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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/463-465/2012-RA | 4067 Date of Issue: 10/10/19

ORDER NO. 187/20/2019-CX (WZ)/ASRA/MUMBAI DATED 30 · 08.2019 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.

Applicants : M/s Garden Silk Mills

Respondent : Commissioner of Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal Nos. US/199 to 201/RGD/2012 dated 29.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai

ORDER

The Revision Application has been filed by M/s Garden Silk Mills, Surat (hereinafter referred to as "the Applicant") against the Order-in-Appeal Nos. US/199 to 201/RGD/2012 dated 29.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai

Sl. No.	Rebate Claim No & Date	Amount (Rs)	Order-in-Original & dt	Order-in-Appeal No. & dt	
1	13032 dt 11.10.2011	8,35,307	1750/11-12/DC(Rebate)/Raigad dt 11.01.2012	Order upheld	
2	76 claims	2,51,92,691	1796/11-12/DC(Rebate)/Raigad dt 13.01.2012	Order se-aside and appeal allowed	OIA No.199 to 201/RGD/2012 dt 29.03.2012
3	144 claims	4,75,70,110	1797/11-12/DC(Rebate)/Raigad dt 13.01.2012		

2. The issue in brief is that the Applicant manufactured and exported Polyester chips and then filed rebate claim for the duty paid on the same in terms of Rule18 of the Central Excise Rules, 2002 (herein after 'CER') :

2.1 In respect of Sr. No. 1, Applicant had filed rebate claim No.13032 dated 11.10.2011 for Rs. 8,35,307/-. The export was made under Shipping Bill No, 8696246 dated 27.07.2010. However, there was a short shipment in as much as only 160 bags could be shipped instead of 164 bags mentioned in the Shipping Bill. So the remaining 04 bags were short shipped and as a result, the Customs Department could not generate EP copy. Finally the

Customs Department released the shipment certificate on 20.08.2011 to their CHA. Consequently, the rebate claim could not be filled within one year from the date of Shipping Bill i.e. one year from 22.07.2010 and they filed the rebate claim No.13032 dated 11.10.2011 for Rs. 8,35,307/- due to late receipt of EP copy i.e. on 20.08.2011. On scrutiny of the claim, the following deficiencies were noticed by the Department which was communicated to the Applicant vide letter F.No. IX/Reb/11/12608 dated 22.12.2011:

(i) Claim was time barred in terms of Section 11B of the Central Excise Act, 1944 (herein after 'CEA'), as the same had been filed after stipulated period of one year from the date of shipment.

(ii) Quantity 164000 kgs of goods mentioned in the ARE-1 did not tally with the quantity (4000 kgs) mentioned in the Shipping Bill No. 8712231 dated 30.07.2010 produced with the claim.

(iii) Proof of duty payment not produced with the claim.

(iv) Bank Realization Certificate not produced with the claim.

The Deputy Commissioner(Rebate), Central Excise, Raigad vide Order-in-Original No. 1750/11-12/DC(Rebate) dated 11.01.2012 rejected the rebate claim No. 13031 dated 10.10.2011 amounting to Rs. 8,35,307/-on limitation ground.

2.2 In respect of Sr. 2 & 3, the Applicant had filed 76 rebate claims collectively and 144 rebate claims collectively which rejected by the Deputy Commissioner(Rebate), Central Excise, Raigad vide Order-in-Original Nos. 1796/11-12/DC(Rebate)/Raigad dt 13.01.2012 amounting

to Rs.2,52,92,691/- and 1797/11-12/DC(Rebate)/Raigad dt 13.01.2012 amounting to Rs. 4,75,70,110/-.

2.3 Aggrieved with 03 Order-in-Originals, the Applicant filed appeal with the Commissioner of Central Excise (Appeal-II), Mumbai who vide Order-in-Appeal No. US/199 to 201/RGD/2012 dated 29.03.2012 in r/o of Sr.No. 1 rejected their appeal on limitation ground and upheld the Order-in-Original No. 1750/11-12/DC(Rebate) dated 11.01.2012 and in r/o Sr. 2 & 3 set aside the Order-in-Original Nos 1796/11-12/DC(Rebate)/Raigad dt 13.01.2012 & 1797/11-12/DC(Rebate)/Raigad dt 13.01.2012 and allowed their appeals with consequential relief.

