

SPEED POST



F.No. 195/50/2019-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...10/8/21.

Order No. 176/2021-CX dated 9-8-2021 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. NOI-EXCUS-002-APP-1889-17-18 dated 21.03.2018 passed by the Commissioner (Appeals), Customs & CGST, NOIDA.

Applicants : M/s Telecom Network Solutions Pvt. Ltd., NOIDA.

Respondent : The Commissioner of CGST, NOIDA.

ORDER

A revision application no. 195/50/2019-R.A. dated 09.09.2019 has been filed by M/s Telecom Network Solutions Pvt. Ltd., NOIDA (hereinafter referred to as the Applicants) against the Order-in-Appeal no. NOI-EXCUS-002-APP-1889-17-18 dated 21.03.2018 passed by the Commissioner (Appeals), Customs & CGST, NOIDA, whereby the Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original No. 176 Refund/ DIV-V/N-II/2016-17 dated 15.02.2017, passed by the Assistant Commissioner, Central Excise Division-V, NOIDA-II.

2. Briefly stated, the Applicants were registered with the Central Excise department for manufacture of Fabricated Steel Structures, falling under Chapter Heading 7308 of the first schedule to the Central Excise Tariff Act, 1985. The Applicants filed rebate claim for Rs. 23,24,772.82 on 13.10.2016, under Rule 18 of Central Excise Rules, 2002, in respect of goods exported, vide ARE-1s Nos. 06/15-16 to 21/15-16, with exports affected from 06.07.2015 to 27.07.2015. The rebate claim was rejected by the original authority on the grounds of limitation, as it was filed after expiry of one year period from the date of shipment, in terms of Section 11B of the Central Excise Act, 1944. The appeal filed by the Applicants has also been rejected by the Commissioner (Appeals). Hence, the present revision application.

3. The revision application has been filed, mainly, on the grounds that the rebate claims should not have been rejected for non-observance of procedure prescribed under Rule 18(2) of Central Excise Rules, 2002 while substantive conditions prescribed under Rule 18 (1) have been complied with. Rebate cannot be denied just for procedural lapse. Further, it has been stated that in the ARE-I, a clear reference about export of goods on payment of rebate of duty had been made, which was sufficient intimation to the department and, hence, department was required to refund the amount on its own without waiting for any application from the Applicant.

4. Personal hearing was granted on 31.05.2021, 24.06.2021, 28.07.2021 and 05.08.2021. Sh. Rajesh Chibber, Advocate, for the Applicants and Sh. Susheel Srivastava, Superintendent, for the Respondent, appeared on 24.06.2021, in virtual mode. Sh. Chibber requested for an adjournment which was granted. On the next date of hearing, i.e., 28.07.2021, another request for adjournment was received, which was also granted. However, no one appeared on 05.08.2021 also and no request for adjournment has been received. Hence, sufficient opportunities having been granted, the matter is taken up for decision on the basis of records available.

5. The Government observes that the instant revision application has been filed on 09.09.2019, much beyond the period of limitation of 03 months prescribed under Section 35EE. It is the contention of the Applicants that they had approached Hon'ble Allahabad High Court against impugned order of the Commissioner (Appeals). The Hon'ble High Court, vide its Order dated 01.08.2019, left it open to the Applicants to take recourse to the statutory remedy available to them under Section 35EE of the Central Excise Act, 1944, to file a Revision Application before the Government which may be decided in accordance with law. Thus, "there is no need to go into the time limitation aspect." As per Section 35EE *ibid*, a revision application against an order of the Commissioner (Appeals) can be filed within 03 months of the receipt of the order. A delay of 03 months can be condoned by the Government if sufficient cause is shown by the Applicants which prevented them from filing it within stipulated time. Limitation, thus, is a part of law, i.e., Section 35EE, as per which the instant revision application has to be decided. There is no order or direction of the Hon'ble High Court that limitation aspect of the law is not to be looked into. As such, the revision application is liable to be rejected as barred by limitation.

6.1 On merits, the Government observes that there is no dispute that the rebate claim was filed after one year from the date of export of goods. The issue that is required to be decided is whether filing of

rebate claims after the stipulated period of one year is a mere procedural infraction.

6.2 The Government observes that as per Clause (A) of the Explanation to Section 11B, "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable material used in the manufacture of goods which are exported out of India. Further, as per Clause (B) of the said Explanation "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 were 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 dispatch of goods by the Post Office concerned to a place outside India;"

Thus, Section 11B not only provides that the rebate of duty of excise is also a type of refund of duty, the relevant date for determining limitation in the cases of rebate is also specifically provided. As such, on a plain reading of Section 11B, there can be no doubt that the limitation provided under Section 11B shall be applicable to the cases of rebate and is a mandatory condition to be followed for processing the rebate claims. This being so, it cannot be inferred that non-adherence to time limitation in rebate cases is a mere procedural infraction which can be overlooked.

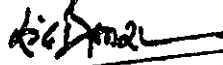
6.3 The Government observes that the Hon'ble Supreme Court has, in the case of *Union of India vs. Uttam Steel Ltd. {2015 (319) ELT 598 (SC)}*, settled the law on this issue. Following the ratio of the judgment by the nine-judge bench in *Mafatlal Industries Ltd. vs.*

Union of India {1997 (89) ELT 247 (SC)}, the Hon'ble Supreme Court 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".

6.4 Thus, there is no doubt that the limitation provided under Section 11B of the Central Excise Act, 1944, as applicable to the cases of rebate under Rule 18 of the Central Excise Rules, 2002, is a substantive requirement to be followed while granting rebate.

6.5 The contention of the Applicant, based on indication in ARE-1 of the export being under claim of rebate, is also sans any merit. Section 11B provides for "an application for refund" to be filed before it can be sanctioned. Thus, suo-moto sanction of refund/rebate, i.e., without filing of application in this behalf, is not contemplated in law.

7. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Telecom Network Solutions Pvt. Ltd.,
A-10, UPSIDC Industrial Area, Sikandrabad,
Bulandshahr, UP 203 205

G.O.I. Order No. 176/21-CX dated 9-1-2021

Copy to: -

1. The Commissioner of CGST, NOIDA.
2. The Commissioner (Appeals), Customs & CGST, NOIDA.
3. Sh. Rajesh Chibber, Advocate, FA-9, New Kavi Nagar, Ghaziabad-201 002.

4. P.S. to A.S. (Revision Application).
5. Guard File.

6. Spare copy.

ATTESTED



Ashish Tiwari
(Assistant Commissioner)