

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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No. 195/06/17/RA

Date of Issue: 12/02/20

ORDER NO. 1624 /2020-CX /ASRA/MUMBAI DATED 03.02.2020 OF THE  
GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT  
OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Black Rose Industries Ltd. Bharuch, Gujarat.

Respondent : The Commissioner of Central Excise, Bharuch Commissionerate.

Subject : Revision Application filed, under section 35EE of the Central  
Excise ACT, 1944 against the Order in Appeal No. CCESA-VAD  
(APP-II)/VK-287/2016-17 dated 17.10.2016 passed by the  
Commissioner Central Excise, Customs and Service Tax, Vadodara,  
Appeals-II.

ORDER

1. This Revision Application has been filed by M/s Black Rose Industries Ltd, Bharuch, Gujarat (hereinafter referred to as "the applicant") against Order-in-Appeal No. CCESA-VAD (APP-II)/VK-287/2016-17 dated 17.10.2016 passed by the Commissioner Central Excise, Customs and Service Tax, Vadodara, Appeals-II.

2. The brief facts of the case are that the applicant had filed rebate claim of Rs.1,09,428/- (Rupees One Lakh Nine Thousand Four Hundred Twenty Eight only) in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004. During the course of scrutiny of Rebate claims, it was observed that the rebate claims were filed beyond one year from relevant date of export as prescribed under Section 11 B of the Central Excise Act, 1944. Therefore, the adjudicating authority vide Order in Original No. ANK-II/AC/2715/Rebate2015-16 dated 19.10.2015 rejected said rebate claims as time barred.

3. Being aggrieved by the aforesaid Order in Original the applicant preferred an appeal before Commissioner Central Excise, Customs and Service Tax, Vadodara, Appeals-II who vide Order in Appeal No. CCESA-VAD (APP-II)/VK-287/2016-17 dated 17.10.2016 upheld the Order in Original and rejected appeal filed by the applicant.

4. Being aggrieved by impugned Order-in-Appeal the applicant has preferred the present Revision Application mainly on the following grounds:

4.1 They had filed a rebate claim of Rs.1,09,428/- under covering letter dated 06.07.2015 by Register AD, received in the excise office on 17.07.2015 along with all the necessary documents. Rebate claim was filed under Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004 - CE(NT) dated 06.09.2004.

4.2 They were issued show cause vide SCN F.No.V/18-1352/Div II/Rebate/15-16 dated 11.08.2015 by the Assistant Commissioner, Central Excise & Customs, Division - II Bharuch as to why rebate claim of Rs.1,09,428/- filed by them on 17.07.2015 should not be rejected, as time barred under Section 11 B of Central Excise Act,1944.

4.3 They filed its reply vide its letter dated 29.08.2015 filed on 31.08.2015 stating that :- It is now a settled law that the Rebate claim is filed under Rule 18 of the Central Excise Rules and therefore it should be as per the

provisions of this Rule and the Notification No.19/2004 — CE (NT) issued by the Central Government. Both the said Rule 18 and Notification 19/2004 do not contain any stipulation regarding the limitation of time.

- 4.4 In the case of Deputy Commissioner of Central Excise, Chennai Vs. Dorcas Markers Pvt. Ltd. and Commissioner of Central Excise (Appeals), Chennai [2015-TIOL-820-HC-MAD-CX] decided by the Hon'ble Madras High Court wherein it was held that rebate claim filed by an assessee is not time barred as Rule 18 of the Central Excise Rules is self contained and has to be construed independently. The Excise Department preferred an appeal before the Hon'ble Supreme Court against the said order of the Madras High Court. The Supreme Court has also held that the period of limitation-prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to rebate claim filed as both Rule 18 of the Central Excise Rules and Notification 19/2004 do not prescribe the time limit for filing rebate claim. These above facts were given in the annexure to our said letter dated 29.08.2015.
- 4.5 The Assistant Commissioner has ignored the decision of the Supreme Court in the case of Deputy Commissioner of Central Excise, Chennai Vs. Dorcas Market Makers Pvt. Ltd. and Commissioner of Central Excise (Appeals), Chennai [2015-TIOL-820-HC-MAD-CX] cited by us in our submissions before him. This case was identical with our case. Instead of following the Supreme Court decision in this very relevant case, the Assistant Commissioner has chosen to refer a very old and not at all relevant case of U01 v. Kirloskar Pneumatics Company reported in 1996 (84) E.L.T. 401 (S.C.). It may be noted that this case was relating to Section 27 of the Customs Act 1962, and not the Central Excise Act and the Supreme Court has only considered whether the direction given by the Bombay High Court that the customs authorities "shall not reject the refund application on the ground that it is time barred" is valid in law. It held that it was not and the case was referred back to the Bombay High Court. Hence, citation of this case law by the Assistant Commissioner is not at all relevant to the case. Also the case referred by the Assistant Commissioner is of 1996 i.e. before the enactment of Rule 18 of Central Excise Rules 2002 and issue of Notification No.19/2004 — CE(NT) dated 06.09.2004 by the Central Government, which are relevant to the case. Both of these do not stipulate any time limit for application for Rebate claim as per decision of the Madras High Court stated above and upheld by the Supreme Court.
- 4.6 Though the Appellate Authority had recorded our submissions regarding our objection that the adjudicating authority had erred in not considering the Supreme Court decision in the identical case of Deputy Commissioner

