

REGISTERED
SPEED POST



F.No. 195/219/15-RA
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. 15/3/18

Order No. 157/2018-Cx dated 14-3-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No.01/CE/BBSR/2014 dated 20.11.2014 passed by Commissioner (Appeals), Central Excise, Bhubaneswar

Applicant : M/s United Chloro Paraffins Pvt. Ltd., Ganjam, Orissa

Respondent : Commissioner of Central Excise, Bhubaneswar-I

ORDER

A Revision Application No.195/219/15-RA dated 25.8.15 is filed by M/s United Chloro Paraffins Pvt. Ltd., Ganjam, Orissa (hereinafter referred to as the applicant) against Order-In-Appeal No.01/CE/BBSR/2014 dated 20.11.2014, passed by the Commissioner of Central Excise (Appeals), Bhubaneswar, whereby the appeal of the applicant filed against original authority's Order dated 4.7.13 has been rejected.

2. The brief facts leading to filing of the present revision application are that the applicant claimed to have filed a rebate claim of Rs.1973480/- on 5.4.12 through courier against duty paid export of Chlorinated Paraffins Wax to UAE. However, the jurisdictional Assistant Commissioner denied that any such rebate claim had ever been received by his Office on 5.4.12 and the rebate claim was received on 25.4.13 only which was held to be time barred under Section 11B of the Central Excise Act, 1944. Accordingly, the rebate claim was rejected by the Assistant Commissioner vide Order dated 4.7.13. The applicant's appeal before the Commissioner (Appeals) against the OIO was also rejected by the Commissioner (Appeals) vide aforesaid Order dated 20.11.14. The applicant challenged the Commissioner (Appeals)'s Order directly before the High Court of Orissa by filing a Writ Petition No.2649 of 2015 which was dismissed as withdrawn by Order dated 27.7.15 directing that delay in filing Revision Application be condoned keeping in view the pendency of the Writ Petition by the High Court if the revision application is filed within 4 weeks from the date of the Order. Accordingly, the revision application has been filed on 25.8.15 along with application dated 18.8.15 for condonation of delay on the above stated grounds.

3. Personal hearings were offered in this case on 9.11.17 and on 6.3.18. But the applicant as well as the respondent did not avail the hearings on these two dates. The applicant had earlier requested for adjournment of the hearing on 9.11.17 and requested for

- another date for hearing after a month. Accordingly, the hearing on 6.3.18 was fixed after more than 3 months from the date of the earlier hearing. But the applicant has not availed the hearing on this date also and no request for any other date for hearing is received by this Office from which it is implied that the applicant and the respondent are not interested in availing the personal hearing in this case. Hence, the revision application is taken up for a decision without offering any other date of hearing.

4. The Government has examined the matter and it is found at the outset that the revision application has been filed after more than 9 months from the communication of the Commissioner (Appeals)'s Order to the applicant. Whereas, as per Section 35EE (2) of the Central Excise Act the revision application should have been filed within 3 months from the date of the communication of the Commissioner (Appeals)'s Order which is 23.11.14 in this case. Hence, it should have been cited by 23.2.15. The Government is empowered to ~~condone the delay in filing the revision application upto 3 months under above stated~~ Section, but the delay beyond 3 months cannot be condoned by the Government also. However, since the Hon'ble High Court has directed to condone the entire delay in this case, it is deemed to have been condoned by the High Court itself and accordingly the revision application is considered as presented in time.

5. Coming to the merit of the revision application, the Government finds that it has been filed with the Government on the same grounds which were raised earlier before Commissioner (Appeals) that they had filed rebate claim on 5.4.12 and it has been wrongly rejected as time barred by the Assistant Commissioner and the Commissioner (Appeals). No new evidence to support their claim has been produced and the applicant has repeated the same grounds that they had dispatched their claim through courier and they had sent two letters dated 10.1.13 and 13.2.13 to the Assistant Commissioner of the Division to enquire about their pending rebate claim. In fact, even the copy of the courier's receipt is

not found enclosed with the revision application. As regards their earlier letter dated 10.1.13 it was replied by the Assistant Commissioner of the Division vide his letter dated 6.3.13 itself informing clearly that the Division Office had not received any rebate claim for Rs.1973480/- from the applicant. All these contentions were considered by the Assistant Commissioner and a well reasoned Order dated 4.7.13 was passed by the Assistant Commissioner holding that the applicant had submitted rebate claim on 25.4.13 only for the goods exported during the period April 2011 to June 2011 and the same is time barred in terms of Section 11B of the Central Excise Act. Subsequently, the Commissioner (Appeals) has also upheld the Assistant Commissioner's Order and rejected the applicant's appeal before him for the same reason that the applicant's rebate claim was not received prior to 25.4.13. The Government is also convinced that merely on the basis of courier's receipt and the above referred letters dated 10.1.13 and 13.2.13, which can be easily manipulated even subsequently to cover up the lapse of non-filing of rebate claim in time, it cannot be accepted that the applicant had earlier filed rebate claim on 5.4.12. Since no other convincing evidence has been produced before the Government also regarding submission of rebate claim before 5.4.12 in this case and the lower authorities have categorically denied having received the rebate claim on 5.4.12, the Government does not have any reason to differ from the earlier findings of the lower authorities.