3. Aggrieved, in respect of Sr. No. 1, the Applicant then filed this Revision Application on the following grounds :

3.1 That the impugned order is bad in law and is also contrary to the provisions of the Central Excise Act, 1944 and / or Customs Act, 1962 and the Rule made there under and also the provisions of the other laws applicable to the issues involved in the appeal. The concerned show cause notice is also ab initio void, without jurisdiction and authority and also vitiated on account of limitation prescribed under the statute.

3.2 That both the lower authorities have failed to appreciate that Para 2.4 of Chapter 9 of the CBEC Manual in fact laid down a general rule stipulating that no incomplete application should be entertained, but the latter part carves out an exception, so as to ensure that an assessee is not put to disadvantage only because of lapse or laxity on the part of the Officers of Central Excise or Customs Department. In fact, a plain reading of Para 2.4 of the

CBEC Manual indicate that an assessee cannot claim refund/ rebate when the Application is incomplete in any manner or it is without supporting documents. However it is further provided that for a situation where a claimant is not a position to make a claim due to non-availability of documents for the reason that such documents are not available because the Central Excise or Customs Department is solely accountable for such deficiency i.e. non availability of the requisite documents, then it is stated that the claim may be admitted, so that the claimant is not put in a disadvantageous position with respect to limitation period. Thus it becomes clear that a claim as per the above Para 2.4 shall not be taken as filed if it is deficient any manner and it shall be taken as filed only when all relevant documents are available. AS against that, the latter part talks of the claim being admitted with respect to limitation period. Thus an exception is provided for in cases where a claim application cannot be tendered for want of requisite documents and such lapse is on account of non availability of such documents due to the department being solely accountable. In such a case, an assessee cannot be put to disadvantage by asking the assessee to tender a deficient claim within the period of limitation and simultaneously treat the claim as not being filed till the point of time all relevant documents are available.

3.3 Chapter 8 of the CBEC Manual is Export under Claim for Rebate. Paragraph No. 8 of the said Chapter pertain to sanction of claim for rebate by Central Excise.-

> "8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E.1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E.1 duly certified by Customs,

and that the goods are of 'duty-aid' character as certified on the triplicate copy of A.R.E.1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

The claim for rebate is in relation to excise duty paid on the goods which are exported outside India. When one reads the requirement of shipping bill being endorsed by the Customs authorities evidencing the physical export of goods which are an integrated scheme to promote exports. In fact the endorsement requirement itself stipulates endorsement of a copy of shipping bill use of the phrase 'export promotion'. Thus an interpretation which advances the object of the scheme has to be referred as against a construction which militates against the scheme.

3.4 That the provisions of Section 11B of the Act stipulate that a claim has to be accompanied by documents, and that such requisite documents in case of an assessee, who has exported duty paid goods would, at any rate, include a copy of shipping bill duly endorsed by the Customs Authorities. Hence, if the Customs Authorities delay parting with a copy of shipping bill bearing necessary endorsement, an assessee cannot be put to disadvantage on the ground of limitation, when the assessee is not in a position to make a claim without accompanying documents.

3.5 That in the present case obtaining of an endorsed copy of shipping bill is primarily a procedural requirement and such procedure is not within the control of the claimant-assessee.

3.6 That considering the matter from any angle it becomes apparent that the interpretation placed by Revenue on provisions of Section 11B of the Act read with Paragraph 2.4 of Chapter of the CBEC Manual cannot be accepted the same being contrary to the object and purpose of the scheme. It cannot be held that the Appliant was at fault in making he claim belatedly, because in fact the period of limitation has to be considered in the light of availability of the requisite documents i.e. from the said point of time.

3.7 that the impugned order is also contrary to the judgement of the Hon'ble Gujarat High Court in case of Cosmonaut Chemicals Vs UOI [2009 (233) ELT 46 (Guj.)] which should directly and completely settle the controversy in favour of the Appellant.

