F. NO. 195/367/13-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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Mumbai- 400 005

F. NO. 195/367/13-RA/1029 Date of Issue: 17.03.2021

ORDER NO. 138 /2021-CX (WZ) /ASRA/Mumbai DATED 16 .03.2021 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 ABB Limited, Satpur Nasik Industrial Estate, Nasik – 422 007.
Respondent	:	Commissioner of CGST, Nashik.
Subject	:	Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 05-10/2013 dated 15.01.2013 passed by the Commissioner of Central Excise (Appeals), Bangalore.

ORDER

This revision application is filed by M/s ABB Limited, Satpur Nasik Industrial Estate, Nasik – 422 007 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. 05-10/2013 dated 15.01.2013 passed by the Commissioner of Central Excise (Appeals), Bangalore.

2. Brief facts of the case are that the applicant are engaged in the manufacture of excisable goods classifiable under Chapter 85 of First Schedule to the Central Excise Tariff Act, 1985. The applicant exported excisable goods during various periods (From December 2008 to April 2010) on payment of duty by way of debit in the Cenvat Credit Register. The Applicant filed rebate claims vide letter dated 28.11.2011 received in the office of Central Excise & Service Tax, LTU, Bangalore on 01.12.2011 for total amount of Rs. 3,79,54,713/- (Rupees Three Crore Seventy Nine Lakhs Fifty Four Thousand Seven Hundred Thirteen Only) being duty paid on the excisable goods exported by them in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.204. The Rebate Sanctioning Authority issued show cause notices to the applicant proposing to reject the impugned rebate claims on the ground that the rebate claims filed were time barred in terms of Section 11B of the Central Excise Act, 1944, read with Notification No. 19/2004-CE (NT) dated 06.09.204. The adjudicating after due process under law rejected the impugned rebate claims.

3. Aggrieved by the said Orders in Original, the applicant filed an appeal before Commissioner (Appeals), LTU, Bangalore. The Appellate Authority vide impugned Order in Appeal dated 15.01.2013 rejected the appeal filed by the applicant.

4. Aggrieved by the impugned Order in Appeal, the applicant filed Revision Application on the following grounds :-

4.1 Time limit prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to rebate claims filed under Rule 18 of the Central Excise Rules.

The Applicant have relied mainly upon the following judgements in support of their argument.

a) Docras Market Makers Private Limited, Chennai Vs. CCE, Chennai, 2012-TIOL-108-HC-MAD-CX
b) CCE Vs. Raghuvar (India) Ltd., 2000(118) ELT 311 (SC)

4.2 Combined reading of Rule 18 of Central Excise Rules, 2002 along with Notification No. 19/2004-CE (NT) dated 06.09.204 makes it abundantly clear that the requisite of fulfilment of one year time limit as prescribed under Section 11B of the Central Excise Act, 1944 has never been precondition for sanction of rebate claim.

4.3 The rebate claims were filed in accordance with the law. The Rule 18 provides that the rebate of duty paid on goods exported shall be granted if the conditions or limitations and the procedure prescribed under any notification issued by the Central Government is fulfilled.

4.4 The Central Government issued Notification No. 19/2004-CE(NT) which sets out procedure, condition & limitation in respect of export of goods under the claim for rebate. The Notification states that if the proper procedure is followed and the conditions prescribed in the Notification are fulfilled the rebate claims is to be granted.

4.5 The Circular No. 510/06/2000-CX dated 03.02.2000 issued by the Board clarifies that the rebate sanctioning authority should examine the admissibility of rebate of the duty paid on the export of goods covered by the rebate claim and should not examine the correctness of the assessment of the gods cleared for export.

4.6 Substantive benefit not to be denied on procedural grounds. The law relating to limitation is a procedural law and the substantive benefit of rebate shall not be denied on procedural ground.

4.7 The intention of the Government is always for zero rated exports. The intention of the Government is not to export duties and taxes.

4.8 The findings of the Commissioner (Appeals) that filing of rebate claim under form 'R' is governed by the provisions of Section 11B is not legally tenable in as much as the Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 nowhere makes a mention of Section 11B of the

Central Excise Act, 1944 in order to import time limit prescribed therein for the rebate claim also.

