

REGISTERED SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No.195/227/WZ/2019-RA

/ 1662

Date of Issue:

20.03.2023

ORDER NO. 158/2023-CX (WZ)/ASRA/MUMBAI DATED 17-03-2023  
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.

Subject : Revision Application filed under Section 35EE of the Central  
Excise Act, 1944 against Order-in-Appeal No. MKK/548/RGD  
APP/2018-19 dated 25-03-2019 passed by the Commissioner  
of Central Tax Central Excise & Service Tax, Raigarh (Appeals).

Applicant : M/s Fairdeal Filaments Ltd, (Now Shahlon Silk Industries Ltd.)

Respondent: Commissioner of Central Tax Central Excise & Service Tax,  
Raigarh (Appeals).

**ORDER**

This Revision application is filed by M/s. Fairdeal Filaments Ltd, (Now Shahlon Silk Industries Ltd.) (hereinafter referred to as 'applicant') against the Order in Appeal No. MKK/548/RGD APP/2018-19 dated 25-03-2019, passed by the Commissioner of Central Tax Central Excise & Service Tax, Raigarh (Appeals).

2. Brief facts of the case are that the applicant had filed a rebate claim for the goods exported under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. During the scrutiny of the claim it was found that the goods covered under said claim were exported on 09.02.2017 and the rebate claim has been filed under said Notification on 26.04.2018. Therefore, deficiency cum show cause notice was issued for rejection of the rebate claim as time barred. During the Personal Hearing the applicant submitted that the delay was due to technical error as their application was not accepted in the on-line portal and therefore, they could not file on-line application. The Adjudicating Authority vide OIO No. 108/D.C(DD)/17-18/Belapur dated 24-10-2018 rejected the rebate claim on the ground that there is a time limit of one year for filing rebate claim from the date of exportation of goods. This time limit is specifically included in the Notification No. 19/2004- CE (NT) dated 16.09.2004 as amended by Notification No. 18/2016 CE(NT) dated 01.03.2016. Adjudicating Authority further observed that there was failure on filing of rebate claim. They could have filed the refund claim manually as filed after time period of one year.

3. Being aggrieved by the aforesaid Order in Original, the applicant filed appeal before Commissioner of Central Tax Central Excise & Service Tax, Raigarh (Appeals) who vide Order in Appeal No. MKK/548/RGD APP/2018-19 dated 25-03-2019 dismissed the appeal filed by the applicant and upheld the Order in Original

4. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:-

4.1 That the Adjudicating Authority has not considered the main reason for the delay in filing rebate claim is due to non-working of Government website for filing rebate claim and showing errors as per the screen shots attached herewith; that the Applicants tried to file online rebate claim on 03.05.2017, 03.06.2017, 02.01.2018, 01.02.2018, 15.02.2018, 28.02.2018, 05.03.2018, 20.03.2018 and 29.03.2018. From the launch of GST, the Applicants were under the impression that when online filing of rebate claim is given there may not be any manual refund claim and therefore the Applicants were trying to file the impugned rebate claim online and after several attempts of technical errors of the website (non-acceptance of IFS Code of Bank Account, etc.), the Applicants filed the impugned rebate claim manually by submitting hard copies of the same. The Commissioner (Appeals) has also not considered the basic fact that the delay has been occurred due to non-working of Government's website.

4.2. Further, the Commissioner (Appeals) has relied upon the decision of Hon'ble Supreme Court in case of Mafatlal Industries Ltd Vs Union of India [1997 (89) ELT 247 (SC)] and of Union of India Vs Uttam Steel Ltd [2015 (319) ELT 598 (SC)] wherein it was held that all claims for refund except where levy is held to be unconstitutional to be preferred and adjudicated upon under Section 11B of Central Excise Act, 1944. In this regard, the Applicant submitted that they are not disputing the fact of filing of rebate claim under Section 11B of Central Excise Act, 1944. However, it is to be noted that the Apex Court in case of Mafatlal Industries Ltd (supra) held that time bar would not be applicable for refunds.