6. The applicant has also claimed that limitation period prescribed under Section 11B of the Central Excise Act is not applicable to the rebate of duty as no time limit has been prescribed in the Notification NO.19/04 dated 6.9.04 and reliance has been placed on Madras High Court's decision in the case of Dorcas Market Makers Pvt. Ltd. Vs CCE, Chennai, 2012 TIOL-108-SC-MAD-CX and Supreme Court's decision in the case of Collector of Central Excise Vs Raghuvar (India) Ltd. (2000) 118 ELT 311 (SC). This contention was raised in their appeal before the Commissioner (Appeals) also. But it is rejected by the Commissioner (Appeals) by observing that the refund claim can be filed

● within the prescribed period of 1 year only as per Section 11B of the Act and the Rules and Notification cannot prevail over the statutory provision contained in Section 11B of the Act wherein 1 year's limitation period for filing the rebate claim has been specified. The Government also does not agree with this argument as it is not found legally tenable since for refunds and rebate of duty 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 principle 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 are not repeated in Rule 18 and the primary conditions 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 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 by Assistant/Deputy Commissioner of a Division under Rule 18. This issue regarding application of time limitation of one year to the rebate matter is dealt by Hon'ble High Court of Bombay in detail in the case of M/s. Everest Flavour Vs. Union of India,

2012(282) ELT 48 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. and even distinguished Supreme Court's decision in the case of M/s. Raghuvar (India) Ltd. The Supreme Court's decision in the case of Raghuvar India Vs. Collector of Central Excise, Jaipur, 2000(118)ELT 311(SC) has been delivered in totally different context of the issue whether the time limitation stipulated in Section 11A of the Central Excise Act could be applied to the recovery of MODVAT Credit under the erstwhile Central Excise Rule 57I which did not have any reference to Section 11A. The Apex Court held that the time limit of Section 11A cannot be applied under Rule 57I as MODVAT scheme is a different scheme, Section 11A is a general provision and Rule 57I is a specific provision and there is no reference of Section 11A in Rule 57I. The decision of Supreme Court in Raghuvar India has been considered by the Bombay High Court in the decision of M/s. Everest Flavours and it has been held to be not applicable in the context of rebate of duty for the reason that Section 11B of the Central Excise Act expressly include rebate of duty in the definition of refund claim and this Section is exclusively dealing with the areas of refund as well as rebate of duty for which Rule 18 also provides conditions & procedures for granting rebate of duty. Since Section 11B of Central Excise Act specifically deals with the rebate of duty also and contains a provision for limitation period of 1 year for filing an application for rebate claim, unlike Section 11A having no reference to recovery of MODVAT credit as dealt by the Hon'ble Supreme Court in the case of Raghuvar India, the decision of the Bombay High Court in the case of M/s. Everest Flavours is manifestly much reasoned, fully in accordance with the statutory provision in Section 11B and has been decided after Madras High Court's decision in the case of Dorcas Market Makers Market Makers Pvt. Ltd. Vs CCE, Chennai, 2012 TIOL-108-SC-MAD-CX. Thus the two decisions relied upon by the applicant are not found relevant for the present

case. Moreover, the above averment of the applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed any time without any time limit which is not only against Section 11B of the Central Excise Act but is also antithetic to the public interest which demands that such matters should be settled in definite time.

7. In view of the above discussions, the Government does not find any fault in the Commissioner (Appeals)'s Order and the revision application is rejected.

R.P. Sharma
14.3.18

(R.P.Sharma)

Additional Secretary (Revision Application)

M/s United Chloro Paraffins Pvt. Ltd.
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G.O.I. Order No. 157/18-Cx dated 14.3.2018

Copy to:-

1. Commissioner of Central Excise, Bhubaneswar-I, C.R.Building, Rajaswa Vihar, Bhubaneswar-751007
2. Commissioner (Appeals) Central Excise, Customs & Service Tax, C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha
3. The Assistant Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar Division, Bhubaneswar, At: Plot No.466(P), Shree Vihar, Patia, Bhubaneswar-751031
4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED

(Debjit Banerjee)
STO (RA)