

F NO. 195/530/13-RA

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**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, Cuff Parade,  
Mumbai- 400 005

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F NO. 195/530/13-RA/2535

Date of Issue: 05.04.2021

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ORDER NO. 169 /2021-CX (WZ) /ASRA/MUMBAI 31.03.2021 DATED  
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.

Applicant : M/s Sumitomo Chemicals India Pvt Ltd.

Respondent : Commissioner(Appeals) of Central Excise & Customs, Nashik.

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.  
RPS/23/NSK/2013 dated 21.01.2013 passed by the  
Commissioner(Appeals) of Central Excise & Customs, Nashik.

**ORDER**

This Revision Application has been filed by M/s Sumitomo Chemicals India Pvt Ltd., Moti Mahal, 7<sup>th</sup> floor, Tata Road, Churchgate, Mumbai 400 020 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. RPS/23/NSK/2013 dated 21.01.2013 passed by the Commissioner(Appeals) of Central Excise & Customs, Nashik.

2. The brief facts of the case are that the Applicant, merchant exporter had filed the rebate claim of Rs. 7,67,556/- (Rupees Seven Lakhs Sixty Seven Thousand Five Hundred and Fifty Six Only) dated 07.11.2011 by Speed Post, which was received in the Office of the Deputy Commissioner, Central Excise, Jalgaon on 02.12.2011 in respect of export clearance effected on 24.09.2010. The details are as under:

ARE-1 No & date	Rebate amount (Rs)	Shipping Bill No & date	Bill of Lading No & date	Date of filing of rebate claim
10-11/E-03 dt 23.09.2010	7,67,556	1578193 dt 24.09.2010	KKLUNQ000189 dt. 02.10.2010	02.12.2011

Since the rebate claim was filed after statutory time limit of one year as prescribed under Section 11B of the Central Excise Act, 1944, the Applicant was issued a Show Cause Notice dated 13.01.2012. The Deputy Commissioner, Central Excise & Customs, Jalgaon vide Order-in-Original No. 33/R/2012 dated 04.04.2012 rejected the rebate claim on the ground of being time barred under the provisions of Section 11B(2) of the Central Excise Act, 1944. Being aggrieved against the said Order-in-Original, the Applicant then filed appeal with the Commissioner(Appeals) of Central Excise & Customs, Nashik. The Commissioner(Appeals) vide Order-in-Appeal No. RPS/23/NSK/2013 dated 21.01.2013 rejected their appeals.

3. Aggrieved, the Applicant has filed the current Revision Application on the following grounds:

- (i) The filing of rebate claims was delayed due to non-receipt of requisite documents from M/s. MDB Chemicals (India) Pvt. Ltd., manufacturer

which was received later and then complete set of rebate claim was submitted to the office of Deputy Commissioner of Central Excise & Customs, Jalgaon Division. The onus is on the Applicant to prove that the goods have been exported. Hence, to file the refund claim it is necessary to attach the proof of export along with the rebate claim. As they had received the necessary documents only after the period of one year, there was a delay in filing of rebate claim, which is merely a procedural lapse and may kindly be condoned and rebate should be allowed.

- (ii) To allow rebate claim, the primary condition is that the excisable goods have been exported. In the present case there is no dispute on the facts that the goods have been exported, hence the right to get the rebate of duty arises to the Applicant. The provision stated under Section 11B of the Central Excise Act, 1944 are only procedural in nature. Neither Rules nor Section 11B contemplates that if the rebate claim is not filed within the period of one year the right accrued to the exporter lapses. It is substantive right of the exporter and substantive law does not barred by the procedural lapses. In this they relied
- (iii) In the present case, the rebate of duty is governed by the provisions contained in Notification 19/2004-CE(NT). There is no specific provision which provides that Section 11B shall be applicable for refund of duty under this section. In absence of any specific provision, the provision of Section 11B providing for limitation cannot be followed the ration of the judgment given in the case of Uttam Steel Vs. UOI [2003 (158) ELT 274 (Bom.)] and Dorcas Market Makers Pvt Ltd Chennai Vs CCE, Chennai [2012-TIOL-108-HC-MAD-CX]
- (iv) When the statutory Notification No.19/2004-C.E.(N.T.) dated 06.09.2004 issued under Rule 18 does not prescribe any time limit, Section 11B is not applicable and based on which the benefit cannot be denied to the Applicant. They relied on the following judgements”

- (a) UOI Vs. Dewas Flour, Oil and Deoiled Cake Factory [1993 (68) ELT 36 (M.P.)];
- (b) Cosmonaut Chemicals Versus Union of India [2009 (233) ELT 46 (Guj.).
- (v) Hence, the refund claim amounting to Rs.7,67,556/- may be allowed to the Applicant.

4. Personal Hearing was fixed for 20.08.2018, 27.08.2019 and 17.09.2019, but no one attended the hearing. Since there was a change in the Revisionary Authority, hearing was granted on 08.01.2021, 15.01.2021, 22.01.2021 and 25.02.2021, however none appeared for the hearing. Hence the case is decided based on available records on merits.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the issues involved in the instant Revision Application are whether Applicant is entitled for the rebate claim which was rejected on the grounds of limitation. There is no dispute that these rebate claims were filed after one year from the relevant dates.

7.1 The Government observes that the Applicant in the Revision Application has relied on the judgment of the Hon'ble Madras High Court in the matter of Dy. Commissioner of C. Ex., Chennai Vs. Dorcas Market Makers Pvt. Ltd. (2015 (321) E.L.T. 45 (Mad.). The Government however finds that the same Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd., [reported in 2017 (355) E.L.T. 342 (Mad.)] upheld the rejection of rebate claim filed beyond one year of export by citing the judgment of In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai reported in 2015 (324) E.L.T. 270 (Mad.) and held that Rules cannot prescribe over a different

period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder :-

29. *In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), it has been held as follows :*

5. *The claim for refund made by the Applicant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-*

*"(B) "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 are 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 despatch of goods by the Post Office concerned to a place outside India;.....*

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."*

7.2 The Government observes that the Applicant in the Revision Application has also relied on the judgment of the Hon'ble Bombay High Court in Uttam Steel Ltd.[2003(158)ELT 274(Bom)]. The said judgment has been reversed by the Hon'ble Supreme Court in Civil Appeal No. 7449 of 2004 decided on 05.05.2015 [2015 (319) ELT 598 (SC)]. Similarly, 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 CEA, 1944.

8. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is thus a mandatory provision. As per explanation (A) to Section 11B 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. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. The explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. Government finds no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

9. Government also places its reliance on the GOI Order Nos. 366-367-CX, dated 07.12.2017 in RE : DSM Sinochem Pharmaceutical India Pvt Ltd. [2018 (15) GSTL 476 (GOI)].

10. Government notes that the statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim has to be treated as time barred.

11. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. RPS/23/NSK/2013 dated 21.01.2013 passed by the Commissioner(Appeals) of Central Excise & Customs, Nashik and therefore, upholds the same.

12. The Revision Application filed by the Applicant is dismissed being devoid of merits.

*(Signature)*  
31/03/21  
(SHRAWAN KUMAR)

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

ORDER No. 169/2021-CX (SZ) /ASRA/Mumbai Dated 31.3.2021

To,  
M/s Sumitomo Chemicals India Pvt Ltd.,  
Moti Mahal, 7<sup>th</sup> floor,  
Tata Road,  
Churchgate,  
Mumbai 400 020.

Copy to:

1. The Commissioner of CGST & CX, Nashik, Plot No. 155, Sector-P-34, NH, Jaishtha & Vaishakh, CIDCO, Nashik - 422 008.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.