of C.Ex., Chennai Vs M/s Dorcas Market. Makers P.Ltd. and Commissioner of C.Excise (Appeals), Chennai [2015-TIOL-820-HC-MAD-CX], decided by the Hon'ble Madras High Court wherein it was held that the rebate claim filed by an assessee is not time barred as Rule 18 of the C.Excise Rules is self contained and has to be construed independently, but while deciding the case Appellate Authority had given emphasis only to the provisions of section 11-B of the Act and not the provision of Rule 18 of Central Excise Rules which as per the order of the Supreme Court in the above cited case is self contained and has to be construed independently without any reference to Sec 11B of the Act. Not only the Appellate Authority has not considered our submissions but had introduced a new point in his decision by referring to Notification No.18/2016-Central Excise (N.T), dated 01.03.2016 i.e. issued recently while our rebate claim pertains to export made on 19.04.2014. Though nowhere this notification dated 01.03.2016 states that the same is with retrospective effect to amend notification No.19/2004-C.E.(N.T.) dated 06th September,2004, but the Appellate Authority has assumed that this notification is with retrospective effect. We fail to understand how and why the Appellate Authority had assumed that this new notification is with retrospective effect.

4.7 Supreme Court decision in the identical case of Deputy Commissioner of Central Excise, Chennai Vs. Dorcas Market Makers Pvt. Ltd. and Commissioner of Central Excise (Appeals), Chennai [2015-TIOL-820-HC-MAD-CX] cited by them where the Supreme Court has held as under:-

(i) Rule 18 of the Excise Rules itself does not stipulate a period of limitation.

(ii) Rebate claim under Rule 18 of the Excise Rules should be as per notification issued by the Central Government and in this regard Notification No.19/2004-CE-(NT)-dated-September-6,-2004 (Notification 19/2004) was issued;

(iii) Notification 19/2004 has superseded the previous Notification No.41/94 — CE (NT) dated September 12, 1994 which prescribed the time limit for filing claim. But, Notification 19/2004 does not contain the stipulation regarding limitation. This was a conscious decision taken by the Central Government and hence, the view taken by the learned Judge of the Hon'ble High Court that Rule 18 of the Central Excise Rules is to be construed independently is fair and reasonable.

(iv) That period of limitation prescribed under Section 11B of the Excise Act is not applicable to rebate claim filed as both Rule 18 of the Excise

Rules 2002 and Notification 19/2004 do not prescribed the time limit for filing rebate claim.

4.8 In view of the above, the Appellate Commissioner has erred in interpretation of the provision of Rule 18 of the Central Excise Rules 2002 and of Notification No.19/2004 CE(NT) dated 06.09.2004 and has ignored the decision of the Apex Court judgment in the above referred case which is squarely applicable to this case.

5. A personal hearing in this case was held on 23.10.2019 and was attended by Mr. C.P. Vyas, Chartered Accountant and Company Secretary on behalf of the applicant and Mr. Laxmidhar Pradhan, Assistant Commissioner, CGST, Div-X, Vadodara-II appeared on behalf of the respondent department. Both the applicant as well as respondent made written submissions. The applicant reiterated grounds of revision application during the personal hearing as well as in their written submissions. The applicant also cited a case law [2015(10)TMI 1106] Punjab and Haryana High Court in case of M/s JSL Life style Limited Vs. UOI.

6. The respondent department in their counter submissions dated 22.10.2019 submitted as under :

6.1 The original adjudicating authority has rightly held vide OIO dtd.19.10.2015 that according to Explanation (A) to Section 11(B), refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. The Explanation (A) to Section 11(B) clearly stipulates that refund of duty includes rebate of duty on exported goods. Further, the rebate claim is required to be filed within one year from the relevant date.

