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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.195/619/2014-RA

/990

Date of Issue:

29.01.2019

ORDER NO. 120/2020-CX (WZ)/ASRA/MUMBAI DATED 20.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Ramdoot Enterprise

Respondent : Commissioner (Appeals-I) Central Excise, Ahmedabad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 12/2013(Ahd-II)CE/AK/Commr(A)/Ahd dated 31.01.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

ORDER

This Revision Application is filed by the M/s Ramdoot Enterprise, Plot No. 902/2, Phase-IV, GIDC Indl. Estate, Naroda, Ahmedabad-382 220 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 12/2013(Ahd-II)CE/AK/Commr(A)/Ahd dated 31.01.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. The issue in brief is that the Applicant, had filed two rebate claims for Rs. 3,12,605/- (Rupees Three Lakhs Twelve Thousand Six Hundred and Five Only) under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004, or duty paid on excisable goods viz S.O. Dyes falling under Chapter Heading 3204. The goods were excisable manufactured and exported by the Applicant. On scrutiny of the rebate claim, it was noticed that the goods were cleared for export vide ARE-1 No. 151 dated 24.09.2010 and ARE-1 No. 174 dated 25.10.2010 on payment of duty and therefore as per the explanation of Section 11B(1) of Central Excise Act, 1944, the relevant date (i.e. one year from the date of export) for filing the claim should be on 23.09.2011 and 24.09.2011 respectively. However, the Applicant had filed the rebate claims on 05.12.2011 and 10.12.2011 respectively after expiry of relevant date which is not admissible and required to be rejected. Hence they were issued a Show Cause Notice dated 27.01.2012 and the same was adjudicated by the Assistant Commissioner, Central Excise, Division-I, Ahmedabad-II Commissionerate vide Order-in-Original No 235 & 236/AC/12-R dated 30.03.2012 wherein the rebate claims amounting to Rs. 3,12,605/- was rejected under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 since they are time barred. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals-I), Central Excise, Ahmedabad who vide his Order-in-Appeal No.12/2013(Ahd-II)CE/AK/Commr(A)/Ahd dated 31.01.2013 rejected their appeal and upheld the Order-in-Original dated 30.03.2012.

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

- 3.1 That the issue involved in the present case is squarely covered by the decision of the Hon'ble High Court in the case of Cosmonaut Chemicals Vs Union India [2009 (2330 ELT 46 (Guj.)). The decision of the Hon'ble Gujarat High Court attained finality as the same has not been further challenged before the Hon'ble Supreme Courts. In these facts, the Commissioner(Appeals) was bound to follow the decision of the higher forum.
- 3.2 That the Applicant received Export Promotion copy of Shipping Bill belatedly from the Customs Department and therefore, they could not file rebate claim in time in the absence of basic document of proof export of the same duty paid goods. Since there was delay on the part of Customs on issuance of Export Promotion copy of Shipping Bills due to test reports there was no fault of theirs, hence the impugned order cannot be sustained.
- 3.3 That the Assistant Commissioner did not give regards to the certificate issued by the Customs officers whereby it was clearly mentioned that Export Promotion copy of Shipping Bills were issued belatedly. In these facts, finding of the impugned order is contrary to the facts of the case.
- 3.4 That the Commissioner(Appeals) erred in relying upon Para 2.4 of Chapter IX of CBEC Manual. The Hon'ble Gujarat High Court considered the said para and held that the para is contrary to the object and purpose of the claim and therefore, the same cannot be relied upon rejection of rebate claims on the ground of limitation.
- 3.5 That they had fulfilled substantial eligibility conditions of the said notification, and lapses, if any, on fulfillment of the procedural part ought to be condoned. There is no dispute

insofar as the export of the goods is concerned. Once it is admitted that goods have been exported, the rebate cannot be denied on the ground of technical and venial lapses.

- 3.6 That in terms of settled law as held by the Hon'ble Supreme Court in a number of judgments, Notifications like statute must be construed having regard to the purpose and object they seek to achieve, hence statutory scheme for issuance of such Notification also much be considered.
- 3.7 That Section 11B is entirely procedural provision. The substantive right to claim rebate arises under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Since they fulfilled conditions under the said Notification while clearing of the goods for export, rebate cannot be denied as Section 11B does not affect in any manner, any substantive or vested right of the Applicant.
- 3.8 That they have not filed any other Appeal, either in this court or any other High Court or in the Supreme Court of India regarding the subject matter of the present Appeal.
- 3.9 That they prayed that the Order-in-Appeal dated 31.01.2013 be quashed and aside with consequential reliefs.

