

SPEED POST

F.No. 198/07/2019-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...17/6/21

Order No. 151/2021-CX dated 17-6-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal Nos. Appl/PKL/CE/235/2018-19 dated 07.02.2019 passed by the Commissioner (Appeals), CGST, Panchkula.

Applicants : The Commissioner of CGST, Rohtak

Respondent : M/s Sterile India Pvt. Ltd., Sonapat

ORDER

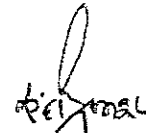
A revision application no. 198/07/2019-R.A. dated 17.05.2019 has been filed by the Commissioner, CGST, Rohtak (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Appl/PKL/CE/235/2018-19 dated 07.02.2019 passed by the Commissioner (Appeals), CGST, Panchkula, whereby the Commissioner (Appeals) has allowed the appeal filed by M/s Sterile India Pvt. Ltd., (hereinafter referred to as the Respondent) against the Order-in-Original No. R-52/CT/DC/SNP/2017-18 dated 05.12.2018, passed by the Deputy Commissioner, CGST Division, Murthal.

2. Briefly stated, the Respondents were registered with the Central Excise department and were engaged in the manufacturing and export of bulk drugs falling under Chapter 29 of the Central Excise Tariff Act, 1985. The Applicants filed rebate claims of Central Excise duty, amounting to Rs. 29,12,056/-, paid on the goods cleared for export, under Rule 18 of the Central Excise Rules, 2002. The original authority, vide the aforesaid Order-in-Original dated 05.12.2018, sanctioned the rebate claim for an amount of Rs. 13,89,063/- and rejected the balance rebate claim of Rs. 15,22,993/- on the grounds of limitation, having been filed beyond the stipulated period of one year. In appeal, the Commissioner (Appeals) relying upon the judgment of Hon'ble Bombay High Court in the case of *Uttam Steel Ltd., vs. Union of India* {2003 (158) ELT 274 (Bom.)}, that of Hon'ble Madras High Court in the case of *Deputy Commissioner of Central Excise, Chennai vs. Dorcas Market Makers Pvt. Ltd.* {2015 (321) ELT 45 (Mad.)} and that of Hon'ble Punjab & Haryana High Court in the case of *JSL Lifestyle Ltd. vs. Union of India* {2015 (326) ELT 265 (P & H)} held that the rebate claim of Rs. 15,22,993/- could not have been rejected on account of limitation and remanded the matter back to the original authority to examine the admissibility of the rebate claim subject to verification of documents related to export of goods.

3. The revision application has been filed, mainly, on the grounds that the rebate claim of Rs. 15,22,993/-, which pertains to airway bills issued from 17.04.2017 to 02.06.2017, was filed on 14.06.2018; that notification no. 19/2004-CE (NT) dated 06.09.2004 was amended, vide Notification No. 18/2016-CE (NT) dated 01.03.2016, whereby the limitation of one year was inserted in the parent notification; that therefore the Commissioner (Appeal) has erred in relying upon the judgments in Dorcas Market Makers Pvt. Ltd. (supra) and JSL Lifestyle Ltd. (supra). The reply to the RA has been filed by the Respondent on 20.06.2019 wherein the order of Commissioner (Appeals) has been supported.
4. Personal hearing, in virtual mode, was held on 16.06.2021. Sh. D.S. Chauhan, AC made the submissions for the Applicant and stated that as per Explanation to Section 11B, 'refund' includes 'rebate'. Hence, the limitation prescribed under Section 11B is applicable to the cases of rebate as well. He also reiterated the contents of RA. Sh. Abhas Mishra, Advocate, appearing for the Respondents, confirmed that the rebate claims in dispute were filed more than one year after the date of export. However, limitation being merely a procedural matter, the substantial right of rebate should not be denied. He also reiterated the contents of reply to RA dated 20.06.2019.
5. The Government has carefully examined the matter. It is an admitted fact that the rebate claim in dispute was filed more than one year after the date of export. As brought out hereinabove, the Commissioner (Appeals) has relied upon the judgment of the Hon'ble Bombay High Court in Uttam Steel Ltd. (supra), of Hon'ble Madras High Court in the Dorcas Market Makers (supra) and that of Hon'ble Punjab & Haryana High Court in the JSL Lifestyle Ltd. (supra) to hold the matter in favour of the Respondents herein. The Government observes that the judgment of the Hon'ble Bombay High Court in the case of Uttam Steel Ltd. has been set aside by the Hon'ble Supreme Court in the case of *Union of India vs. Uttam Steel Ltd. {2015 (319) ELT 598 (SC)}*. The Hon'ble Supreme Court, following the ratio of the judgment of the nine-judge bench in *Mafatlal Industries Ltd. vs.*

Union of India {1997 (89) ELT 247 (SC)}, has held that "13. It is clear from Section 11B (2) proviso (a) that a rebate of duty of excise on excisable goods exported out of India would be covered by the said provision. A reading of *Mafatlal Industries (supra)* would also show that such claims for rebate can only be made under Section 11B within the period of limitation stated therefore. This being the case, the argument based on Rule 12 would have to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B". The judgments in the cases of Dorcas Market Makers Pvt. Ltd. (supra) and the JSL Lifestyle Ltd. (supra) cannot be followed in view of the Hon'ble Supreme Court's judgment in *Uttam Steel Ltd. (supra)*. In any case, judgments in Dorcas Market Makers Ltd. and JSL Lifestyle Ltd., have been made by the Hon'ble High Courts premised in the fact that at the relevant time there was no provision relating to limitation in the notification no. 19/2004-CE (NT), whereas, in the present case, as rightly pointed out by the Applicant department, the exports took place on 17.04.2017 to 02.06.2017, by which time notification no. 19/2004-CE (NT) had been amended (on 01.03.2016) to insert the provision of limitation of one year. As such, the impugned Order-in-Appeal cannot be sustained.

6. In view of the above, impugned Order-in-Appeal is set aside and the revision application is allowed.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST,
2nd Floor, Pacific City Centre, Opposite
Shangrila Hotel, Near Jat Bhawan, Delhi Bypass,
Rohtak, Haryana- 124 001.

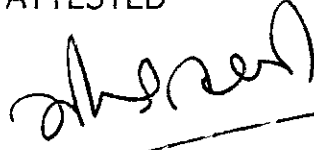
G.O.I. Order No. 151/21-CX dated 17-6-2021

Copy to: -

1. M/s Sterile India Pvt. Ltd., Plot No. 100, Sector- 56, Phase-IV, Kundli, Distt. Sonapat, Haryana.

2. The Commissioner (Appeals), CGST, Panchkula.
3. M/s. Sterile India Pvt. Ltd., 5th Floor, Aggarwal Corporate Heights, Netaji Subhash Place, Pitampura, New Delhi- 110 034.
4. P.S. to A.S. (Revision Application).
5. ~~Guard File.~~
6. Spare copy.

ATTESTED



आशीष तिवारी / ASHISH TIWARI, J
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi