

F. No. 195/194/2017-RA

SPEED POST



F. No. 195/194/2017-RA
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 21/12/22

Order No. 111/2022-CX dated 21-12-2022 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 Application filed, under section 35 EE of the Central Excise
Act, 1944, against the Order-in-Appeal No. 35/2017/LTU dated
16.02.2017, passed by the Commissioner (Appeals), LTU, Bengaluru.

Applicant : M/s Volvo India Pvt. Ltd., Bengaluru.

Respondent : The Commissioner of CGST & Central Excise, Bengaluru East.

.....

ORDER

A Revision Application No. 195/194/2017-RA dated 17.05.2017 has been filed by M/s Volvo India Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 35/2017/LTU dated 16.02.2017, passed by the Commissioner (Appeals), LTU, Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 205R/2016 dated 23.05.2016, passed by the Assistant Commissioner of Central Excise & Service Tax, LTU, Bengaluru.

2. Briefly stated, the Applicants herein exported excisable goods on payment of Central Excise Duty, against 16 Shipping Bills filed during the period of 28.02.2012 to 09.06.2014. The goods were exported out of the country during the period of 31.08.2012 to 09.06.2014. A rebate claim of Rs. 3,56,24,177/-, being the Central Excise Duty paid by debiting through CENVAT credit account, was filed on 04.01.2016, under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The rebate claim was rejected by the original authority, vide the aforesaid Order-in-Original dated 25.05.2016, as it was filed beyond the period of one year from the date of export and was, therefore, barred by limitation provided under Section 11B of the Central Excise Act, 1944. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals).

3. The Revision Application has been filed, mainly, on the grounds that the time limit prescribed under Section 11B is not applicable to the rebate claims filed under Rule 18; that the rebate claim was filed in accordance with law; that substantive benefit cannot be denied on procedural grounds; that the intention of the Government is always for zero rated exports; and that the rebate may be allowed as re-credit in the CENVAT credit account.

4. The personal hearing, was held, in virtual mode, on 21.12.2022. Ms. Neetu James, Advocate appeared for the Applicant and requested that additional submissions filed by email on 21.12.2022 may be taken on record. She submitted that in view of the Apex

Court's decision in the case of Sansera Engineering Ltd., on 29.11.2022, the case is covered against them on merits. However, as the factum of exports and duty paid nature of goods is not in dispute, the rebate amount may be allowed by way of re-credit in the CENVAT credit account. She relied upon the decisions cited in the additional submissions in support of this contention. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The issue involved in the subject revision application is whether the limitation provided under Section 11B of the Central Excise Act, 1944 is applicable to the claims for rebate of duty, under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-CE(NT) dated 06.09.2004.

5.2 It is observed that as per clause (A) of the Explanation to Section 11B, "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable material used in the manufacture of goods which are exported out of India. Further, as per clause (B) of the said Explanation "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 were 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 by land, the date on which such goods pass the frontier, or*
- (iii) If the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India.,"*

Thus, Section 11B not only provides that the rebate of duty of excise is a type of refund of duty, the 'relevant date' for determining limitation in the cases of rebate is also specifically provided. As such, on a plain reading of Section 11B, there should be no scope for doubt that the limitation provided under Section 11B is applicable to the cases of rebate as well.

5.3 The Government further observes that the issue is no longer res-integra. The Hon'ble Supreme Court has, in the case of Sansera Engineering Ltd. vs. Deputy Commissioner, Large Tax Payer Unit, Bengaluru (Civil Appeal No. 8717 of 2022), noted the statutory position, as above, and, vide its judgment dated 29.11.2022, held that "15-----
-----While making claim for rebate of duty under rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable." While deciding this matter, the Hon'ble Supreme Court has also overruled the judgments of Hon'ble Madras High Court in the case of Dorcas Market Makers Pvt. Ltd. {2015(321) ELT 45 (Mad.)}, and that of Hon'ble Punjab & Haryana High Court in the case of JSL Lifestyle Ltd. {2015 (326) ELT (P & H)}, which have been relied upon by the Applicants herein in support of their case.

