

SPEED POST



F.No. 195/206/2018-R.A.
195/207/2018-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 25/5/21..

Order No. 109-110/2021-CX dated 24-5-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. NOI-EXCUS-002-APP-2037-17-18 dated 28.03.2018 and NOI-EXCUS-002-APP-160-18-19 dated 19.07.2018 passed by the Commissioner (Appeals), Customs & Central Tax, Noida.

Applicants : M/s. CNH Industrial (India) Pvt. Ltd., Noida

Respondent : Commissioner of CGST, Gautam Budh Nagar

ORDER

Two revision applications, bearing nos. 195/206/2018-RA & 195/207/2018-R.A. both dated 18.10.2018, have been filed by M/s. CNH Industrial (India) Pvt. Ltd., Noida (hereinafter referred to as the Applicant) against Orders-in-Appeal Nos. NOI-EXCUS-002-APP-2037-17-18 dated 28.03.2018 and NOI-EXCUS-002-APP-160-18-19 dated 19.07.2018, passed by the Commissioner (Appeals), Customs & CGST, Noida wherein the appeals of the applicant, against Orders-in-Original Nos. 191/R/AC/D-I/N-II/16-17 dated 18.01.2017 and 49/R/AC/D-I/N-II/17-18 dated 14.06.2017 passed by Assistant Commissioner, Central Excise, Noida, have been rejected.

2. The revision application no. 195/206/2018-RA has been filed on 18.10.2018 against the Order-in-Appeal No. NOI-EXCUS-002-APP-2037-17-18 dated 28.03.2018, which was received by the Applicants on 16.06.2018. The revision application, has, therefore, been filed after a delay of 34 days. As per the condonation of delay application, this delay was caused due to lack of clarity regarding the authority before which it was to be filed and later due to some medical exigency. Delay is condoned.

3. Brief facts of the case are that the Applicant, a manufacturer of 'Tractors and Tractor Parts', exported Tractors on payment of Automobile Cess/ Tractor Cess leviable on Tractors @1/8 % advalorem, which in fact was leviable on clearance of tractors of the engine capacity exceeding 1800 CC in the domestic market, during the period July 2015 to March 2016 and April 2016 to June 2016. Two rebate claims of Rs. 81,08,979/- and Rs. 25,00,646/- for the respective periods were filed by the Applicant in the office of jurisdictional Central Excise authorities under Rule 18 of Central Excise Rules, 2002. The rebate claims were rejected on the ground that rebate of Automobile Cess is not admissible under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004, as Automobile Cess is levied and collected under

Section 9 of the Industries (Development and Regulation) Act, 1951 and is not specified as duty for grant of rebate vide Notification No. 19/2004-CE (NT) dated 06.09.2004. An amount of Rs. 11,35,401/-, for the period 03.07.2015 to 31.08.2015, out of the total rebate amount of Rs. 81,08,979/- was also held to be barred by the limitation under Section 11B of the Central Excise Act, 1944. Aggrieved, the Applicant filed appeals before the Commissioner (Appeals), which were rejected.

4. The present revision applications have been filed, mainly, on the ground that Section 9(1) of Industrial (Development and Regulations) Act, 1951 provides for levy and collection of cess as duties of excise and, hence, the same is admissible for rebate under Rule 18 of Central Excise Rule, 2002. Applicant has also relied upon the judgment of Hon'ble Karnataka High Court in the case of M/s TVS Motor Co. Ltd. vs. UOI {2015 (323) ELT 57 (Kar)} wherein it has been held that automobile cess is a duty of excise and is covered by Notification No. 19/2004. It is further contended that the claim for the period 03.07.2015 to 31.08.2015 of Rs. 11,35,401/- is not time barred as during the said period, there was no period of limitation provided either under Rule 18 or Notification No. 19/2004.

4. Personal hearing was held on 17.05.2021 in virtual mode. Sh. Nishant Mishra, Advocate and Sh. Sumit Aggarwal, Senior Manager, attended the hearing for the applicant. Sh. Mishra reiterated the contents of the revision application and the additional submissions filed by email on 16.05.2021. Upon being asked, Sh. Mishra fairly admitted that the cess was not payable in the instant case, as it was applicable only to the goods cleared for domestic consumption and not to the export goods. He further submitted that the part claim (in RA No. 195/206/2018-RA) is not barred by limitation as the claims were filed within one year from the date the ship left India. Sh. Mishra also filed additional submissions on 21.05.2021 to substantiate his contention in respect of limitation. None appeared for the respondent department and no adjournment has been sought. Therefore, the matter is taken up for decision on the basis of records.

