

SPEED POST



F.No. 195/43/2019-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...12/6/21.

Order No. 152/2021-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. 297(CRM)/CE/JDR/2019 dated 26.03.2019 passed by the Commissioner (Appeals), CGST, Jodhpur.

Applicants : M/s Metallizing Equipment Co. Pvt. Ltd., Jodhpur

Respondent : The Commissioner of CGST, Jodhpur.

ORDER

A revision application no. 195/43/2019-R.A. dated 06.06.2019 has been filed by M/s Metallizing Equipment Co. Pvt. Ltd., Jodhpur (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 297(CRM)/CE/JDR/2019 dated 26.03.2019 passed by the Commissioner (Appeals), CGST, Jodhpur, whereby the Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original No. 28/2018-R dated 27.04.2018, passed by the Assistant Commissioner, CGST Division-A, Jodhpur.

2. Briefly stated, the Applicants were registered with the Central Excise department for manufacture of Metal Spray Equipment, falling under Chapter Heading 84 of the first schedule to the Central Excise Tariff Act, 1985. The Applicant filed rebate claim for Rs. 10,91,998/- on 31.01.2018, under Rule 18 of Central Excise Rules, 2002, in respect of goods exported, vide ARE-1 No. 217/16-17 dated 21.09.2016, 233/16-17 dated 03.10.2016, 319/16-17 dated 06.12.2016, 320/16-17 dated 06.12.2016 and 364/16-17 dated 11.01.2017. The rebate claim was rejected by the original authority on the grounds of limitation, as it was filed after expiry of one year period from the date of shipment, in terms of Section 11B of the Central Excise Act, 1944. The appeal filed by the Applicant has also been rejected by the Commissioner (Appeals). Hence, the present revision application.

3. The revision application has been filed, mainly, on the grounds that the rebate claims were filed under Rule 18 of the Central Excise Rules, 2002 read with notification no. 19/2004-CE (NT) dated 06.09.2004; that no time limit for filing of such rebate claims was prescribed, under Rule 18 or the notification no. 19/2004-CE (NT), at the time when the export of the goods in question had taken place; that on identical facts Hon'ble Punjab & Haryana High Court in the case of *JSL Lifestyle Ltd. vs. Union of India* {2015 (326) ELT 265 (P

& H)} and 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.)} have held that since no time limit is prescribed either under Rule 18 of the Central Excise Rules, 2002 or under notification No. 19/2004-CE (NT), therefore, the rebate claim cannot be rejected on the grounds of limitation. It is also contended that substantial benefit cannot be denied even though procedural conditions are not complied with.

4. Personal hearing, in virtual mode, was held on 16.06.2021. Sh. O.P. Agarwal, CA appeared for the Applicant and reiterated the contents of the RA. No one appeared for the respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

4.1 The Government has carefully examined the matter. There is no dispute that the rebate claim was filed after one year from the date of export of goods. The issue that is required to be decided is whether the limitation period provided in Section 11B of the Central Excise Act, 1944 shall be applicable, as held by the Commissioner (Appeals), or, since, there was no provision specifying limitation in the notification no. 19/2004-CE (NT) at the time of exports, no limitation would apply, as contended by the Applicant.

4.2 The Government observes that as per Clause (A) of the Explanation to Section 11B, "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable material used in the manufacture of goods which are exported out of India. Further, as per Clause (B) of the said Explanation "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 were 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;"

Thus, Section 11B not only provides that the rebate of duty of excise is also a type of refund of duty, the relevant date for determining limitation in the cases of rebate is also specifically provided. As such, on a plain reading of Section 11B, there can be no doubt that the limitation provided under Section 11B shall be applicable to the cases of rebate.

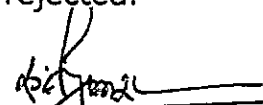
4.3 The Applicant has disputed this plain and unambiguous reading of Section 11B on the grounds that the notification no. 19/2004-CE (NT) did not specify any limitation at the time exports took place in the present case. Since, subsequently, vide amendment dated 01.03.2016, such limitation was adopted in the notification no. 19/2004-CE (NT), therefore, limitation would apply only for the exports made on or after 01.03.2016. In this regard the judgment of the Hon'ble Madras High Court in the case of *Dorcas Market Makers Pvt. Ltd. (supra)* and that of Hon'ble Punjab and Haryana High Court in the case of *JSL Lifestyle Pvt. Ltd. (supra)* have been heavily relied upon.

4.4 The Government observes that the Hon'ble Supreme Court has, in the case of *Union of India vs. Uttam Steel Ltd. {2015 (319) ELT 598 (SC)}*, settled the law on this issue. Following the ratio of the judgment by the nine-judge bench in *Mafatlal Industries Ltd. vs. Union of India {1997 (89) ELT 247 (SC)}*, the Hon'ble Supreme Court 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 therefor. 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”.

4.5 Thus, there is no doubt that the limitation provided under Section 11B of the Central Excise Act, 1944 is applicable to the cases of rebate under Rule 18 of the Central Excise Rules, 2002 and the absence of provision regarding limitation in the Notification No. 19/2004-CE (NT) during the relevant period cannot negate the effect of specific provision made under Section 11B. As such, the impugned Order-in-Appeal does not merit any interference.

5. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

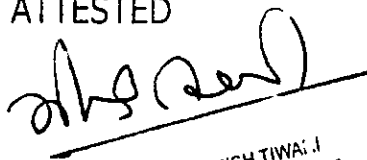
M/s Metallizing Equipment Co. Pvt. Ltd.,
E-101/101A, Basni Phase-II, Marudhar
Industrial Area, Jodhpur (Raj.)

G.O.I. Order No. 152/21-CX dated/7-6-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Jodhpur, 117/5, PWD Colony, Ratanada, Jodhpur – 302005.
2. The Commissioner (Appeals), CGST, Jodhpur.
3. Sh. O.P. Agarwal, CA, 56, Section 7, NPH Road, Jodhpur-342 003
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