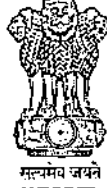


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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.195/116, 117/2017-RA /GS 45
F. No.195/105/WZ/2018-RA

Date of Issue: 15.11.2022

ORDER NO. 1075-1077 /2022-CX (WZ) /ASRA/Mumbai DATED 15.11.2022
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 : 1. M/s ISMT Limited,
B-13, MIDC, Baramati - 413133.

2. M/s ISMT Limited,
Plot No.C-1, MIDC Area, Ahmednagar.

Respondents : 1. Commissioner of CGST & Central Excise, Pune - II.

2. Commissioner of Central Excise, Nashik.

Subject : Revision Applications filed under Section 35EE of the Central
Excise Act, 1944 against the following Orders-in-Appeal :-

| Sl. No. | Order-in-Appeal No. | Date | Passed by |
|---------|---------------------------------|------------|----------------------------------------------|
| 1 | PUN-SVTAX-000-APP-253-254-16-17 | 24.10.2016 | Commissioner of Service Tax (Appeals), Pune |
| 2 | NSK-EXCUS-000-APPL-267-17-18 | 27.02.2018 | Commissioner (Appeals), CGST & C.Ex., Nashik |

ORDER

The subject Revision Applications have been filed by M/s ISMT Limited, Baramati and M/s ISMT, Ahmednagar (here-in-after referred to as 'the applicant') against the subject Orders-in-Appeal dated 24.10.2016 and 27.10.2018. The Order-in-Appeal dated 24.10.2016 decided appeals by the applicant against two Orders-in-Original both dated 01.07.2016 passed by the A.C., C.Ex., Division IV, Pune and the Order-in-Appeal dated 27.02.2018 decided an appeal by the applicant against Order-in-Original dated 31.01.2017 passed by the A.C., C.Ex., Div. II, Ahmednagar. All the Orders-in-Original had rejected the rebate claims filed by the applicant.

2. Brief facts of the case are that the applicants are manufacturers of Seamless Pipes and Tubes falling under Chapter 7304 of the Central Excise Tariff. In all the subject three cases, they filed rebate claims in respect of goods exported by them, which the original rebate sanctioning authorities found to be time barred as all of them were filed beyond the stipulated period of one year from the date of export and proceeded to reject them. Aggrieved, the applicant filed appeals against the three Orders-in-Original before the Commissioner (Appeals) resulting in the impugned Orders-in-Appeal. The details of the Orders-in-Original and the corresponding Orders-in-Appeal is as under:-

| Sl. No. | Order-in-Original No. & Date | Order-in-Appeal No. & Date |
|---------|------------------------------------------------------|--------------------------------------------------|
| 1 | R/62/CEX/Div-IV (Purandhar) 2016-17 dated 01.07.2016 | PUN-SVTAX-000-APP-253-254-16-17 dated 24.10.2016 |
| 2 | R/62/CEX/Div-IV (Purandhar) 2016-17 dated 01.07.2016 | |
| 3 | 80/REB/A.C./2016 dated 31.01.2017 | NSK-EXCUS-000-APPL-267-17-18 dated 27.02.2018 |

The Commissioner (Appeals), in all the cases above, held that the time limit prescribed by Section 11B of the Central Excise Act, 1944 is applicable for filing of refund/rebate claims and upheld the impugned Orders-in-Original which had rejected the rebate claims as time barred.

3. Aggrieved by the impugned Orders-in-Appeal the applicant has filed the subject Revision Applications on the following grounds:-

(a) The authorities concerned had confirmed that the claims were complete in all respects and the sole reason for rejection was they were filed beyond a period of one year from the relevant date in terms of Section 11B of the Central Excise Act, 1944;

(b) They submitted, with respect to the consignments covered by Order-in-Appeal dated 24.10.2016 that goods were cleared for export in the month of January 2014 under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE(NT) dated 06.09.2004 and that the rebate claims were filed on 04.04.2016; and the consignments covered by Order-in-Appeal dated 27.02.2018 were cleared for export in the month of January 2014 and the rebate claims filed on 01.12.2015;