4. A personal hearing in the case was held on 27.08.2019 which was attended by Ms Payal Nahar, Chartered Accountant, on behalf of the Applicant. The Applicant submitted that rebate claim was filed after one year i.e. after 02 months delay. However it was due to delay by Customs releasing the Shipping Bill. The date of export was 23.09.2011 and 24.09.2011, the Shipping Bill was released on 11.11.2011 and the claim was filed on 15.12.2011. The Shipping Bill was received after one year itself. In this they relied in the case law in *Banswara Syntex Ltd Vs UOI* [2017 (349) ELT 900 (Raj.)] and *Cosmonaut Chemicals Vs Union of India* [2009 (233) ELT 46 (Guj.)] and also Para 2.4 of CBEC Manual.

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

6. Government observes that 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, even though such delay was due to delay in Customs Department issuing EP copy of the Shipping Bill

7. Government observes that the Applicant's argument is that the limitation period of one year is not specified under Rule 18 of the Central Excise Rules, 2002 and Section 11B of the Central Excise Act is not relevant for the rebate of duty. This contention is not found legally tenable as for refunds and rebate of duty, Section 11B of the CEA is the relevant statutory provision. In addition to time limitation, other substantive and permanent provisions like the authority who has to deal with the refund or rebate claim, the application of principle of undue enrichment and the method of payment of the rebate of duty, etc. are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation to rebate duty need not be repeated in Rule 18 and the areas over and above already covered in Section 11B have been left to the Central Government for regulation from time to time. Hence, Government find that by combined reading of both Section 11B and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that Rule 18 is independent from Section 11B of the Act. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of filing the rebate claim within 1 year is squarely applicable to the rebate of duty when dealt under Rule 18. Rule 18 is not independent from Section 11B. Further

there is no provision under Section 11B, to condone any delay. Applicant has argued that they had received EP copy of Shipping Bill in November 2011 from Customs and therefore delay has occurred. In this regard, the provisions of Para 2.4 of Chapter of CBEC's Excise Manual of Supplementary Instructions are very clear which state that

"In case any document is not available for which Central Excise or Customs Department is solely accountable, the claim may be received so that the claim is not hit by time-limitation period".

Here in the current case, Government finds that the Applicant failed to take appropriate care to comply with the laid down statutory time-limit and therefore, the rebate claim was rightly rejected as time-barred.

8. Government observes that the Applicant has relied on the decisions of the Hon'ble High Court of Gujarat in the case of Cosmonaut Chemicals Vs Union of India [2009 (233) ELT 46 (Guj.)] and Hon'ble High Court of Rajasthan in the case Banswara Syntex Ltd Vs UOI [2017 (349) ELT 90 (Raj.)]. These have been adequately differentiated in the Order-in-Appeal dated 31.01.2013 under Revision. The Government also relies on the judgment of the Hon'ble Supreme Court dated 09.02.2016 in the case of UOI Vs Concord Fortune Minerals (I) P. Ltd. [2017 (349) ELT 3 (S.C.)]

Writ jurisdiction not to be invoked to act contrary to law – Appeal against judgment of Single Judge disposed of by making stray observation relating to letter-which-was-not-on-record before Division Bench – Neither merits of case gone into nor adjudication done on views of Single Judge – Also, liberty granted to writ-petitioner to prefer appeal and if within time as indicated, to be heard on merit – HELD : In respect of statutory provisions governing limitation, even while acting under Article 226 of Constitution of India High Court has to enforce rule of law and ensure that authorities/ organs of States act in accordance in accordance with law – Writ jurisdiction cannot be invoked for directing authorities to act contrary to law – Matter remanded to Division Bench for re-hearing appeal on merits [paras 3,4,5,6]

Appeals allowed.

9. The Government notes that the Hon'ble High Court Madras who 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 appellant 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 despatch 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."


10. 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.

11. Government notes that the statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim has to be treated as time barred.

12: -In-view of the above position, Government finds no infirmity in the Order-in-Appeal No 12/2013(Ahd-II)CE/Commr(A)/Ahd dated 31.01.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad and therefore, upholds the same and rejects the Revision Application filed by the Applicant being devoid of merits.

13. So, ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 120/2020-CX (WZ)/ASRA/Mumbai DATED 20-01-2020.

To,
M/s Ramdoot Enterprise,
Plot No. 902/2, Phase-IV,
GIDC Indl. Estate, Naroda,
Admedabad-382 220.

Copy to:

1. The Commissioner of Central Excise(Appeals), Ahmedabad
2. The Commissioner of GST & Central Excise, Ahmedabad, 7th floor,
Central Excise Bhavan, Nr Polytechnic, Ambawadi, Ahmedabad
380015
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.