3.8 That the lower authorities have misplaced reliance on the judgment of the Hon'ble High Court in case of Exclusive Steels Pvt. Ltd Vs UOI [2011 (267) ELT 586 (Guj)]. The said judgment is clearly distinguishable and if at all it is applicable, it is in favour of the Applicant. This is because there is a clear cut observation in Para 18 that the only circumstances under which a claimant would be entitled to limitation would be where the lapse as to non-availability of requisite document is on account of Central Excise or Customs Department.

3.9 That the lower authorities have failed to appreciate that the time limit prescribed under Section 11B is not applicable to the Rebate claim filed under Rule 18 which is the case here. There is absolutely no dispute as regards the export made by the Appellant. There is also no dispute as regards the duty payment which is claimed as rebate. There is again no dispute that the rebate claim could not be filed earlier solely because there was a short shipment of 4 bags which resulted into the customs department not able to

generate the EP copy in time. Finally, the Customs department release the Shipment Certificate dated 20.08.2011 and then the Appellant filed the rebate claim on 11.10.2011. As per Rule 18, the Rebate of duty paid on excisable goods is to be sanctioned in terms of Notification No. 19/2004 dated 06.09.2004. Neither Rule 18 nor the Notification No. 19/2004 prescribed any time limit either directly or indirectly by reference to Section 11B. Consequently, what is not prescribed in the Rule 18 or in the Notification No. 19/2004 cannot be imported into the said statutory provisions. As a result, Section 11B and in particular the time limit prescribed therein is not applicable in this case. The Hon'ble Supreme Court in Commr of Central Excsie, Jaipur Vs Raghvar (India) Ltd. [(2000) 5 SCC 299 = 2002 - TIOL-711-SC-CX-LB] dealt with a question whether 6 months time prescribed under Section 11A of the CER for the recovery from the manufacturer. The manufacturer took a defense that the recovery could be made under Section 11A of the CEA within 6 months and not under Rule 57I and that the claim of the department was beyond 6 months, amount could not be recovered. The Supreme Court elaborately dealt with the matter and held that Section 11A of the Central Excise and Salt Act, 1944 would have no application to any action taken under Rule 57I of the CER and Rule 57I is not in any manner subject to Section 11A of the Act. The above judgment would make it clear that the Rule will act independently and any action taken under the Rule has to be considered independently. Therefore, Rule 18 is not subject to Section 11B of the Act. In this case, the claim is regard to the rebate of the excise duty already paid by the manufacturer under Rule 18. If the said judgment is taken into consideration, the notification issued under Rule 18 of the CER which prescribed no

time limit alone is applicable and Section 11B of CEA which prescribed 1 year time for claiming refund would not be applicable to deny the rebate claim of the Applicant. In this they rely on the judgment of the Hon'ble High Court of Madras in case of Dorcas Market Makers P Ltd Vs CCE [2012-TIOL-108-HC-MAD-CX].

3.10 They prayed to set aside the impugned order with consequential relief.

4 A personal hearing in the case was held on 20.08.2019 which was attended by Shri Willngdon Christian, Advocate on behalf of the Applicants. The Applicants submitted written submissions and stated that the time delay over one year in respect of Bill of Entry dated 27.07.2010 and claim filed on 11.10.2011. Due to shortage new Bill of Entry dated 30.07.2010 for short goods and no EP copy was issued. The shipment certificate was received on 20.08.2011 vide the Applicant request dated 16.08.2010. They relied on the judgment in the case of Cosmonaut Chemicals [2009 (233)ELT 46 (Guj)] along with the case of Gravita India Ltd Vs UOI [2016 (334) ELT 321 (Raj)] and Banswara Synthex Ltd Vs UOI [2017 (349) ELT 90 (Raj).

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

6. On perusal of records, Government observes that the Applicant had filed ARE-1 No. 237/10-11 dated 26.07.2010 which shows quantity as 164 bags of the goods under Shipping Bill No. 8696246 dated 27.07.2010. However, there was a short shipment in as much as only 160 bags could be shipped instead of 164 bags mentioned in the Shipping Bill. So the remaining 04 bags were short shipped and as a result, the Customs Department could not generate EP copy.