6.2 Appellate Authority has held that the Notification no.18/2016 which amends Notification No. 19/2004-CE(NT) dtd.06.09.2004 by inserting the words '(2) under heading "(3) Procedures", in paragraph (b), in subparagraph (i), after the words "shall be lodged", the words, figures, letter and brackets "before expiry of the period specified in Section 11B of Central Excise Act, 1944 (1 of 1944)" shall be inserted'.

6.3 Appellate Authority vide Order-in-Appeal No. CCESA-VAD(APP-11)VK-287/2016-17 dtd. 17.10.2016 has held that the amendments in the Notification no. 19/2004-CE (NT) dtd. 06.09.2004 vide Notification no. 18/2016-Central Excise (N.T.) dtd.01.03.2016 regarding conditions and limitations of the period for expiry of filing claim as specified in Section

11 B of Central Excise Act, 1944 is having retrospective effects in nature as per judgments of the Apex Court.

- 6.4 Appellant Authority at pars 5.4 of Order-in-Appeal No. CCESA-D(APP-II)VK-287/2016-17 dtd. 17.10.2016 held as under;

*Parliament having specifically brought within the sweep of Section 11 B a claim for rebate, it cannot be postulated that Rule 18 of the Central Excise Rules, 2002 would operate independent of the provisions of Section 11B. Since 11B categorically comprehends a rebate of excise duty on excisable goods exported out of India or on excisable material used in the manufacture of goods which are exported out of India. Since the statutory provision for refund in Section 11 B brings within its purview, a rebate of excise duty on goods exported out of India or materials used in the manufacture of such goods, Rule 18 cannot be read independent of the requirement of limitation prescribed in Section 11 B".*

- 6.5 Both the original adjudicating authority and Appellate Authority had considered the case law i.e. Deputy Commissioner of Central Excise, Chennai Vs M/s. Dorcas Market Makers P. Ltd and Commissioner of C. Excise (Appeals), Chennai [2015-TIOL-820-HC-MAD-CX] cited by the applicant/appellant while rejecting the rebate claim.

Therefore, the refund claim has been correctly rejected being time barred.

7. Government has carefully gone through the relevant case records available in case files, perused the impugned Orders-in-Original and Order-in-Appeal and considered oral & written submissions made by the applicant in their Revision Application.

8. Government observes that Original authority had rejected the refund claims of the applicant amounting to Rs.1,09,428/- holding that the said rebate claim was filed beyond the period of one year from the relevant date of export as prescribed under Section 11 B of the Central Excise Act, 1944 and hence time barred. The Commissioner (Appeals) has upheld the Order of the original authority.

9. Government also observes that while dealing with the issue whether limitation of one year is applicable to the rebate claims filed under Rule 18 and Notification No. 19/2004, GOI in its Order No. 366-367/2017-CX, dated 7-12-2017 In Re : Dsm

Sinochem Pharmaceuticals India Pvt. Ltd. reported in [2018 (15) G.S.T.L. 476 (G.O.I.)] observed as under:-

*“5. ....This issue regarding application of time limitation of one year is dealt [with] by Hon’ble High Court of Bombay in detail in the case of M/s. Everest Flavour v. Union of India, 2012 (282) E.L.T. 481 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. [2015 (321) E.L.T. 45 (Mad.)] and even distinguished Supreme Court’s decision in the case of M/s. Raghavar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.)]. Hence, the applicant’s reliance on the decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. is not of much value. The above averment of the applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed at any time without any time-limit which is not only against Section 11B of the Central Excise Act but is also not in the public interest as per which litigations cannot be allowed for infinite period”.*

10. The Hon’ble Madras High Court has in its judgment dated 18.04.2017 in the case of Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance [2017(355)ELT 342(Mad)] held that the contention that no specific relevant date was prescribed in Notification No. 19/2004-CE(NT) was not acceptable in view of proviso (a) to sub-section (2) of Section 11B of the Central Excise Act, 1944 by quoting the relevant paragraph of its previous judgment in Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), which is extracted hereunder :-

*“8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression “relevant date” is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the*

*rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."*

It is pertinent to note here that Hon'ble High Court Madras in its aforementioned judgment [2017(355)ELT 342(Mad)] has also referred to case laws in Deputy Commissioner v. Dorcas Market Makers Pvt. Ltd. - 2015 (321) E.L.T. 45 (Mad.) and 2015 (325) E.L.T. A104 (S.C.)] which are relied by the applicant in their grounds of Revision Application.