4.3. That the Commissioner (Appeals) grossly erred in holding that the decision of Hon'ble M/s Sun Pharmaceuticals Ltd is not relevant, however: on the contrary, it is fact on records that the Appellants tried to file instant rebate application online on 3.5.2017 and thereafter repeated attempts were made to file the same and lastly submitted manually/physical application on 26.4.2018, so the decision of Hon'ble High Court of Delhi dated

22.08.2016 in case of M/s Sun Pharmaceuticals Ltd [W(C) No. 7120/2001] is squarely applicable to the facts of instant case which have been accepted by the CBEC and covered in Circular No. 1063/2/2018 dated 16.02.2018 whereby it had circulated the list of decisions of various appellate forums accepted by the department (i.e. attained finality). Even this Circular also clarified at para-4.1 that "4.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of Apar Industries (Polymer Division) vs Union of India in Special Civil Application No. 7815 of 2014. The issue examined in the order is as follows, Manufacturer exporter. M/s Apar Industries (Polymer Division) filed Rebate claims in incorrect format under Rule 19 instead of as required under Rule 18. The same was re-filed correctly but department held that the subsequent filing was time barred. The Hon'ble Court held that the intention of claiming rebate was clear and first application should have been treated by the department as rebate application. Whatever defect arose from the incorrect filing could have been rectified. In such situations, re-submission should be seen as a continuous attempt and therefore in the matter department was directed to examine the rebate claims of the petitioner on merits. In view of the above clarification of CBEC, the above decision of Sun Pharmaceutical Ltd as well as Apar Industries [2016 (333) ELT 246 (Guj)] are squarely applicable to the instant case.

In addition to the above, the Appellants rely upon following decisions:- (a) Government of India (Revisionary Authority) in case of CCE, Aurangabad Vs Dagger Forst Tools Ltd [2011 (271) ELT 471 (G.O.I.)]

(b) Hon'ble Supreme Court in case of Dy. Commissioner Vs Dorcas Market Makers Pvt Ltd [2015 (325) E.L.T. A104 (S.C.)]

4.4. That there are catena of decisions wherein it has been held that the procedural infraction of Notification / Circulars etc. can be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for technical or procedural lapses and hence in the instant case the delay may please be condoned and rebate may please be granted as there is no dispute of exportation of goods.

4.5. That exports are tax-free and if the cash rebate is not allowed, the Applicant requested to allow in the form of credit of the same amount so that the Cenvat credit debited by the Applicant could be compensated by such credit. In this regard, the Applicant relied upon the decision of Government (Revisionary Authority) in case of Radiall India Pvt Ltd Vs Union of India [2013(298) ELT 149 (G.O.I.)]

In view of the above, the Applicant requested to condone the delay in filing this rebate claim with to set aside the impugned OIA & O10 with consequential relief.

5. Personal hearing in this case was scheduled on 11.11.2022, 24.11.2022, 13.12.2022 and 10.01.2023. Shri Santosh Soni, Consultant, appeared online and submitted that online filing of rebate was in time. He further submitted that since online submission could not materialize, their filing offline was delayed. He requested to allow the claim.

6. Government has carefully gone through the relevant case records, oral and written submissions and perused the Order in Original and Order-in-appeal.

7. The issue involved in the present case is to decide whether the impugned Order-in-Appeal was proper in upholding the rejection of rebate claims of the applicant on the grounds of being time barred. Government observes that the applicant has claimed that they had tried to file the rebate claim online from 03-05-2017 onwards for the export made on 9-02-2017, but due to technical glitches their IFSC code was not being uploaded in the website and after a number of attempts they filed the rebate claim manually on 26-04-2018.

8. The applicant's contention is that the rebate claim should not be considered as time barred as they had tried to file the rebate claim as early as 03-05-2017 for the export made on 9-02-2017 and subsequently they had made attempts to file the claim on 3-06-2017, 2-01-2018, 01-02-2018, 15-02-2018, 28-02-2018, 05-03-2018, , 20-03-2018, 29-03-2018 and at last they had filed manually on 26-04-2018. Government observes that the Explanation (B) to Section 11B of the CEA, 1944, specifies the date from

which limitation would commence for filing refund/rebate claim for excise duty paid on the excisable goods and the excisable goods used in the manufacture of such goods which is one year from the date of export in the impugned case. Government finds that in the normal course any diligent applicant would try and ensure that their rebate claim would be lodged within time and in course of any difficulty, they would try to sort the same. If the applicant was unable to file the rebate claim online after so many attempts and period, they should have approached the authorities with their said difficulty within the prescribed time-limit under Section 11B of Central Excise Act. Such timely action on their part would have ensured that the rebate claim was not time barred. Even if the claim was returned by the rebate sanctioning authority on the grounds that the same has to be filed online, the applicant could have established their entitlement to the rebate claim. In such a case, their rebate claim would be deemed to have been filed in time.

