

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. 198/52/18-RA / 7494

Date of issue: 12/12/2022

ORDER NO. 195 /2022-CX (WZ)/ASRA/MUMBAI DATED 12.12.2022
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 : Commissioner, CGST, Kolhapur

Respondent: M/s. ACG Pharma Pack Pvt. Ltd.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. KLH-EXCUS-
000-APP-137-2017-18 dated 01.06.2017 passed by the
Commissioner(Appeals-II), Central Excise & Service Tax,
Kolhapur.

ORDER

The subject Revision Application has been filed by the Commissioner of CGST, Kolhapur (here-in-after referred to as 'the Applicant Department') against the Order-in-Appeal (OIA) No. KLH-EXCUS-000-APP-137-2017-18 dated 01.06.2017 passed by the Commissioner (Appeals-II), Central Excise & Service Tax, Kolhapur.

2. Brief facts of the case are that the M/s. ACG Pharma Pack P. Ltd., (hereinafter referred to as "the respondent"), manufacture excisable goods - 'PVC Films' falling under CSH No. 39204900 of Central Excise Tariff Act, 1985. They had filed rebate claims on 21.12.2015, under Section 11B of the Central Excise Act, 1944, totally amounting to Rs. 29,89,920/- in respect of duty paid on goods exported outside the country. On scrutiny and verification of the said rebate claims, the rebate sanctioning authority observed that 5 ARE-1s were exceeding the one year period from the date when goods were exported. Therefore, the rebate sanctioning authority vide OIO No. Satara/337/ADJ/2015-16 dated 16.03.2016 reduced the rebate claim by Rs.3,09,142/- and sanctioned the remaining amount of Rs.26,80,778/-. Aggrieved, the applicant filed an appeal which was allowed by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the applicant-department has filed the impugned Revision Application mainly on the grounds that:

- a) The Provisions of Section 11B of the Central Excise Act, 1944 deal with the sanctioning of refund of the duty, including the Rebate of duty paid on goods exported and specifies the 'relevant date' for filing of such claim. Further, the 'relevant date' under Section 11B(5)(B) of the Central Excise Act, 1944 is specified as -- "(a)(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". The Rule 18 of the Central Excise Rules, 2002 and Notification no.

19/2004- C.E.(N.T.) dated 06/09/2004 govern the procedural aspect of the Claims.

- b) The Commissioner (A) has failed to appreciate the fact that if things are not mentioned in the Notification then the recourse is to be taken to Law as Notification issued under the authority of law cannot be read in isolation without referring to the Statute. By only considering the decisions at various forums, the Commissioner (A) has failed to consider the limitations specified under the Section 11B of the Central Excise Act, 1944. The Commissioner (A) failed to consider that the non-mentioning of relevant date in the Notification does not obviate the provisions mentioned under Section.

On the above grounds the applicant-department prayed to restore the impugned Order-in-Original.

4.1 Personal hearing in the case was fixed for 10.11.2022. Shri Durgesh Nadkarni, Advocate, representing the respondent, attended the online hearing and submitted that time limit is not applicable to rebate. He further submitted that claim in respect of Sr. No.1 & 5 is within one year excluding the day of reckoning as per limitation Act. He requested one week's time to file additional submissions.

4.2 No representative from the side of applicant-department appeared nor any written communication has been received from them in the matter.

4.3 In their written submission, the respondent has inter alia contended that:

- a) The Appeal filed by the Department is against granting of rebate pertaining to 5 claims amounting to Rs.3,09,142/- to the Respondent. In this regard an attention is drawn to the page 14 of the RA which is a finding portion of the Adjudication Order at serial no 1 and 5:

Sr No.	ARE-1 No./ date	date of clearance of export goods from the factory	date of actual export of goods	Amount of rebate claimed (in Rs.)	date of receipt of the claim by the Dept.
1	698/5-12-14	5-12-2014	18-12-2014	1,29,565/-	21-12-2015
5	718/16-12-14	16-12-2014	25-12-2014	18,325/-	21-12-2015

As regards to serial no. 1, the actual date of export of goods was 18-12-2014 and as per Section 12(1) of the Limitation Act, which is reproduced as follows:

Section 12. Exclusion of time in legal proceedings.

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

The actual date of export i.e.18-12-2014 is to be excluded and a one year period as per Section 11B would start from 19-12-2014 and would end at 19-12-2015, which is a Saturday followed by 20-12-2014, a Sunday. On both these days, the office of the Central Excise Department is closed and Application was filed on the very next day i.e. 21-12-2015, which is on the last day of the limitation period. Hence, the said claim of Rs.1,29,565/- is not time barred.

b) As regards to claim of Rs.18,325/- at sr. no.5, the actual date of export was 25-12-2014 and rebate claim was filed on 21-12-2015, which was well within the time of one year as prescribed in Section 11B of the Central Excise Act,1994.

