

REGISTERED SPEED POST AD



**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. 195/442/16-RA / 2550 Date of Issue: 14.12.2022

ORDER NO. 1192/2022-CX(WZ)/ASRA/MUMBAI DATED 09.12.2022
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 : Roha Dyechem Pvt. Ltd.
42, MIDC Industrial Estate,
Dhatav, Roha,
Dist. Raigad -402116

Respondent : Commissioner of CGST & Central Excise, Raigad.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Order-in-Appeal No. CD/192/RGD/2016
dated 10-03-2016 passed by the Commissioner of Central
Excise(Appeals), Mumbai Zone - II.

ORDER

The revision application has been filed by M/s. Roha Dychem Pvt. Ltd., having their factory at 42, MIDC, Dhatax, Tel Roha, Dist Raigad, (herein after to be referred as "Applicant"); against Order-in-Appeal No. CD/192/RGD/2016 dated 10-03-2016 passed by the Commissioner (Appeals), Central Excise, Mumbai-II.

2. The applicant had filed rebate claims amounting to Rs. 10,72,479/- under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002 read with Section 11B of the CEA, 1944 for the goods cleared from the factory for export under ARE-1's. The concerned Assistant Commissioner, Central Excise Mahad Division after following the due process of Law rejected the said rebate claim vide his OIO No. RBT/2641 to 2645/15-16(MHD) dated 30.09.2015 being inadmissible under Section 11B of the CEA, 1944 as the rebate claim had been filed beyond the stipulated time limit of one year from the relevant date.

3. Aggrieved by the OIO dated 30.09.2015, the applicant filed appeal before the Commissioner(Appeals). The appellate authority after following due process of law rejected the appeal and upheld the OIO vide his OIA No. CD/192/RGD/2016 dated 10-03-2016.

4. Aggrieved by the OIA dated 10-03-2016, the applicant filed revision application on the following grounds:

- (a) The Commissioner (Appeals) erred in not considering the legal issue that the time limit prescribed under Section 11B of Central Excise Act, 1944 is inapplicable to the rebate claims filed under Rule 18 of the Central Excise Rules, 2002 when it is not prescribed under the notification issued under Rule 18.

- (b) Rule 18 of the Central Excise Rules, 2002 prescribing rebate of duty reads as under-

Rule 18 - Rebate of duty. - Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

- (c) The Notification No. 19/2004-CE(NT) dated 06-09-2004 prescribing conditions, limits and procedures and other details is issued under the provisions of rule 18 of Central Excise Rules, 2002. The relevant clause is Clause 2(d) of the said notification, which deals with filing of rebate claim, which is as follows -

d. the rebate claim by filing electronic declaration shall be allowed from such place of export and such date, as may be specified by the Board in this behalf;

- (d) The previous Notification No.41/94-CE(NT) dated 12-09-1994 the clause (iv) reads as under-

(iv) the claim or, as the case may be, supplementary claim, for rebate of duty is lodged with the Maritime Collector of Central Excise or the Collector of Central Excise having jurisdiction over the factory of manufacture or warehouse, as mentioned in the relevant export documents; together with the proof of due exportation within the time limit specified in section 11B of the Central Excise and Salt Act, 1944(1 of 1944).

- (e) Thus, in the earlier Notification No. 41/94-CE(NT) dated 12-09-1994 in clause (iv) it has been specifically provided that the claim for rebate of duty has to be made within time limit as specified under Section 11B of the Central Excise and Salt Act. 1944. This notification is superseded by Notification No. 19/ 2004-CE(NT) dated 06-09-2004 wherein no such condition for filing rebate claim within the period prescribed under Section 11B.