5.4 Thus, there is no doubt that limitation provided under Section 11B of the Central Excise Act, 1944 shall be applicable in respect of claims for rebate, under Rule 18 ibid read with Notification No. 19/2004-CE(NT) dated 06.09.2004 irrespective of whether the provisions regarding limitation were specifically adopted in the notification dated 06.09.2004 or otherwise. This position has been fairly admitted by the Applicants during the course of personal hearing.

6.1 The alternate plea of the Applicants is that, though, the case is covered on merits against them, the factum of export and duty paid nature of the goods is not in dispute. Therefore, the rebate may be allowed by way of re-credit in the CENVAT credit account.

However, the Government is not persuaded to accept this alternate plea for the following reasons:

- (i) The re-credit of the amount claimed by way of rebate in the CENVAT credit account would amount to rejecting the rebate claim in cash, on one hand, but allowing the very same claim by way of re-credit, on the other hand. It is trite that what cannot be done directly can also not be done indirectly.

- (ii) After the introduction of the GST (w.e.f. 01.07.2017), there is no CENVAT credit account available with the Applicant where the re-credit could be considered.
- (iii) Any refund claim arises as the duty was not payable or duty paid should otherwise be not retained (as in the case of export goods). If this contention of the Applicant is accepted, it would mean that no refund claim, which is otherwise admissible on merits, can be rejected on the grounds of limitation. Such interpretation would render the provisions regarding limitation made under Section 11B redundant, a position which cannot be contemplated in law.]

6.2 The Applicants have relied upon the judgment of Hon'ble Gujarat High Court in the case of Garden Silk Mills Ltd. vs. Union of India {2018 (11) G.S.T.L. 272 (Guj.)} and that of Hon'ble Punjab and Haryana High Court in the case of Nahar Industrial Enterprises Ltd. vs. Union of India {2009 (235) ELT 22 (P & H)} in support of above contention. The Government observes that in the aforesaid cases the assessee had paid duty in excess of the amount that was payable. The rebate sanctioning authority had restricted the rebate in cash to the amount of duty payable. In this light, the Hon'ble High Courts treated the excess amount paid as a deposit and allowed it to be refunded by way of re-credit. In the present case, on the other hand, there is no excess payment of duty. The duty was paid as it was payable but the rebate claim has been rejected on the grounds of limitation. Therefore, the ratio of the decisions in Garden Silk Mills Pvt. Ltd. and Nahar Industries Enterprises Pvt. Ltd. is not applicable in the facts of this case. For the same reason, the Government's earlier decision in the case of Balkrishna Industries Ltd. {2011 (271) ELT 148 (G.O.I.)} is also not applicable.

6.3 The Applicants have also cited the judgment of Hon'ble Karnataka High Court in the case of Rediall India Pvt. Ltd. vs. Union of India {2018 (362) ELT 981 (Kar.)} in support of their contention. However, the Government observes that in the case of Rediall India Pvt. Ltd. the assessee had filed the rebate claim under Rule 18 whereas they had followed the procedure prescribed under Rule 19. It is in this light that the Hon'ble High Court had held

that the relief either as rebate of duty under Rule 18 or export without payment of duty under Rule 19 ought to have been allowed. The facts of the present case are entirely different.

6.4 As such, the alternate plea of allowing rebate by way of re-credit in the CENVAT credit account cannot also be accepted.

7. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

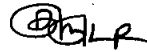
M/s Volvo India Pvt. Ltd.,
Yellachalli Village, Tavarekere Post,
Hoskote Taluk,
Bengaluru-562122.

G.O.I. Order No. 111/22-CX dated 21-12-2022

Copy to:

1. The Pr. Commissioner of CGST & Central Excise, Bengaluru East, TTMC, BMTC Bus Stand Complex, HAL, Airport Road, Domluru, Bengaluru-560071.
2. The Commissioner of CGST & Central Excise (Appeals), TTMC, BMTC Bus Stand, HAL Airport Road, Domluru, Bengaluru-560071.
3. M/s Lakshmi Kumaran & Sridharan, Advocates, No. 5, Jangpura Extension Link Road, New Delhi-110014.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



21.12.22

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi