

SPEED POST



F.No. 198/06/2019-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..13/7/21.....

Order No. 161/2021-CX dated 12-7-2021 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.
Appeal/CE/PKL/175/2018-19 dated
29.10.2018, passed by the Commissioner
(Appeals), CGST, Panchkula.

Applicants : Commissioner of CGST, Panchkula.

Respondent : M/s Park Non Woven Pvt. Ltd.,
Panipat.

ORDER

A revision application no. 198/06/2019-RA dated 01.02.2019 has been filed by the Commissioner of CGST, Panchkula (hereinafter referred to as the Applicant) against Order-in-Appeal nos. Appeal/CE/PKL/175/2018-19 dated 29.10.2018, passed by the Commissioner (Appeals), CGST, Panchkula, whereby the Commissioner (Appeals) has allowed the appeal filed by M/s Park Non Woven Pvt. Ltd., Panipat (hereinafter referred to as the Respondents) against Order-in-Original Nos. 09-R/AC/CGST/CE/PNP/2018-19 dated 16.05.2018 passed by Assistant Commissioner, CGST, Panipat. The Commissioner (Appeals) has remanded the matter to the original authority to examine the admissibility of rebate claim subject to verification of documents relating to export goods.

2. Briefly stated, the Respondents were registered with the Central Excise department and were engaged in the manufacturing and export of Foam-Caulking Sponge/Non Woven Felts under Chapter 5602 of the Central Excise Tariff Act, 1985. The Respondents filed rebate claims of Central Excise duty amounting to Rs. 44,57,479/-, 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 16.05.2018, rejected the said rebate claim 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 said rebate claim could not have been rejected on account of limitation and allowed the appeal filed by the Respondents and remanded the matter to the original authority for decision on merits.

3. The instant revision application has been filed on the grounds that the limitation of one year provided under Section 11B of the Central Excise Act is applicable to the claims for rebate under Rule 18 of the Central Excise Rules, 2002; that limitation is not a procedural issue; and that there is no provision of condonation of delay under Section 11B of the said Act. The Respondents have filed cross-objections dated 30.08.2019. Additional Submissions dated 23.04.2021 have also been filed by the Applicant department.

4. Personal hearing was held on 09.07.2021, in virtual mode. Sh. Maninder Kumar, DC, appeared for the Applicant and reiterated the contentions in the revision application and additional submissions dated 23.04.2021. Sh. Sagar Verma & Sh. Dinesh Verma, Advocates made the submissions on behalf of the Respondents. They reiterated the contents of the cross objections dated 30.08.2019. Sh. Sagar Verma

stated specifically that the filing of claim got delayed due to the late receipt of the EP copy of the Shipping Bill. Sh. Maninder Kumar, DC, controverted it by stating that at no stage in the original proceedings, this plea was taken. Hence, it is an afterthought.

5.1 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 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". The ratio of the judgment of the Apex Court in Uttam Steel (Supra) is

squarely applicable in the facts of the present case - if the provisions of Rule 12 of the erstwhile Central Excise Rules, 1944 could not be used to negate the effect of limitation provided in terms of section 11B, the absence of a provision specifying limitation in the notification no. 06/2004-CE (NT) cannot also be used to negate the limitation provided under the parent statute, i.e., Section 11B. The judgments, in the case of Dorcas Market Makers Pvt. Ltd. (Supra) and the JSL Lifestyle Ltd. (Supra), can also not be followed in view of the Hon'ble Supreme Court's judgment in Uttam Steel Ltd. (Supra).

5.2 As regards the issue of late receipt of EP copy of the Shipping Bill being the reason for delay in filing the claim, the same has been controverted by the department as an afterthought. Irrespective of the rival contentions, the Government observes that a similar plea was taken before the Hon'ble Delhi High Court in the case of M/s Orient Micro Abrasives Ltd. vs. Union of India [2020 (371) ELT 380 (Del.)] which was turned down by Hon'ble High Court in the following terms:

"20. Section 11B (1) of the Act read with Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of goods, where against rebate is claimed. There is no provision which permits relaxation of this stipulated one year time-limit."

5.3 In view of the above, the impugned Order-in-Appeal cannot be sustained.

6. The revision application is allowed and the impugned Order-in-Appeal is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

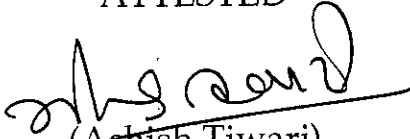
Commissioner of Central Goods & Service Tax, S.C.O. No. 407-408,
Sector-8, Panchkula (Haryana) - 134 109

G.O.I. Order No. / 6 / 21-CX dated 12-7-2021

Copy to: -

1. M/s Park Non Woven Pvt. Ltd., 298, Sector-29, HUDA,
Panipat- 132 103.
2. The Commissioner (Appeals), CGST, Panchkula, S.C.O. No.
407-408, Sector-8, Panchkula (Haryana) - 134 109.
3. Sh. Dinesh Verma, Advocate, 895, Sector - 12, HUDA,
Panipat (Haryana) - 132 103.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)