2016, it was specifically provided in para 3(b)(i) of rebate notification No. 19/2004-CE(NT) that "claim for rebate of duty paid on all excisable goods shall be lodged before the expiry of period specified in section 11B of CEA, 1944.

(i) That the Allahabad High Court in the case of Camphor and Allied Ltd. Vs. Union of India reported in 2019 (368) ELT 865 (All) has taken note of the above amendment in clause 3(b)(i) and held that the amendment was prospective and not clarificatory.

(j) That in view of the above legal position, the suppl. rebate claims filed by the applicant under rule 18 r/w unamended notification No. 19/2004-CE(NT) could not be disallowed by applying the embargo of one year limitation period of section 11B. Accordingly, the orders passed by both the lower authorities rejecting the rebate claims on limitation are liable to be quashed on merit.

(k) That without prejudice to the above submissions regarding non-applicability of limitation period for filing of rebate claims prior to 01.03.2016, the applicant submits that the supplementary rebate claims were filed in time i.e. within one year from the "relevant date" as defined in section 11B of CEA, 1944. The original rebate claims were initially filed by the applicant w.r.t. export of goods and those rebate claims were duly sanctioned by the Department. However, due to subsequent price revision from retrospective date, the applicant discharged differential duty on incremental price and made suppl. ARE-I documents. The duty was discharged by the applicant on 27.08.2014 (Rs. 1,57,527/-) and 11.11.2014 (Rs, 1,83,751/-). After payment of duty, the applicant filed rebate claims within one year from the date of payment of duty which is a relevant date under clause (f) of the definition of "relevant date" given as part of Explanation (B) below section 11B.

(l) That both the lower authorities have taken the date of 09.12.2016 as the date of filing the rebate claims by the applicant after removal of defects. Since the applicant submitted the rebate claims papers originally in time from the date of payment of differential duty, the appellate authority failed to appreciate that the rebate claims could not have been rejected on limitation notwithstanding the resubmission of claims later after correction of mistakes / removal of defects pointed out by the Department.

(m) That it is a settled law that the time limit for filing the refund claim should be computed from the date the refund claim is

originally filed and not from the date on which refund claim is resubmitted by the assessee after removal of defects.

The applicant, inter alia, rely upon the following case law:-

(i) Apar Industries (Polymer Division) Vs. Union of India — 2016 (333) 246 (Guj).
(ii) CBEC Circular No. 1063/2/2018-CX dated 16.02.2018. The Board has accepted the said Gujarat High Court judgment and did not prefer any appeal / SLP before the Supreme Court.
(iii) In Re: I.O.C. Ltd. -2007 (220) ELT609 (GOI)
(iv) Goodyear India Ltd. Vs. Commissioner of Customs, New Delhi — 2002 (150) ELT 331 (Tri-Del).
(v) Rubberwood India (P) Ltd. Vs. Commissioner of Customs (Appeals), Cochin — 2006 (206) ELT 536 (Tri-Bang).
(vi) Super Spinning Mills Ltd. Vs. CCE, Coimbatore — 2009 (15) STR 614 (Tri.Chennai)

(n) That in view of the above legal position, both the lower authorities failed to appreciate that even if the time limit of one year as provided in section 11B was applicable to filing of the suppl. rebate claims in question, the applicant filed those claims within the specified period of one year from the date of payment of suppl. duty without violating the time limitation of one year. Merely because the rebate claims initially filed by the applicant had some defects / deficiencies which were subsequently removed by the applicant with the permission from the Division Office and the applicant resubmitted the claims after rectification of mistakes / defects, the date of resubmission of claim cannot be taken as date of filing of rebate claims for the purpose of limitation. The date of initial filing of rebate claims of supplementary duty is alone relevant as held by the Gujarat High Court in the case of Apar Industries (Polymer Division) Vs. Union of India — 2016 (333) 246 (Guj).