(c) They had fulfilled all the conditions prescribed in notification no.19/2004-CE(NT) dated 06.09.2004; that neither Rule 18 of the Central Excise Rules, 2002 nor notification no.19/2004-CE(NT) prescribe a time limit for filing of rebate claim;

(d) They relied on the decision of the Hon'ble High Court of Madras in the case of Dy. Commissioner vs Dorcas Market Makers Pvt. Ltd. [2015 (321) ELT (45) Mad.] wherein it was held that the question of rebate of duty was governed separately by Section 12 of the Central Excise Act, 1944 and the entitlement to rebate would arise only out of a notification under Section 12(1) *ibid*; that Rule 18 of the Central Excise Rules, 2002 was to be construed independently and that rebate of duty under Rule 18 *ibid* should be as per notification issued by Central Government; that notification no.19/2004-CE (NT) dated 06.09.2004 which superseded notification no.41/94-CE did not contain the prescription regarding limitation; a conscious decision taken by Central Government, which was maintained in the Apex Court; that this view was taken by other High Courts too;

(e) That they had exported the goods within six months from the date of clearance and that duty was paid on the said goods and hence in the absence of any prescribed time limit, the rejection of their rebate claims on the grounds of being time barred was unjustified;

In view of the above, the applicant prayed that the impugned Orders-in-Appeal be set aside and their rebate claims be sanctioned.

4. Personal hearing in the matter was held on 18.10.2022 and Ms T. Mantrawali, C.M.A., and Shri Srihari Parvate, AVP, of the applicant firm appeared online on behalf of the applicant. They submitted that the time limit under Section 11B of the Central Excise Act, 1944 was not applicable to rebate claims. They mentioned the Dorcas Metals case passed by the Madras High Court and requested to allow their claims.

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

6. Given finds that the issue for decision in all the subject cases is whether the rebate claims filed by the applicant would be hit by the time limit prescribed by Section 11B of the Central Excise Act, 1944. Government notes that the applicant themselves have submitted that the consignments covered by the Order-in-Appeal dated 24.10.2016 were exported in the month of January 2014 and the rebate claims pertaining to these consignments were filed on 04.04.2016 and that the consignment covered by the Order-in-Appeal dated 27.02.2018 was exported in the month of January 2014 and the rebate claims pertaining to them filed on 01.12.2015. Thus, Government finds that it is not in dispute that in all cases, the rebate claims were filed beyond a period of one year from the date of the same being exported. Government finds that the applicant has relied on the decision of the Hon'ble High Court of Madras in the case of Dy. Commissioner vs Dorcas Market Makers Pvt. Ltd. [2015 (321) ELT (45) Mad.] in support of their case which they have submitted has been maintained by

the Hon'ble Supreme Court. On examining the said decision of the Hon'ble Supreme Court, Government finds that in this case, the Apex Court did not go into the merits of the case while giving its decision.

7. Government finds that the issue of whether the time limit prescribed by Section 11B of the Central Excise Act, 1944 is applicable to claims for rebate is no more *res integra* and has been laid to rest by a number of decisions of the higher Courts. Government observes that the Hon'ble High Court of Madras, in a judgment subsequent to its decision in the case of Dy. CCE vs Dorcas Market Makers relied upon by the applicant, while dismissing a Writ Petition filed by Hyundai Motors India Limited [2017 (355) E.L.T. 342 (Mad.)] had upheld the rejection of rebate claims which were filed after one year from the date of export and held that the limitations provided by a Section will prevail over the Rules. Further, Government also notes that the Hon'ble High Court of Karnataka while deciding the case of Sansera Engineering Pvt. Ltd. Vs Dy. Commissioner, Bengaluru [2020 (371) ELT 29 (Kar.)], an identical case, had distinguished the decision of the Apex Court referred to by the applicant and had held as under:-

" It is well settled principle that the claim for rebate can be made only under section 11-B and it is not open to the subordinate legislation to dispense with the requirements of Section 11-B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11-B is only clarificatory.

14. It is not in dispute that the claims for rebate in the present cases were made beyond the period of one year prescribed under Section 11-B of the Act. Any Notification issued under Rule 18 has to be in conformity with Section 11-B of the Act.

15. The decision of Original Authority rejecting the claim of rebate made by the petitioners as time-barred applying Section 11-B of the Act to the Notification No. 19 of 2004 cannot be faulted with."