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

6. Government observes that the main issue in the instant case is whether the rebate claims filed after one year are time barred, being hit by limitation in terms of section 11B of the Central Excise Act, 1944.

7.1 Government observes that the respondent, a manufacturer exporter, had exported 'PVC Films' falling under CSH No. 39204900. Against these exports, they filed rebate claims on 21.12.2015, under Section 11B of the Central Excise Act, 1944, totally amounting to Rs.29,89,920/-. The rebate sanctioning authority rejected partial rebate claim amounting to Rs.3,09,142/- in respect of five ARE-1s which were exceeding the one year period from the date when goods were exported i.e. the date on which the ship/air craft had left India.

7.2 Government observes that the respondent has contended that the time limit prescribed by Section 11B of the Central Excise Act, 1944 (hereinafter referred to as CEA), is not applicable to rebate claims. In this regard, Government observes that Rule 18 of the CER has been made by the Central Government in exercise of the powers vested in it under Section 37 of the CEA to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA. Moreover, Section 37 of the CEA by virtue of its sub-section (2)(xvi) through the CER specifically institutes Rule 18 thereof to grant rebate of duty paid on goods exported out of India. Notification No. 19/2004-CE(NT) dated 06.09.2004 and Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the CER to set out the procedure to be followed for grant of rebate of duty on export of goods. The respondent's contention that the time limit has been done away as provision for filing of electronic declaration in Notification No. 19/2004-CE dated 06.09.2004 does not stand to reason because the provisions of Section 11B making reference to rebate have not been done away with and continue to subsist.

7.3 Government observes that the respondent 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

7.4 Further, the observations of the Hon'ble High Court of Karnataka in the case of M/s. 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."

Recently, Hon'ble Supreme Court of India, in Civil Appeal No. 8717 of 2022, decided on November 29, 2022, while upholding this judgment, has held that:

35. In view of the above and for the reasons stated above, it is observed and held that 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. In the present case, as the respective claims were beyond the period of limitation of one year from the relevant date, the same are rightly rejected by the appropriate authority and the same are rightly confirmed by the High Court. We see no reason to interfere with the impugned judgment and order passed by the High Court. Under the circumstances, the present appeal fails and deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.

8. Government observes that the respondent has further contended that the exports done under two of the five ARE-1s were filed before the expiry of one year period stipulated under Section 11B *ibid*.

8.1 Government observes that shipment date in the case of ARE-1 No. 698 dated 05.12.2014 is 18.12.2014. The respondent has contended that in view of Section 12(1) of the Limitation Act,1963, the actual date of export i.e.18.12.2014 is to be excluded and a one year period as per Section 11B would start from 19.12.2014 and would end at 19.12.2015. Government observes that as per section 11B *ibid* the application for refund is to be filed before expiry of one year from the relevant date. Thus, if start date is taken as 19.12.2014, expiry of one year would be on 18.12.2015, which was a working day. Therefore, Government does not agree with this contention of the respondent.

8.2 Government observes that shipment date in the case of ARE-1 No. 718 dated 16.12.2014 is 25.12.2014. The rebate claim was filed on 21.12.2015. Thus, the claim was filed before the expiry of period of one year from relevant date, viz. the date on which the ship loaded with the export goods left India. Therefore, Government agrees with the respondent on this count.

9. In view of the findings recorded above, Government sets aside the Order-in-Appeal No. KLH-EXCUS-000-APP-137-2017-18 dated 01.06.2017 passed by the Commissioner (Appeals-II), Central Excise & Service Tax, Kolhapur and allows the impugned Revision Application except in respect of ARE-1 No. 718 dated 16.12.2014.


(SHRAWAN KUMAR)

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

ORDER No. 1195/2022-CX (WZ)/ASRA/Mumbai dated 12.12.2022

To,
M/s. ACG Pharma Pack P. Ltd.,
Gat No.448, 464, Shindewadi,
Post Shirwal, Tal.: Khandala,
Dist.: Satara (Maharashtra State).

Copy to:

1. Pr. Commissioner of CGST,
Kolhapur Commissionerate,
Vasant Plaza Commercial Complex,
4th & 5th Floor, Rajaram Road,
Bagal Chowk, Kolhapur - 416 001.

2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.