11. The applicant has placed reliance upon the Hon'ble High Court judgments in the case of Dorcas Market Makers Pvt. Ltd [2015(321)ELT 45(Mad)] and Punjab and Haryana High Court Order in case of M/s JSL Life style Limited Vs. UOI 2015(10)TMI 1106]. With due respect to these judgments of the Hon'ble High Courts relied upon by the applicant, it is observed that these judgments have been delivered in exercise of the powers vested in these courts in terms of Article 226/Article 227 of the Constitution of India. Needless to say, no statute passed by Parliament or State Legislative Assembly or any existing law can abridge the powers vested in the High Courts which is known as writ jurisdiction of the High Court under Article 226 of the Constitution of India. However, the irrefutable fact in the present case is that the Central Excise Act, 1944 provides for a period of limitation in Section 11B of the Central Excise Act, 1944. The powers of revision vested in the Central Government under Section 35EE of the Central Excise Act, 1944 are required to be exercised within the scope of the Central Excise Act, 1944 which includes Section 11B of the Central Excise Act, 1944. In other words, notwithstanding the mitigating circumstances or compelling facts, there can be no exercise of powers in revision outside the scope of the Central Excise Act, 1944. Thus, there is a great difference in the degree of powers exercisable by the by the High Courts and creatures of statute.

12. Additionally, Rule 18 of the Central Excise Rules, 2002 has been made by the Central Government in exercise of the powers vested in it under Section 37 of the Central Excise Act, 1944 to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the Central Excise Act, 1944. Moreover, the Explanation (A) to Section 11B explicitly sets out that for the purposes of the section



"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. The 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 covers the entire Rule 18 within its encompass. Likewise, the third proviso to Section 11A(1) of the Central Excise Act, 1944 identifies "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" as the first category of refunds which is payable to the applicant instead of being credited to the Fund. Finally yet importantly, the Explanation (B) of "relevant date" in clause (a) specifies the date from which limitation would commence for filing refund claim for excise duty paid on the excisable goods and the excisable goods used in the manufacture of such goods. It would be apparent from these facts that Section 11B of the Central Excise Act, 1944 is purposed to cover refund of rebate within its ambit. If the contention of the applicant that Section 11B is not relevant for processing rebate claims is accepted, it would render these references to rebate in Section 11B superfluous.

13. Moreover, Section 37 of the Central Excise Act, 1944 by virtue of sub-section (2)(xvi) through the Central Excise Rules, 2002 specifically institutes Rule 18 thereof to grant rebate of duty paid on goods exported out of India. Notification No. 19/2004-CE(NT) dated 06.09.2004, Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the Central Excise Rules, 2002 to set out the procedure to be followed for grant of rebate of duty on export of goods.

14. Since it is unambiguously clear that the limitation under Section 11B applies to export of goods under claim of rebate under Rule 18 and Notification No. 19/2004, the next issue that arises is whether the applicant had filed these rebate claims within one year of date of shipment of the goods. As per para 6 of the Order in Original ANK-II/AC/2715/Rebate/2015-16 dated 19.10.2015, the vessel STADT COBURC which shipped the impugned export goods under shipping bill No.2254295 dated 19.04.2014, left on 26.04.2014 and hence the relevant date in terms of Section 11B for filing of rebate claim in this case was 25.04.2015. However, the said Rebate claim had in fact been filed by the applicant under covering letter dated 06.07.2015 by

Registered AD and received in the Central Excise Office on 17.07.2015, i.e. after the expiry of one year from the relevant date.

15. In view of the foregoing discussion Government does not find any infirmity in the Order in Appeal No. CCESA-VAD (APP-II)/VK-287/2016-17 dated 17.10.2016 passed by the Commissioner Central Excise, Customs and Service Tax, Vadodara, Appeals-II, and therefore upholds the same.

16. The revision application is thus rejected being devoid of merits.

17. So, ordered.



(SEEMA ARORA)

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

ORDER No. 164 /2020-CX (WZ) /ASRA/Mumbai Dated 03.02.2020.

To,

M/s Black Rose Industries Ltd.,  
Plot No.675, GIDC, Jhagadia Industries Estate,  
Jhagadia, Bharuch (Gujarat)- 393 110

Copy to :

1. Commissioner of Goods & Service Tax, Vadodara-II Commissionerate, GST  
Bhavan, Sabhanpura, Vadodara, 390023.
2. The Commissioner of CGST (Appeals), Central Excise Building , 1st Floor  
Annex, Race Course Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissioner, of CGST, Division-X, Vadodara-II  
Commissionerate, Plot No. C/4/9, Behind Roshan Cinema, Station Road,  
Ankleshwar.
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.