4.9 From a reading of Section 11B, it is abundantly clear that the Section primarily applies to claims of refund as against the claims of rebate as held by the appellate authority in the impugned order.

4.10 Rebate to be allowed as re-credit in the Cenvat Account. Assuming that the duty paid is not admissible to the applicant, the same is liable to be allowed to be credited tin Cenvat Account of the applicant.

4.11 The applicant have relied upon following judgements in support of their arguments:-

5. A Personal hearing in the matter was granted on 16.02.2021. Shri Rajesh Ostwal, Consultant appeared online and reiterated the submission. On issue of time bar, he submitted that Rule 18 does not prescribe time limit. He also submitted that had he claimed benefit under Rule 19, and exported goods under bond, he would have got the benefit.

6. 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.

7. The Government observes that the basic issue involved in the instant revision application is whether time limit prescribed under Section 11B of the Central Excise Act, 1944 is applicable to rebate claims filed under Rule 18 of the Central Excise Rules or otherwise.

8. The Government finds that Rule 18 of the Central Excise Rules, 2002 has been made 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. It would be apparent from these facts that Section 11B of the CEA, 1944 covers rebate within its ambit. If the contention of the applicant that Section 11B is not relevant for processing rebate claims is accepted, it would render these references to rebate in Section 11B superfluous.

8.1 Moreover, Section 37 of the CEA, 1944 by virtue of sub-section (2)(xvi) through the CER, 2002 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 has been issued under Rule 18 of the CER, 2002 to set out the procedure to be followed for grant of rebate of duty on export of goods. Therefore, it is unambiguously clear that the limitation under Section 11B applies to export of goods under claim of rebate.

8.2 The applicant has placed reliance upon various judgments in support of their argument. With due respect to these judgments of the Hon'ble High Courts relied upon by the applicant, it is observed that these judgments have been delivered in exercise of the powers vested in these courts in terms of Article 226/Article 227 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.

8.3 As such, in respect of the applicant's contention that the time limitation of one year is not applicable to the rebate claims filed under Rule 18 and Notification No. 19/2004, the Government finds no legal force in this argument as for refunds and rebate of duty [under] Section 11B of the Central Excise Act is directly dealing statutory provision and it is clearly mandated therein that the application for refund of duty is to be filed with the Assistant/Deputy Commissioner of Central Excise before expiry of one year from the relevant date. Further in explanation in this Section, it is clarified that 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. 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 principles 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 of 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. But by combined reading of both Section 11B [of Central Excise Act, 1944] 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 rebate claim within 1 year is squarely applicable to the rebate of duty when dealt [with] by Assistant/Deputy Commissioner of a Division under Rule 18. Thus Section 11B and Rule 18 are interlinked and Rule 18 is not independent from Section 11B. This issue regarding application of time limitation of one year is dealt [with] by Hon'ble High Court of Bombay in detail in the case of *M/s. Everest Flavour* v. *Union of India*, 2012 (282) E.L.T. 481 wherein it is held that since the statutory provision for refund in Section 11B specifically covers within its

purview a rebate of Excise duty on goods exported, Rule 18 cannot be independent of requirement of limitation prescribed in Section 11B. In the said decision the Hon'ble High Court has differed from the Madras High Court's decision in the case of *M/s. Dorcas Market Makers Pvt. Ltd.* [2015 (321) E.L.T. 45 (Mad.)] and even distinguished Supreme Court's decision in the case of *M/s. Raghuvar (India) Ltd.* [2000 (118) E.L.T. 311 (S.C.)]. Hence, the applicant's reliance on the decision in the case of *M/s. Dorcas Market Makers Pvt. Ltd.* is not of much value. The above averment of the applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed at any time without any time-limit which is not only against Section 11B of the Central Excise Act but is also not in the public interest as per which litigations cannot be allowed for infinite period.

8.4 Further, it is found that the Hon'ble Madras High Court, in its judgment dated 18.04.2017 in the case of Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance{2017(355)ELT 342(Mad)}, has held that the contention that no specific relevant date was prescribed in Notification No. 19/2004-CE(NT) was not acceptable in view of proviso (a) to sub-section (2) of Section 11B of the CEA, 1944.

8.5 The Government further observes that the Rebate Sanctioning Authority after due process of law rejected the rebate claims since they were time barred. Government observes that the Rebate Sanctioning Authority has merely followed the mandate of para 2.4 of Chapter 9 of the CBEC's Excise Manual of Supplementary Instructions, 2005. On finding that the rebate claims are time barred, he has rejected the claims by issuing speaking order after giving due opportunity to the applicant to represent their case during personal hearings. Therefore, no fault can be found with the respective Orders in Original rejecting the claims. The Government holds that being time bared, the impugned rebate claims were *ab initio* not admissible and thus cannot be tested further on the basis of substantial compliance of procedure by the applicant. Therefore, the reliance by the applicant on various court decisions granting rebate / refund on the grounds of substantial compliance of conditions / procedures under Notification No. 19/2004-CE(NT) dated

06.09.2004 are not relevant as far as the issue involved in the instant revision application.

9. The Government finds that it has been stipulated in the notification No. 19/2004- CE (NT) dated 06.09.2004 and the CBEC Circular No. 510/06/2000-CX dated 03.02.2000 that rebate of whole of duty paid on all excisable goods is to be granted. Here, the whole of duty of excise would mean the duty payable under the provisions of Central Excise Act. However, in case any amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a voluntary deposit with the Government which is required to be returned to the respondent in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.09.2008 in CWP Nos. 2235 & 3358 of 2007, in case of M/s Nahar Industrial Enterprises Ltd. Vs. UOI reported as 2009(235)ELT-22(P&H) has decided as under :-

"Rebate/refund- Mode of payment- petitioner paid lesser duty on domestic product and higher duty on export product which was not payable- Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/ amount in Cenvat Credit is appropriate. As such, the excess paid amount/duty is required to be returned to the respondent in the manner in which it was paid by him initially.

9.1 However, the ratio of the said case law is not applicable in the present case. Government has already held availment of double benefit by the applicant in the instant case. The Government observes that the rebate is to be allowed of the duty paid on the transaction value of the goods as determined under Section 4 of the Central Excise Act, 1944 and the rebate on the amount of duty paid in respect of post-clearance expenses like freight and insurances may be allowed as re-credit entry in their Cenvat account treating

it as payment of additional amount in the nature of deposit with Government. *Government observes* that the applicant in the instant case had cleared the goods on payment of appropriate duty on transaction value of goods exported as determined under Section 4 of Central Excise Act, 1944, under claim of rebate of duty under Rule 18 of Central Excise Rules, 2002. It is not the case that the said duty paid by applicant, was collected without any authority of law so as to be treated as voluntary deposit and therefore required to be returned to the applicant in the manner it was paid. In view of above, the request of the applicant to allow rebate as re-credit in the Cenvat Credit Register cannot be acceded to in the instant case

10. 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 with the available documents 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.

11. In view of above circumstances, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

12. Revision Application is thus rejected being devoid of merit.

Shrawan 16/03/21

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

ORDER No.138 /2021-CX (WZ) /ASRA/Mumbai DATED 16.03.2021

To,
M/s ABB Limited,
Satpur Nasik Industrial Estate,
Nasik – 422 007.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Nasik Commissionerate, GST Bhawan, Plot No. 155, P-34, NH Jaishtha & Vaishakha Trimurti Chowk, CIDCO, Nashik – 422008.
2. The Commissioner of Central Goods & Service Tax, Nasik Appeals, GST Bhawan, Plot No. 155, P-34, NH Jaishtha & Vaishakha Trimurti Chowk, CIDCO, Nashik – 422008.
3. The Deputy Commissioner, CGST, Nashik –I Division, Plot No. 155, Sector-P-34, NH, Jaishtha & Vaishakha, CIDCO, Nashik-422008.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.