(o) That the lower authorities failed to appreciate that the differential excise duty paid by the exporter after exportation of initial shipment was allowed as rebate in cash. The Hon'ble Tribunal South Zonal Bench, Chennai in the case of M/s. Sterlite Industries (I) Ltd.

Vs. Commissioner of Central Excise, Tirunelveli — 2009 (236) ELT 143 (Tri. Chennai) held that the fact ARE-1 did not show the additional duty paid on the consignment specifically cannot be the reason to deny part of the duty paid as per the contract with the buyer. The exporter is entitled to rebate of the entire duty of excise paid by it on clearance of goods for export. The Tribunal further held that since there is no dispute regarding exportation of goods, the exporter became entitled to rebate of entire duty paid albeit major portion of duty paid at the time of physical exportation and additional duty paid later on post-export shipment.

(p) That the appellate authority failed to respect and follow the judgment of Commissioner of Central Excise (Appeals), Pune-II in the case of RE: CASPRO EXPORTS - 2010 (261) ELT 790 (Commr. Appl.). In this case, the assessee filed rebate claim on the basis of supplementary invoice issued after exportation of goods. The Assistant Commissioner rejected the rebate claims, iner alia, on the ground that the date of shipment has to be taken for reckoning one year period for grant of rebate under section 11B of CEA, 1944. The Commissioner (Appeals) held that for original rebate claim, date of shipment has to be considered and in the situation where rebate claim is filed subsequently in respect of additional duty paid by the assessee, the date of payment of additional duty is the relevant date within which the supplementary rebate claim should be filed. Since in the present case the applicant admittedly filed the rebate claims within the limitation period of one year from the date of payment of duty I supplementary duty, the impugned order rejecting the rebate claim of limitation is not sustainable.

(q) That the lower authorities failed to appreciate that in the applicant's own case, the dispute arose in the past regarding admissibility of rebate claim where differential duty was paid by the applicant by raising supplementary invoice on post-export basis. The supplementary invoices were raised due to upward price revision

allowed by the customer from retrospective effect. The Commissioner (Appeals) categorically observed that the assessee has filed revision claim within one year from the date of payment of duty. The Commissioner (Appeals) by relying upon the Tribunal's judgment in the case of M/s. Sterlite Industries (supra) and in the case of Caspro Exports (supra), held that the applicant were eligible to rebate of excise duty paid through supplementary invoices issued by the assessee.

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal with consequential relief.

4. Personal hearing in the case was fixed for 22.11.2022. Shri S.C. Kamra, Advocate attended the hearing and submitted that supplementary claim of rebate would not attract time limit of Section 11B of the Act. He submitted a brief written submission and citation of case laws. He requested to allow the application.

5. Government has carefully gone through the relevant case records available in case files, oral and written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government notes that the issue to be decided in this case is whether the supplementary claims filed by the applicant were time barred in terms of Section 11B of the Central Excise Act,1944.

7. Government observes that the applicant is a manufacturer-exporter. They had claimed rebate of duty paid on exports carried out by them during the period Jan-Jun 2014 under Section 11B of the Central Excise Act,1944 which were duly sanctioned. Subsequently, in Aug-2014, their client agreed for upward revision in the price of export goods w.e.f. 01.05.2014. Consequently, the applicant raised supplementary invoice for differential price on their client and paid the differential duty. Thereafter, the applicant

filed two supplementary rebate claims on the basis of these supplementary invoices as detailed hereunder:

Rebate Claim No./date	Amount claimed (in Rs.)	Supplementary Tax Invoice No. & Date
15/2016-17 dtd. 17.08.2015	1,57,527/-	EX/1415/77 dt. 27.8.2014
14/2016-17 dtd. 01.11.2015	1,83,751/-	EX/1415/133 dt.11.11.2014
Total	3,41,278/-	

8. Government observes that lower authorities had rejected the supplementary rebate claims on following grounds:

i The applicant had withdrawn their claims vide letter dated 18.11.2016 for carrying out necessary corrections/amendments which they resubmitted on 09.12.2016 which was much after the period of one year from the date of export of goods.

ii The applicant had filed the rebate claim without relevant documents such as shipping bills, bills of lading, mate receipts etc. Hence, in the light of judgment of Hon'ble Bombay High Court in the case of Everest Flavours Limited as reported in 2012-TIOL-285-HC-MUM-CX, the claim of the applicant is not valid.

9. Government notes the applicant has relied upon CBEC Circular No. 1063/2/2018-CX dated 16.02.2018. In the said Circular, the Board has drawn attention to sixty three orders of different High Courts which had been accepted by the Department. One of the judgment wherein point of law relevant in the instant case had been decided by the Hon'ble High Court of Gujarat and has been relied upon by the applicant is reproduced hereunder:

4. Decision of the Hon'ble High Court of Gujarat dated 17.12.2015 in the matter of Apar Industries (Polymer Division) vs Union of India in Special Civil Application No. 7815 of 2014 [2015-TIOL-2859-HC-AHM-CUS]

4.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of Apar Industries (Polymer Division) vs Union of India in Special Civil Application No. 7815 of 2014. The issue examined

in the order is as follows, Manufacturer exporter, M/s Apar Industries (Polymer Division) filed Rebate claims in incorrect format under Rule 19 instead of as required under Rule 18. The same was re-filed correctly but department held that the subsequent filing was time barred. The Hon'ble Court held that the intention of claiming rebate was clear and first application should have been treated by the department as rebate application. Whatever defect arose from the incorrect filing could have been rectified. In such situations, re-submission should be seen as a continuous attempt and therefore in the matter department was directed to examine the rebate claims of the petitioner on merits

Therefore, Government concludes that in the instant case also the dates on which the supplementary rebate claims were initially submitted with the department and not the date of re-submission should be considered as date of filing, viz. 17.08.2015 and 01.11.2015 and not 09.12.2016.

10. Government observes that as per Chapter 8 of CBEC's Excise Manual of Supplementary Instructions, a supplementary rebate claim should be filed within stipulated time provided under section 11B of the Central Excise Act, 1944. In the instant case, as the goods had already been exported under the original invoice, hence, the relevant date as per Section 11B would be the date of payment of duty under the supplementary invoice, viz. 27.08.2014 and 11.11.2014. Therefore, Government agrees with the contention of the applicant that the limitation period of one year should be calculated from the date of payment of duty.

11. As regards the other reason for rejecting the rebate claim, viz. case law of Everest Flavours Limited, Government notes that the said case was in respect of original rebate claim and not a supplementary rebate claim. In the instant case, as no goods were cleared under the supplementary invoice, the question of export documents such as shipping bills, bills of lading, mate receipts etc. does not arise. As such, said case law cannot be made basis for rejecting a supplementary claim.

12. Government also observes that the veracity of the impugned supplementary invoices issued as addendum to original invoices, under which exports had been done by the applicant and consequent rebate had been sanctioned by the department, has not been doubted by the lower authorities nor any discrepancy in the rebate claim has been found.

13. In view of above discussion, Government sets aside the Order-in-Appeal No. NSK-EXCUS-000-APP-247-2017-18 dated 23.02.2018 passed by the Commissioner (Appeals), CGST & CX, Nashik and allows the impugned Revision Application.

Shrawan 4/1/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 01/2023-CX (WZ)/ASRA/Mumbai dated 04.1.2023

To,
M/s. AAM India Manufacturing Corporation Private Limited,
Gat No. 787 & 788, Opp. Supa MIDC,
Village – Hanga, Tal.- Parner, Ahmednagar – 414 301.

Copy to:

1. Commissioner of CGST, Nashik,
   Plot No. 155, Sector P.34 NH,
   Jaishtha & Vaishakh, CIDCO,
   Nashik – 422 008

2. M/s. S.C. Kamra & Co.,
   B-2/210, Safdarjung Enclave,
   New Delhi – 110 029.

3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.