5.1 The Government has examined the matter. The rebate has been claimed under Rule 18. The 'conditions and limitations' and the 'procedure' for grant of rebate under Rule 18 have been specified vide notification no. 19/2004-CE (NT) dated 06.09.2004. Condition 2(a) of the notification prescribes "that the excisable goods shall be exported after payment of duty". "Duty" is defined in the Explanation-I of the notification as under:-

"Explanation I – "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely:

- (a) the Central Excise Act, 1944 (1 of 1944);*
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);*
- (d) the National Calamity Contingent duty leviable under Section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) and further amended by Section 3 of the Finance Act, 2004 (13 of 2004);*
- (e) special excise duty collected under a Finance Act;*
- (f) additional duty of excise as levied under clause 81 read with clause 83 of the Finance (No. 2) Bill, 2004."*

As the Automobile Cess does not find a place in the list so specified in the governing notification (No. 19/2004), the lower authorities have denied the subject rebate claims. This view is also in line with the CBIC's Circular No. 262/01/2007-CX-8 dated 20.03.2007.

5.2 The applicant has heavily relied on the Hon'ble High Court of Karnataka's judgment in the case of M/s TVS Motor Co. Ltd. vs. UOI {2015 (323) ELT 57 (Kar)}. The Hon'ble High Court has held that the Automobile Cess is collected as a duty of excise and, hence, a reference to 'duties of excise' collected under the Central Excise Act, 1944 in the Explanation I to the aforesaid notification includes Cess, though not expressly specified. The Government observes that the

ratio of the decision in TVS Motor is not applicable in the present case for the following reasons:

(i) The notification no. 19/2004-CE (NT) covers grant of rebate of duty paid and is, therefore, in the nature of an exemption notification. A Constitution Bench of the Hon'ble Supreme Court has, in the case of Commissioner of Customs (Import), Mumbai, vs. M/s. Dilip Kumar and Company & Ors. {2018-TIOL-302-SC-CUS-CB}, held that:

“(i) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(ii) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.”

In the present case, the subject Cess is not specifically listed in the aforesaid notification-a position also stated by the Hon'ble High Court in TVS Motors (supra). Therefore, on a strict interpretation, the Automobile Cess is not covered by the notification for grant of rebate. On the other hand, Rule 3 of the Automobile Cess Rules, provides that provisions of Central Excise Act regarding collection of duty are applicable to Automobile Cess, which has prompted the Hon'ble High Court to by implication hold that the subject Cess is duties of excise for the purposes of the notification. However, following the dictum of the Constitution Bench of the Apex Court in Dilip Kumar, there is no scope to deviate from a strict interpretation and even if some ambiguity is said to be caused due to Rule 3 *ibid*, it has to be resolved by an interpretation in favour of Revenue.

(ii) In the TVS Motor, the Cess was payable whereas in the present case, the Cess is admittedly not applicable on export goods and, hence, was not payable. As such, the amount paid in this case is not 'cess'.

5.3 In view of the above, Government finds that the rebate under Rule 18 is not applicable in the present case.

5.4 In respect of issue of limitation, the Hon'ble Supreme Court has, in the case of UOI vs. Uttam Steel Ltd. {2015 (319) ELT 598 (SC)}, held that claim of rebate can only be made under Section 11B within the period of limitation stated therefor and it is not open to the subordinate legislation to dispense with the provisions of Section 11B. As such, contentions of Applicant, to the contrary, are not acceptable. The Government refrains from examining the factual submissions made, vide the additional submissions dated 21.05.2021, in view of the findings above.

6. The revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

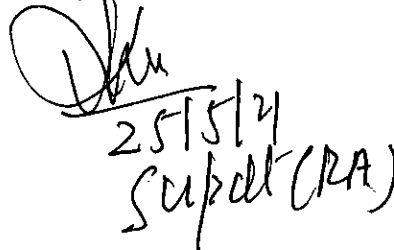
M/s. CNH Industrial (India) Pvt. Ltd.,
Plot No. 3, Udyog Kendra,
Greater Noida- 201 306.

G.O.I. Order No. 109-110/21-CX dated 24-5-2021

Copy to: -

1. The Commissioner of CGST, Gautam Budh Nagar, Greater Noida.
2. The Commissioner of Customs & Central Tax (Appeals), Noida.
3. P.S. to A.S. (Revision Application).
4. Guard File.
5. Spare Copy.

ATTESTED



25/5/21
Superintendent (RA)