A Writ petition filed against the above decision was decided by a Larger Bench of the Hon'ble High Court of Karnataka in Sansera Engineering Limited vs Deputy Commissioner, LTU, Bengaluru [2021 (372) ELT 747 (Kar.)] wherein the Hon'ble High Court upheld the decision by the Single Judge in the above cited case with the following remarks :-

" A reading of Section 11B of the Act makes it explicitly clear that claim

for refund of duty of excise shall be made before the expiry of one year from the relevant date. The time prescribed under Section 11B of the Act was earlier six months which was later on amended on 12-5-2000 by Section 101 of the Finance Act, 2000. Rule 18 of the Central Excise Rules and the Notification dated 6-9-2004 did not prescribe any time for making any claim for refund as Section 11B of the Act already mandated that such application shall be filed within one year. Section 11B of the Act being the substantive provision, the same cannot yield to Rule 18 of the Rules or the Notification dated 6-9-2004. As rightly held by the Learned Single Judge, the Notification dated 1-3-2016 was mere reiteration of what was contained in Section 11B of the Act, and therefore, the Law as declared by the Hon'ble Supreme Court in Uttam Steel (supra) is applicable to the facts of this case. In that view of the matter, the judgment of the Madras High Court in the case of Dorcas Market Makers Pvt. Ltd., (supra) is not applicable to the facts of this case. As a matter of fact, the Madras High Court in the case of Hyundai Motors India Ltd. v. Department of Revenue, Ministry of Finance reported in 2017 (355) E.L.T. 342 (Mad.) did not subscribe to the law declared in Dorcas Market Makers Pvt. Ltd., (supra) and held that the time prescribed under Section 11B of the Act is applicable.

13. *In view of the aforesaid, the Learned Single Judge had extensively considered the questions of law and the applicability of Section 11B of the Act and has rightly held that the claim of the appellant for refund was time-barred as it was filed beyond the period of one year. We do not find any justification to interfere with the findings of the Learned Single Judge. Hence, W.A. No. 249/2020 lacks merit and is dismissed."*

Government finds the above decision is squarely applicable to the issue on hand and finds that it relies on the decision of the Hon'ble Supreme Court in the case of UOI & Others vs. Uttam Steel Limited [2015 (319) E.L.T. 598 (S.C.)] to hold that the limitation of one year prescribed by Section 11B of the Central Excise Act, 1944 is applicable to claims for rebate. Thus, Government rejects the contention of the applicant that there is no time limit for filing a rebate claim and holds that the time limit prescribed by Section 11B of the Central Excise Act, 1944 will be applicable to the instant case too.

8. As stated above, Government finds that it is not in dispute that in the present case, all the rebate claims were filed beyond a period of one year from the date on which the goods were exported. Thus, Government finds that the said rebate claims are time barred in terms of the limitation of one

year prescribed by Section 11B of the Central Excise Act, 1944 and accordingly holds so.

9. In view of the above, Government does not find any infirmity in the impugned Orders-in-Appeal and upholds the same. The subject Revision Applications are rejected.

Shrawan Kumar
15/11/22

(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. ¹⁰⁷⁵⁻107/2022-CX (WZ) /ASRA/Mumbai dated 15.11.2022

To,

1. M/s ISMT Limited,
B-13, MIDC, Baramati - 413133.
2. M/s ISMT Limited,
Plot No.C-1, MIDC Area, Ahmednagar.

Copy to:

1. Commissioner of CGST & Central Excise, Pune - II, ICE House, 41-A, Sasoon Road, Pune - 411 001.
2. Commissioner of Central Excise, Nashik, Plot no.155, Sector P-34, Jaishtha & Vaishakh, CIDCO, Nashik - 422 008.
3. Commissioner of Service Tax (Appeals), Pune, 3rd floor, 'F' Wing, ICE House, 41-A, Sasoon Road, Pune - 411 001.
4. Commissioner (Appeals), CGST & C.Ex., Nashik, Plot No.155, Sector 34, NH, Jaishtha & Vaishakh, CIDCO, Nashik - 422008.
5. Sr. P.S. to AS (RA), Mumbai.
6. Notice Board.