- (f) Thus, the Commissioner (Appeals) failed to appreciate that while comparing of earlier Notification No. 41/94-CE(NT) dated 12-09-1994 and present Notification No. 19/2004-CE(NT) dated 06-09-2004, it shows an apparent omission of the time limit in the later notification. In present notification the time limit as prescribed under Section 11B of the Central Excise Act, 1944 has been intentionally omitted. It seems that it is only a conscious omission when all other conditions under earlier Notification No.41/94-CE(NT) are retained in the Notification 19/2004-CE(NT). Since, the Rule 18 of the Central Excise Rules, 2002 gives the power to the authorities to issue Notification prescribing conditions, limitation and procedures, the same have to be followed. Therefore, what is not prescribed the notification cannot be imported into the said notification and decide the issue accordingly. There is no time limit has been prescribed in the present Notification No.19/2004-CE(NT) dated 06-09-2004. Thus, when the statutory notification issued under Rule 18 does not prescribe any time limit, Section 11B is not applicable and based on which the benefit cannot be denied to the applicant.
- (g) The Commissioner (Appeals) also totally ignored follow the ratio of the judgment of Hon'ble Madras High Court in case of Dorcas Market Makers Pvt. Ltd. [2012 (281) E.L.T. 227 (HC- Mad)] it has been held that -

"Rebate - Limitation - Time limit under Section 11B of Central Excise Act, 1944 - Prescribed by Notification No. 41/94-C.E., but omitted by subsequent Notification No. 19/2004-C.E., prescribing procedure for obtaining rebate. HELD : Omission was conscious as all other conditions for obtaining rebate were retained in the subsequent Notification - Rebate could not be rejected on ground of limitation - It was more so as even Rule 18 of Central Excise Rules, 2002 did not prescribe it. Rebate - Claim of - Limitation - Rule 18 of Central Excise Rules, 2002 is not subject to Sections 11A and 11B of Central Excise Act, 1944 -In that view, rebate cannot be rejected on ground of limitation."

- (h) The Commissioner (Appeals) also ignored another judgment of Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd.[2015 (321) E.L.T. 45 (HC Mad)] held that –

“16. As rightly pointed out by the learned Judge, the rebate of duty under Rule 18 should be as per the notification issued by the Central Government. The Notification bearing No 19/2004, dated 6-9- 2004 prescribes the conditions, limitations and procedures for considering the claim for refund. Under Clause 2(d) of the Notification, the rebate claim may be allowed from such place of export and such date, as may be specified by the Board, by filing electronic declaration. This Notification dated 6-9-2004 superseded the previous Notification bearing No. 41/1994, dated 12-9-1994. At the time when the 1994 Notification was issued, the procedure for filing electronic declaration had not been made. Since everything was made manually at that time, the notification of the year 1994 prescribed a time-limit for filing claim. But, the 2004 notification did not contain the prescription regarding limitation. This was a conscious decision taken by the Central Government and hence, the view taken by the learned Judge is fair and reasonable.”

- (i) The Commissioner (Appeals) not appreciated that this judgment is further maintained by Hon'ble Supreme Court in 2015 (325) ELT A 104(SC).
- (j) Without prejudice to above submission and assuming, but not admitting that the provisions of Section 11B are applicable in this case, the applicant submitted that the subject claims cannot be rejected on the ground of limitation, since delay in filing of said rebate claims due to delay in furnishing copies of Shipping Bills by the Customs Authorities. The Customs Authorities have issued the subject Shipping Bills to the applicant on 04-06-2015 as shown on said Shipping Bills as “Print Date”. Only after getting the Shipping Bills on 04-06- 2015 the applicant could furnish the subject rebate claims on 08-06-2015.

(k) Thus, due to delayed submission (over one year) of samples for testing and analysis by the Customs department, the applicant could not receive the Shipping Bills even when the goods were duly exported. The Commissioner (Appeals) failed to appreciate that in a situation where applicant are prevented from making the rebate claims within the prescribed period of limitation due to non-availability of Shipping Bills from the Customs department, the department is solely responsible for such delay, they cannot be put in a disadvantageous position with respect to limitation period by reading provisions of Section 11B. It is not the case that the delay had occurred because of any laxity on the part of the applicant but it was because of the lapse on part of the Customs Authorities in sending samples for testing purpose in time and obtaining the certificates, which leads to delay in furnishing the Shipping Bills, over which the applicant had no control.

(l) The Commissioner (Appeals) further failed to take note of Chapter IX of the CBEC Manual 2001-02 deals with 'Refund' and paragraph No.2 deals with Presentation of refund claim. Sub-paragraph No. 2.4 of said paragraph No. 2 deals with the subject matter of controversy and reads as under:

'2.4 It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department. Consequently, submission of rebate claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, the claim should be rejected or returned with query Memo(depending on the nature / importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case of not availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted so that the claimant is not disadvantageous position with respect to limitation period.'

