

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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/264-265/13-RA

Date of Issue:

ORDER NO.01-03/2019-CX (WZ)/ASRA/MUMBAI DATED 27-08.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Gainup Industries India Pvt. Ltd.

Respondent : Commissioner, Central Excise, Madurai Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 220-221/2012 dated 18.10.2012 passed by the Commissioner of Central Excise (Appeals) Madurai.

ORDER

This Revision Application is filed by the M/s Gainup Industries India Pvt.Ltd. (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 220-221/2012 dated 18.10.2012 passed by the Commissioner of Central Excise (Appeals), Madurai.

2. The Applicant, is inter alia engaged in the manufacture of excisable goods namely, 100% cotton yarn and export the same under claim for rebate under Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended under Rule 18 of the Central Excise Rules, 2002. The Applicant had filed two rebate claims of Rs. 3,22,599/- each under two ARE-1s No. 39/2010-11 dated 02.08.2010 and ARE-1 No. 41/2010-11 dated 09.08.2010. As the goods left India on 13.08.2010, the rebate claims should have been filed on or before 12.08.2011. However, the rebate claims were filed on 02.09.2011 and therefore the rebate claims were hit by limitation as per section 11B of the Central Excise Act,1944. Accordingly after due process of the law, the jurisdictional Assistant Commissioner vide his order in original Nos. MAD-CEX-000-ASC-045-12 and MAD-CEX-000-ASC-046-12 both dated 08.03.2012 rejected the rebate claims. Being aggrieved, the Applicant then filed Appeals with Commissioner of Central Excise (Appeals), Madurai who vide Order-in-Appeal No. 220-221/2012 dated 18.10.2012 upheld the two Order-in-Originals and rejected the appeals.

3. Being further aggrieved, the Applicant then filed this Revision Application on the following grounds that:

3.1 The Honourable High Court of judicature at Madras in the case of Dorcas Mattel Makers Pvt Ltd vs. Commissioner of Central Excise reported in 20(2 (28)) ELT 227 (Mad) in part 8 has observed that the judgment of Hon'ble Supreme Court in the case of Collector of Central Excise, Jaipur vs. Raghuvar (India) Ltd reported in 2000 (118) ELT 311 (SC) makes it clear that Rule will act independently and any action taken under the rule to be considered independently; therefore Rule 18-B is not subject to Section 11A of the Act; and in that case, the claim is with regard to the rebate of the excise duty already paid by the manufacturer under Rule 18; if the said judgment is taken into consideration, the

notification issued under Rule 18 of the Central Excise Rules which prescribes no time limit alone is applicable and Section 11B of Central Excise Act which prescribes a time limit for claiming rebate would not be applicable to deny the rebate claim of the petitioner. In view of the above stated judgment of the Hon.ble High Court, the findings of Commissioner (Appeal) are not sustainable in law.

3.2 The Applicant also contended that the judgment of Hon'ble High Court in the case of Dorcas Mar. Makers Pvt Ltd vs. Commissioner of Central Excise reported in 20(2 (28)) ELT 22' (Mad) is binding on the lower authority and it should have been followed and in the absence of above, the order passed by the Commissioner (Appeals) is not sustainable in law.

3.3 Without prejudice to the above, the applicant have sought for re-credit of the duty paid on the export goods in their cenvat credit account, in the event, rebate was not allowed by the lower authorities. The applicant submit that in the impugned order the claim of re-credit was denied on the ground that the rebate claim is time barred. It cannot be said that the duty was paid without authority of law and the principles of restitution cannot be applied. The Government therefore cannot retain the amount collected without any authority of the law and the same has to be returned to applicant in the manner it was paid. The Applicant was not even required to make a request with the department for allowing re-credit in their cenvat account. The adjudicating officer/Commissioner (Appeals) could have themselves allowed this instead of rejecting the same as time barred.

3.4 In view of the above stated facts and circumstances of the case, it is prayed that the Hon'ble Revisionary Authority may be pleased to set aside the Order-in-Appeal of the Commissioner (Appeals), with consequential relief or pass any such order as may be deemed fit and proper in the facts and circumstances of the case.

4. A personal hearing in the case was held on 16.05.2019. The Applicants vide their letter dated 20.08.2019 submitted that due to some preoccupied work they were not in a position to attend the personal hearing on the scheduled date and requested that the appeal may be decided based on the written submissions.

5. Government has carefully gone through the relevant case records, written submissions and the impugned Order-in-Original and Order-in-Appeal. The Government observes that the Applicant had filed 2 rebate claims of Rs. Rs. 3,22,599/- each under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. As the goods left India on 13.08.2010, the rebate claims should have been filed on or before 12.08.2011. However, the rebate claims were filed on 02.09.2011 that is after the lapse of time limit of one year as stipulated under Section 11B of Central Excise Act, 1944.

6. The Government observes that the Applicant in the Revision Application has relied on the judgment of the Hon'ble Madras High Court in the matter of Dy. Commissioner of C. Ex., Chennai Vs. Dorcas Market Makers Pvt. Ltd. (2015 (321) E.L.T. 45 (Mad.)). The above cited judgment has been upheld by the Hon'ble Supreme Court as reported vide 2015 (325) F.L.T. A104 (S.C). Government however observes that the same Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd., [reported in 2017 (355) E.L.T. 342 (Mad.)] upheld the rejection of rebate claim filed beyond one year of export by citing the judgment of same Hon'ble High Court Madras In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), noting as under :-

29. 5. The claim for refund made by the appellant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-

"(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;.....

* * *

Quoting a recent decision of the Hon'ble Supreme Court in the case of *Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai*, reported in 2015 (324) E.L.T. 270 (Mad.). A Division Bench of this Court held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder :-

"8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

7. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is thus a mandatory provision. As per explanation (A) to Section 11B refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. The explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. Therefore the Government finds no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.


8. Government, further notes that the statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim has to be treated as time barred. Further, Government observes that identical issue has been decided by the Government earlier too.

9. With regard to the claim of re-credit of duty paid on the ARE-1s in their cenvat credit account in the event, rebate was not allowed, the government agrees with the observations of the lower authority that refund of duty paid on the goods is allowable only if a refund claim is filed under section 11B of the Central Excise Act within one year from the relevant date. The Applicants have only filed an application claiming rebate of duty paid on exported goods and hence are not eligible for claiming recredit. Further, the application for claiming refund, the maximum time limit is also one year and therefore the claim is also hit by limitation.

10. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. 220-221/2012 dated 18.10.2012 passed by the Commissioner of

Central Excise (Appeals) Madurai and therefore upholds the same and dismisses the Revision Application filed by the Applicant being devoid of merits.

11. So, ordered.



(SEEMA ARORA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 02-03 /2018-CX (WZ)/ASRA/MUMBAI DATED 27-08-2019

To,
M/s Gainup Industries India Pvt. Ltd.,
13/341, Dindigul-Batlagunda Highway,
Sitharevu Village, Ottpatti Post,
Dindigul (D.T.)- 674708.

Copy to:

1. The Commissioner of CGST & Central Excise, Madurai.
2. The Commissioner of Central Excise (Appeals), Madurai.
- ✓ 3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.