9. Government in the instant case observes that the applicant has relied on judgments wherein it has been held that time-limit is to be computed from the date on which refund/rebate claim was originally filed and if the same is filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944, then the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed. Government finds that in this case the rebate claim alongwith the relevant documents had not been filed at all. The same can be taken to be filed only on 26-04-2018 (filed manually along with the relevant documents) and hence there is no dispute that the rebate claim has been filed beyond the one year from the date of exportation.

10. In this regard Government observes that Commissioner Appeals in the impugned orders at para 4.3 to 4.7 has observed that:

*“4.3. There is no dispute that rebate claim under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated*

06.09.2004 has to be filed within one year from the date of exportation. This provision was further confirmed by amending the said Notification No. 18/2016-CE(NT) dated 01.03.2016 where it was specifically stated that rebate claim has to be filed before expiry of the period specified in Section 118 of Central Excise Act, 1944. I find that there is no provision for condonation of such delay.

4.4. I find that Hon'ble Supreme Court in case of Mafatlal Industries Ltd. Vs. Union of India reported in 1997 (89) ELT 247 (SC) has already held that all claims for refund except where levy is held to be unconstitutional, to be preferred and adjudicated upon under Section 11B of Central Excise Act, 1944. Similar view was taken again by Hon'ble Supreme Court in case of Union of India Vs. Uttam Steel Ltd. reported in 2015 (319) ELT 598 (SC).

4.5. Appellant has relied upon the judgment of Hon'ble Madras High Court Judgement in the case of Deputy Commr., C.Ex., Chennai Vs. Dorcas Market Makers as reported in 2015(321) ELT 45(Mad). However, I find that in the case of Hyundai Motor reported in 2017(355)ELT342(Mad) the Hon'ble Madras High Court itself has distinguished the case of Dorcas Market Makes Pvt. Ltd. and following the judgment of 9 Member Bench of Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. Union Of India reported in 1997 (89) E.LT. 247 (S.C.) held that such rebate can be made only under Section 11B within the period of limitation as prescribed under the Central Excise Act.

4.6. I find that a Trade Facilitation No. 03/2012, issued by the Commissioner, Central Excise, Raigad, with regard to online filing of rebate claim. Paragraph 4 reads as follows:

*"The date of filling of rebate claim online will be considered as the date of submission of claim under Section 11B of CEA. However, the claim is required to be supported with*

*the hard copy of documents relied upon and listed in the rebate/refund request. All such documents should be submitted to the Office within 8(eight) days of filling the claim for rebate online, failing which the claim will be liable for rejection as unsubstantiated. It may be noted that if the documents are not filed within 8(eight) days of filing the claim on-line, the system shall automatically delete the on-line claim".*

*On perusal of the trade facilitation circular for on-line filing of refund claim it is very clear that department has circulated that if the documents are not filed within eight days of filing the claim online, the system will automatically delete the online claim. Thus, online refund claim was just a procedure to facilitate the trade and filing of documents within eight days was mandatory and online filing was not taken into account if the documents were not filed. In the instant case the appellant even not able to file rebate claim online. Thus, filing of refund claim along with documents physically was a mandatory requirement. Only after submission of documents, the same to be considered as claim filed under this notification. Further, there is no documentary evidence on the record which shows that the delay in filling rebate claim beyond one year is caused due to reasons attributable to the Department. This view was held by the Gujarat High Court in the case of Pacific Exports Vs Union of India [2017(346)ELT240(Guj).*

*4.7. Since filing of rebate claim within time limit is a mandatory requirement and delay was not due to any action by the department, therefore, adjudicating authority has rightly rejected the rebate claim as time barred. The case laws of M/s. Sun Pharmaceuticals Ltd. is not relevant as facts of this case was different with the present case."*

11. Government finds that the order of the Commissioner Appeal is proper and do not find any reason to interfere with the same and holds that the rebate claim filed by the applicant is rightly rejected as time-barred.



12. Revision Application is dismissed on the above terms.

  
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. 138/2023-CX /ASRA/Mumbai Dated 17-03-2023

To,

1. M/s Fairdeal Filaments Ltd (now Shalon Silk Industries Ltd.), 3<sup>rd</sup> Floor, Dawar Chambers, Near Sub Jail, ring Road, Surat-395002, Gujarat.
2. The Commissioner CGST and C.Ex Commissionerate, Belapur, 1<sup>st</sup> Floor, C.G.O Complex, CBD Belapur, Navi Mumbai-400614

Copy to:

1. The Commissioner of Central Tax, C.Ex & S.T Raigarh Appeals, 5<sup>th</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.
4. Notice Board.