

F NO. 195/196/14-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
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005**

F NO. 195/196/14-RA /1599

Date of Issue: 03.03.2024

ORDER NO. \25 /2021-CX (SZ) /ASRA/MUMBAI 03.03.2024\ DATED
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 Ashley Alteams India Ltd.

Respondent : Commissioner of Central Excise(Appeals), Chennai.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 51-57/2014(P)
dated 03.03.3014 passed by the Commissioner of Central
Excise(Appeals), Chennai.

ORDER

This Revision Application are filed by M/s Ashley Alteams India Ltd., No. 8, SIPCOT Industrial Park, Via Cheyyar Taluk, Tiruvannamalai District, Chennai- 631 701 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 51-57/2014(P) dated 03.03.3014 passed by the Commissioner of Central Excise(Appeals), Chennai.

2. The brief facts of the case are that the Applicant, manufacturer had filed the rebate claims on the grounds that they had excisable goods under ARE-1s, Bill of Exports and Export Invoices to foreign countries as well as to SEZ on payment of duty. The Assistant Commissioner, Central Excise, Villuparam Division rejected all the rebate claims as time barred in terms of Rule 18 of Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 on the grounds that the claims were filed beyond the period of one year from the date of shipment/admission into SEZ area as prescribed under Section 11B of the Central Excise Act. Being aggrieved against the said Order-in-Original, the Applicant then filed appeal with the Commissioner of Central Excise(Appeals), Chennai. The Commissioner(Appeals) vide Order-in-Appeal No. 51-57/2014(P) dated 03.03.3014 rejected their appeals. The details are given below:

Sr.No.	Rebate claim	Total Amount (Rs)	Order-in-Original No & date	Order-in-Appeal No. & date
1	29 rebate claims	1,21,46,079	128/2012(R) dt 11.6.12	51- 57/2014(P) dated 03.03.3014
2	09 Nos of ARE-1s	4,86,180	220/2012(R) dt 27.12.12	
3	08 nos of ARE-1s	4,87,186	221/2012(R) dt 27.12.12	
4	07 nos of ARE-1s	4,95,769	222/2012(R) dt 27.12.12	
5	03 nos of ARE-1s	4,79,473	223/2012(R) dt 27.12.12	
6	02 nos. of Are-1s	4,83,439	224/2012(R) dt 27.12.12	
7	ARE-1 No. 0587/10-11 dt 9.12.10	5,32,613	225/2012(R) dt 27.12.12	

3. Aggrieved, the Applicant has filed the current Revision Application on the following grounds:

- (i) There had been delay in filing refund claim beyond one year period prescribed and in some case, there had also been inordinate delay in filing the claims. The main reason for delay was mainly due to the reason that the Head of the Division who was primarily and principally responsible for this portfolio had left the company and the position remained idle for 4 months and thus resulting in accumulation of claims and delay in filing of claims.
- (ii) Further, in certain cases, the CHA had also sent the documentation belatedly and in some cases instead of sending the claims to the Applicant's address, it was addressed to the Superintendent of Central Excise, which was sent to the Excise officials directly and which was subsequently redirected to the Applicant.
- (iii) The Applicant submitted that whatever had taken place was beyond the control of the Applicant and hence requested to kindly condone the delay in submission of the rebate claims. They relied upon the case of Cosmonaut Chemicals [2009 (233) ELT 46 (Guj)], Punjab General Mfg. Works Vs CCE Lucknow [2003 (158) ELT 177 (Tri. Del.)], M/s Dorcas Market Makers Pvt Ltd vs CCE [2012-TIOL-108-HC-MAD-CX] and few other case laws.
- (iv) They would be at loss in getting the benefit of export as the export price fixed had excluded the duties and taxes based on the principle that only goods can be exported and duties and taxes cannot be exported.
- (v) There cannot be any dispute with regard to the following points:
 - (a) The duty paid character of excisable goods exported;
 - (b) The exportation of the said goods;

(c) Realization of foreign exchange on export.

Therefore, in the interest of exports, the same may kindly be condoned and issue may be decided on merits by granting the rebate claims.

(vi) The prayed that the Order-in-Appeal be set aside and to grant the refund condoning the delay in filing the claim.

4. A Personal hearing in this case was held 03.03.2020. Shri Sujay N Kantawala, Advocate and Shri Ashish Sheth, Representative, appeared on behalf of the Applicant. The Applicant submitted that no SCN/PH was issued and the rebate claim was rejected on time bar. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 04.02.2021. Shri Ashish Sheth, Representative, appeared on behalf of the Applicant. He appeared and reiterated the earlier submission. He submitted that his claim should not be rejected on time bar as there is no doubt on export and duty payment.

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. 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. There is no dispute that these rebate claims were filed after one year from the relevant dates.

7. The Government observes that the Applicant in the Revision Application has relied on the judgment of the Hon'ble Madras High Court in the matter of Dy. Commissioner of C. Ex., Chennai Vs. Dorcas Market Makers Pvt. Ltd. (2015 (321) E.L.T. 45 (Mad.)). The Government however finds that the same 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 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.”

8. 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.

9. Government also places its reliance on the GOI Order Nos. 366-367-CX, dated 07.12.2017 in RE : DSM Sinochem Pharmaceutical India Pvt Ltd. [2018 (15) GSTL 476 (GOI)].

10. 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.

11. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. 51-57/2014(P) dated 03.03.2014 passed by the Commissioner of Central Excise(Appeals), Chennai and, therefore, upholds the same.

12. The Revision Application filed by the Applicant is dismissed being devoid of merits.

Shrawan
01/03/21

(SHRAWAN KUMAR)

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

ORDER No. 25/2021-CX (SZ) /ASRA/Mumbai Dated 01.03.2021

To,
M/s Ashley Alteams India Ltd.,
No. 8, SIPCOT Industrial Park,
Via Cheyyar Taluk,
Tiruvannamalai District,
Chennai- 631 701.

Copy to:

1. The Commissioner of CGST & CX, Chennai Outer, No. 2054-1, II Avenue, 12th main Road, Newry Towers, Anna Nagar, Chennai – 600 040.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.