

SPEED POST



F.No. 195/212-214/2018-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...6.17.21...

Order No. 157-159/2021-CX dated 6-7-2021 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. 290-292/JSR/2018 dated 04.07.2018 passed by the Commissioner (Appeals), CGST, Ranchi.

Applicants : M/s Kyocera CTC Precision Tools Pvt. Ltd., Jamshedpur

Respondent : The Commissioner of CGST, Jamshedpur.

ORDER

Three revision application, bearing nos. 195/212-214/2018-R.A. all dated 22.10.2018, have been filed by M/s Kyocera CTC Precision Tools Pvt. Ltd., Jamshedpur (hereinafter called the Applicants) against the Order-in-Appeal no. 290-292/JSR/2018 dated 04.07.2018 passed by the Commissioner (Appeals), CGST, Ranchi, whereby the appeals filed by the Applicant, against rejection of their rebate claims by the jurisdictional Deputy Commissioner, have been rejected.

2. Briefly stated, the Applicants filed rebate claims for Rs. 57,14,809/-, Rs. 20,21,572/- and Rs. 25,79,790/- for rebate of excise duty paid on the goods exported during January 2015 to March 2015, October 2014 to December 2014 and April 2015 to May 2015, respectively, under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944. All these claims were filed on 27.07.2016 and were rejected by the original authority on the grounds of limitation as these were filed beyond the prescribed time limit of one year under Section 11B (1) of the Central Excise Act, 1944. The three separate communications, all dated 08.08.2016 rejecting the rebate claims as time barred, were challenged in appeal by the Applicants before the Commissioner (Appeals), who rejected the appeals filed by the Applicants.

3. The revision application has been filed, mainly, on the grounds that the rebate claims under Rule 18 of the Central Excise Rules, 2002 are governed by the notification no. 19/2004-CE (NT) dated 06.09.2004, which at the relevant time i.e. at the time the exports were made, did not specify any limitation; and that it is only by virtue of amending notification no. 18/2016-CE (NT) dated 01.03.2016 that the limitation of one year, as specified in Section 11B, was made applicable. As such, in the absence of a limitation period in the notification, as it existed at the time when the subject exports took

place, the claims could not have been rejected on the grounds of limitation. The judgments of the Hon'ble Punjab & Haryana High Court in the case of *JSL Lifestyle Pvt. Ltd. vs. Union of India* {2015 (326) ELT 265 (P&H)} and that of Hon'ble Madras High Court in the case of *Deputy Commissioner of Central Excise, Chennai vs. Dorcas Markets Makers Pvt. Ltd.* {2015 (321) ELT 45 (Mad.)} have been relied upon in support of this contention.

4. Personal hearing in the matter was held on 05.07.2021 in virtual mode. Sh. Harish Bindumadhavan, Advocate made the submissions for the Applicant. He requested that the written submissions dated 04.07.2021 alongwith compilation may be taken on record. Sh. Bindumadhavan reiterated the contents of the RAs and the written submissions dated 04.07.2021. Sh. Mahesh Manjhi, DC drew attention to the provisions of Section 11B wherein it is clearly provided that refund includes rebate and therefore limitation provided in Section 11B will apply to rebate cases as well irrespective of whether the relevant notification 19/2004-CE (NT) dated 06.09.2004 prescribed such limitation or otherwise.

5. The revision applications have been filed against the Order-in-Appeal dated 04.07.2018, which is stated to have been received by the Appellants on 21.07.2018 while the revision applications have been submitted on 22.10.2018. The delay is stated to have been caused due to the delay at the end of the courier. Delay is condoned.

6.1 The Government has carefully examined the matter. There is no dispute that the rebate claims were 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, 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 Applicants.

6.2 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 materials 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.

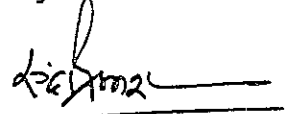
6.3 The Applicant has disputed this plain and unambiguous reading of Section 11B on the grounds that the notification no. 19/2004-CE (NT) did not specify any limitation at the time when exports took place in the present case. Since, it is only subsequently (i.e., vide amendment dated 01.03.2016) that 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 judgments 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 by the Applicants. However, the Government observes that the Hon'ble Bombay High Court in the case of *Everest Flavours Ltd. vs. Union of India* {2012 (282) ELT 481 (Bom)} and Hon'ble Delhi High Court in the case of *Orient Micro Abrasives Ltd. vs. Union of India* {2020 (371) ELT 380 (Del)} have taken a contrary view in the matter.

6.4 The Government further 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".

6.5 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 ^{be} used to negate the effect of the specific provision made under Section 11B. To put it differently, Section 11B (1) of the Act read with the Explanation to the said Section clearly requires any claim for rebate to be submitted within one year of the export of goods and this provision made in the parent statute cannot be negated due to the absence of a corresponding provision in a notification issued under the very same statute. As such, the impugned Order-in-Appeal does not merit any interference.

7. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Kyocera CTC Precision Tools Pvt. Ltd.,
M-22, Phase-VII, Adityapur Industrial Area,
Jamshedpur- 832 108.

G.O.I. Order No. 157-159/21-CX dated 6-7-2021

Copy to: -

1. The Commissioner of CGST, Jamshedpur Commissionerate, Outer Circle Road, Bistupur Jamshedpur, Jharkhand- 831 001.
2. The Commissioner of CGST (Appeals), 2nd & 3rd Floor, Grand Emerald, Ashok Nagar, Ranchi.
3. Sh. Harish Bindumadhavan, 19th Floor, 46- Prestige Trade Power, Palace Road, High Grounds, Bengaluru, Karnataka- 560 001.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. *spare copy*

ATTESTED



Superintendent (CRA)