(m) In this respect the applicant relied on the judgment of Hon'ble Gujrat High Court in case of Cosmonaut Chemicals (2009 (233) E.L.T. 46 (Guj)), which is not appreciated by the Commissioner (Appeals). The High Court ordered that

- Section 118 of the Act stipulate that a claim has to be accompanied by requisite documents in case of an assessee who has exported duty paid goods being copy of shipping bill duly endorsed by the Customs Authorities. Hence, if the Customs Authorities delay parting with a copy of shipping bill bearing necessary endorsement, an assessee cannot be put to disadvantage on the ground of limitation when the assessee is not in a position to make a claim without accompanying documents.

In view of the aforesaid submissions, the impugned order deserves to be set aside with all the consequential relief.

5. The applicant was thereafter granted opportunity of personal hearing on 21.06.2022, 05.07.2022, 19.07.2022 or 26.07.2022. Neither the applicant nor the respondent appeared for personal hearing or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

6. The issue for decision in the present case is the admissibility of rebate claim filed by the applicant beyond one year of the date of export of goods. The contention of the applicant in the revision application is that the delay in filing rebate claim was due to non availability of the Shipping Bills from the Customs Department. The applicant has averred that limitation of one year for filing rebate claim should commence from the date on which they had received the shipping bill from Customs authorities.

7.1 Before delving into the issue, it would be apposite to examine the statutory provisions regulating the grant of rebate. Rule 18 of the CER, 2002 has been instituted by the Central Government in exercise of the powers vested in it under Section 37 of the CEA, 1944 to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA, 1944. Moreover, the Explanation (A) to Section 11B explicitly sets out that for the purposes of the section “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. The duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India covers the entire Rule 18 within its encompass. Likewise, the third proviso to Section 11A(1) of the CEA, 1944 identifies “rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India” as the first category of refunds which is payable to the applicant instead of being credited to the Fund. Finally yet importantly, the Explanation (B) of “relevant date” in clause (a) specifies the date from which limitation would commence for filing refund claim for excise duty paid on the excisable goods and the excisable goods used in the manufacture of such goods. The relevant text is reproduced below.

“(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 dispatch of goods by the Post Office concerned to a place outside India;”*

7.2 It would be apparent from the definition of relevant date in Section 11B of the CEA, 1944, that for cases of refund of excise duty paid on

exported goods or on excisable materials used in exported goods, the date of export is the relevant date for commencement of time limit for filing rebate claim.

8. The next issue that arises is whether the non-availability of documents would have the effect of postponing such "relevant date". Government infers that in the normal course any diligent applicant would try and ensure that their rebate claim would be lodged within time. Therefore, the applicant should have filed the rebate claim within one year of date of shipment of the goods with the available documents and photocopies of documents which had been submitted by them to the Customs Authorities. Such timely action on their part would have ensured that the rebate claim was not time barred. Even if the claim was returned by the rebate sanctioning authority for deficiency in the documents submitted, the applicant could have established their entitlement to the rebate claimed as and when the proper documents were received. In such a case, their rebate claim would be deemed to have been filed in time. Para 2.4 of Chapter 9 of the CBEC's Excise Manual of Supplementary Instructions, 2005 in very explicit terms provides for such exigencies. The text thereof is reproduced below.

"2.4Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo(depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period."

9. Although, the applicant has placed reliance upon various case laws it is a matter of record that the Government has as far back as in 2010 itself held In Re: Dagger Forst Tools Ltd.[2011(271)ELT 471(GOI)] that where the applicant had filed incomplete documents, the initial date of filing would be the relevant date under Section 11 B of the CEA, 1944. However, in

the present case the applicant has failed to file rebate claim within the prescribed time limit.

10.1 The applicant has placed reliance upon the judgments in the case of Cosmonaut Chemicals [2009(233)ELT 46(Guj)]. With due respect to this judgment of the Hon'ble High Court relied upon by the applicant, it is observed that this judgment has been delivered in exercise of the powers vested in these courts in terms of Article 226/Article 227 of the Constitution of India. Needless to say, no statute passed by Parliament or State Legislative Assembly or any existing law can abridge the powers vested in the High Courts which is known as writ jurisdiction of the High Court under Article 226 of the Constitution of India. However, the irrefutable fact in the present case is that the Central Excise Act, 1944 provides for a period of limitation in Section 11B of the CEA, 1944. The powers of revision vested in the Central Government under Section 35EE of the CEA, 1944 are required to be exercised within the scope of the CEA, 1944 which includes Section 11B of the CEA, 1944. In other words, notwithstanding the mitigating circumstances or compelling facts, there can be no exercise of powers in revision outside the scope of the Central Excise Act, 1944. Thus, there is a great difference in the degree of powers exercisable by the High Courts and creatures of statute.

10.2 The applicant has placed reliance upon the judgment of the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. vs. CCE[2012(281)ELT 227(Mad.)] although the same High Court has reaffirmed the applicability of Section 11B to rebate claims in its later judgment in Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance[2017(355)ELT 342(Mad.)] by relying upon the judgment of the Hon'ble Supreme Court in UOI vs. Uttam Steel Ltd.[2015(319)ELT 598(SC)]. Incidentally, the special leave to appeal against the judgment of the Hon'ble High Court of Madras in Dorcas Market Makers Pvt. Ltd. has been dismissed *in limine* by the Apex Court whereas the judgment in the case of

Uttam Steel Ltd. is exhaustive and contains a detailed discussion explaining the reasons for arriving at the conclusions therein.

10.3 The observations of the Hon'ble High Court of Karnataka in Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru [2020(371)ELT 29(Kar)] at para 13 of the judgment dated 22.11.2019 made after distinguishing the judgments in the case of Dorcas Market Makers Pvt. Ltd. and by following the judgment in the case of Hyundai Motors India Ltd. reiterate this position.

"13. The reference made by the Learned Counsel for the petitioners to the circular instructions issued by the Central Board of Excise and Customs, New Delhi, is of little assistance to the petitioners since there is no estoppel against a statute. It is well settled principle that the claim for rebate can be made only under section 11B and it is not open to the subordinate legislation to dispense with the requirements of Section 11B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11B is only clarificatory."


10.4 Be that as it may, the Hon'ble Delhi High Court has in its judgment in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)] dealt with the issue involved in the present revision application and disagreed with the views expressed by the Hon'ble High Court of Gujarat in its judgment in Cosmonaut Chemicals[2009(233)ELT 46(Guj.)] The text of the relevant judgment is reproduced below.

"16. We also record our respectful disagreement with the views expressed by the High Court of Gujarat in Cosmonaut Chemicals[2009(233)ELT 46(Guj.)] and the High Court of Rajasthan in Gravita India Ltd.[2016(334)ELT 321(Raj.)], to the effect that, where there was a delay in obtaining the EP copy of the Shipping Bill, the period of one year, stipulated in Section 11B of the Act should be reckoned from the date when the EP copy of the Shipping Bill became available. This, in our view, amounts to rewriting of Explanation (B) to Section 11B of the Act, which, in our view, is not permissible."

10.5 The judgment of the Hon'ble Delhi High Court has very unambiguously held that the period of one year must be reckoned from the date of export and not from the date when the copy of shipping bills is received.

11. In the light of the foregoing facts and in keeping with the judicial principle of *contemporanea exposito est optima et fortissima in lege* (contemporaneous exposition is the best and strongest in law), Government respectfully follows the ratio of the judgment of the Hon'ble Delhi High Court in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)]. The applicants contention that limitation of one year for filing rebate claim should commence from the date on which they had received the corrected shipping bill from Customs authorities cannot be approved as it is beyond the scope of the statute. The criteria for the commencement of time limit for filing rebate claim under the Central Excise law has been specified as the date of export of goods and cannot be varied by any exercise of discretion. Therefore, the rebate claims filed by the applicant have correctly been held to be hit by bar of limitation by the Commissioner (Appeals) in the impugned order.

12. The Order-in-Appeal No. CD/192/RGD/2016 Dated 10-03-2016 passed by the Commissioner(Appeals) is upheld. The revision application filed by the applicant is rejected as devoid of merits.


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

ORDER No. 1192/2022-CX(WZ) /ASRA/Mumbai DATED 09.12.2022

To,
Roha Dyechem Pvt. Ltd.
42, MIDC Industrial Estate,
Dhatav, Roha,
Dist. Raigad -402116

Copy to:

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