

F NO. 195/194/WZ/2018-RA

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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F NO. 195/194/WZ/2018-RA

7658

Date of Issue:

16.12.2022

ORDER NO. 1208/2022-CX (WZ) /ASRA/MUMBAI DATED 15.12.2022  
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 : M/s. Woodstar India Pvt. Ltd.

Respondent : Pr. Commissioner CGST & CX, Ahmedabad North.

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-  
002-APP-6-18-19 dated 21.06.2018 passed by the  
Commissioner, Central GST, Appeals, Ahmedabad.

**ORDER**

This Revision Application is filed by M/s. Woodstar India Pvt. Ltd. (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. AHM-EXCUS-002-APP-6-18-19 dated 21.06.2018 passed by the Commissioner, Central GST, Appeals, Ahmedabad.

2. Briefly stated facts of the case are that the applicant had filed rebate claims totally amounting to Rs. 41,46,832/- on 14.11.2017 in respect of three ARE-1s. The details of the same are as under:

S.No.	ARE-1 No. & Date	Date of Export	Date of filing of claim
1	01 dated 05.08.2013	23.08.13	14.11.2017
2	02 dated 17.08.2013	30.08.13	14.11.2017
3	03 dated 10.09.2013	18.09.13	14.11.2017

The provisions of Section 11B of the Central Excise Act, 1944, Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-CE (NT) dated 06.09.2004, as amended governs export under rebate. As per the same, the claim of rebate is required to be filed within one year from the export of goods. In the instant case, aforesaid claims were filed beyond the stipulated time limit. Accordingly, a Show Cause Notice proposing rejection of rebate claims was issued to the Applicant, which was adjudicated by the adjudicating authority vide OIO No. 1236/R/1/2017 dated 31.01.2018 under which he rejected all three rebate claims filed by the applicant holding that the same were time barred. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner, Central GST, Appeals, Ahmedabad, who vide Order-in-Appeal No. AHM-EXCUS-002-APP-6-18-19 dated 21.06.2018 rejected their appeal and upheld the OIO.

3. Being aggrieved, the Applicant filed the current Revision Application on the following grounds that:

- i. the OIA and OIO are illegal, illogical, bad in law and without due consideration to the facts and circumstances.
- ii. adjudicating authority erred in holding that as per explanation to section 11B, rebate claims are to be filed within one year from the relevant date.
- iii. no time limit is prescribed in Notification 19/2004-CE(NT).
- iv. all conditions are specified in the said notification in terms of Rule 18 of the Central Excise Rules,2002, which gives power, to issue notification prescribing conditions, limitation and procedures. Therefore, what is not prescribed in the notification can not be imported in the said notification.
- v. applicant placed reliance on various case laws.
- vi. In view of above, Applicant requested to set aside the impugned OIA and to allow their refund claim.

4. Personal hearing in this case was fixed for 14.10.2022, Mr. Dharmendra Kumar Singh, Advocate appeared online and submitted that notification for rebate does not prescribe any time limit for filing claim. He mentioned Dorca's Case. He requested to allow his claim.

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

6. The issue involved in the instant Revision Application is whether Applicant is entitled for the rebate claim which was rejected on the grounds of limitation or not.

7. The applicant had filed the rebate claim beyond one year from the date of export was a ground for rejection of rebate claim before the original authority and for rejection of their appeal by the Commissioner (Appeals). On perusal of the records, Government observes that the Applicant had

exported their goods on payment of duty and had sought the rebate of the duty paid by them as per Rule 18 of the Central Excise Rules, 2002. The contention of the Department is that the claims were hit by the limitation of time as per section 11B which stipulates claims for rebate to be filed within one year from the relevant date prescribed therein and in case of exports such relevant date would be the date of export. It is seen that in all cases the Applicant had filed their rebate claims beyond one year from the date of export.

8. The Government finds that the Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd., [reported in 2017 (355) E.L.T. 342 (Mad.)] upheld the rejection of rebate claim filed beyond one year of export by citing the judgment of In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai reported in 2015 (324) E.L.T. 270 (Mad.) and held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder: -

*"29. In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), it has been held as follows :*

*5. The claim for refund made by the Applicant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-*

*"(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;.....

8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

9. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is thus a mandatory provision. As per explanation (A) to Section 11B refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. The explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year

from the relevant date. Government finds no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

10. Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below:

*“14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.*

*15. In Everest Flavours Ltd. v. Union of India [2012(282)ELT 481(Bom.)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree.”*

In such manner, the Hon'ble High Court of Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it.

11. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that the Applicant has failed to act diligently in as much as they have failed to file rebate claim within the statutory time limit of one year from the date of shipment of the export goods. 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. In view of above, Government finds no infirmity in the impugned Order-in-Appeal No. AHM-EXCUS-002-APP-6-18-19 dated 21.06.2018 and upholds the same.

*Shrawan Kumar*  
15/12/22  
(SHRAWAN KUMAR)

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

ORDER No. 204/2022-CEX (WZ) /ASRA/Mumbai Dated 15.12.2022

To,

1. M/s. Woodstar India Pvt. Ltd., Survey No. 258, Vadodara, Taluka Sanand, Dist. Ahmedabad, Gujrat - 380015.
1. The Commissioner of CGST & CX, Ahmedabad North, Custom House, 1st Floor, Navarangpura, Ahmedabad - 380009.

Copy to:

2. The Commissioner (Appeals), Central GST, Appeals Commissionerate, CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad - 380015.
3. Sr. P.S. to AS(RA), Mumbai.
4. ~~Guard File~~