Finally the Customs Department released the shipment certificate on 20.08.2011 to their CHA. Consequently, the Applicant then filed rebate claim No.13032 dated 11.10.2011 for Rs. 8,35,307/-i.e after one year from 22.07.2010. Government finds that adjudicating authority vide Order-in-Original dated 11.01.2012 rejected the rebate claim on the grounds of limitation and hence the issue on merits was not discussed. Further, Government also finds that the Commissioner(A) vide Order-in-Appeal No. US/199 to 201/RGD/2012 dated 29.02.2012 also rejected the appeal on the grounds of limitation.

7. Government finds that the issue here is whether the rebate claim No.13032 dated 11.10.2011 filed after one year from the date of Shipping Bill No. 8696246 dated 27.07.2010 is liable to be reject as time barred or not, even though such delay was entirely for delay in Customs Department issuing Shipment Certificate dated 20.08.2011 in lieu of EP copy of the shipping Bill.

8. Government observes that the Applicant's argument is that the limitation period of one year is not specified under Rule 18 of the Central Excise Rules, 2002 and Section 11B of the Central Excise Act is not relevant for the rebate of duty. The Government finds that the Applicants above contention is not found legally tenable as for refunds and rebate of duty, Section 11B of the CEA is directly dealing statutory provision:

> ***"Section 11B. Claim for refund of duty and interest, if any, paid on such duty -***
>
> *(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the*

documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Explanation. - *For the purposes of this section, -*

(A) "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;

(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..."

In addition to time limitation, other substantive and permanent provisions like the authority who has to deal with the refund or rebate claim, the application of principle of undue enrichment and the method of payment of the rebate of duty, etc. are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation to rebate duty need not be repeated in Rule 18 and the areas over and above already covered in Section 11B have been left to the Central Government for regulation from time to time. Hence, Government find that by combined reading of both Section 11B and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that Rule 18 is independent from Section 11B of the Act. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of

filing rebate claim within 1 year is squarely applicable to the rebate of duty when dealt by Assistant/Deputy Commissioner of a Division under Rule 18. Thus Section 11B and Rule 18 are interlinked and Rule 18 is not independent from Section 11B.

9. Government observes that the rebate claim is required to be filed within one year of the relevant date as stipulated in Section 11B. There is no provision under Section 11B, to condone any delay. Applicant has argument that they had received EP copy of Shipping Bill after nearly 15 months from Customs and therefore delay has occurred. In this regard, the provisions of Para 2.4 of Chapter of CBEC's Excise Manual of Supplementary Instructions are very clear which state that in case any document is not available for which Central Excise or Customs is accountable the claim may be received so that the claim is not hit by time-limitation period. Here, Government finds that the Applicant was required to file rebate claim within one year even without Shipping Bill Copy so as to avoid the rebate claim getting time barred and failed to take appropriate care to comply with the laid down statutory time-limit and therefore, the rebate claim was rightly rejected as time-barred.

10. Further Government finds that this issue regarding application of time limitation of one year is dealt 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. 48] 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.* and even distinguished Supreme Court's decision in the case of *M/s. Raghuvar (India) Ltd.* The decision of the Supreme Court in the case of *Union of India v. M/s. Dorcas Market Makers Pvt. Ltd. [2015 (321) E.L.T. 45 (Mad.)]* relied upon by the

applicant is clearly a decision not on the merit of the case as the departmental SLP is dismissed at the admission stage itself. The other decision in the case of *JSL Lifestyle Ltd. v. Union of India – [2015 (326) E.L.T. 265 (P&H)]*, relied upon by the applicant, is decided purely by relying upon the Supreme Court's decision in the case of *M/s Raghuvar India v. Collector of Central Excise, Jaipur, 2000 (118) E.L.T. 311 (S.C.)*, which has been decided in totally different context whether the time limitation stipulated in Section 11A of the Central Excise Act could be applied to the recovery of Modvat credit under the erstwhile Central Excise Rule 57-I which did not have any reference to Section 11A. The Apex Court held that the time limit of Section 11A cannot be applied under Rule 57-I which is a specific provision and there is no reference of Section 11A in Rule 57-I. The application of the above referred decision of Supreme Court in M/s *Raghuvar India* has been considered by the Bombay High Court in the context of rebate of duty for the reason that Section 11B of the Central Excise Act expressly include rebate of duty in the definition of refund claim and this Section is exclusively dealing with the areas of refund as well as rebate of duty for which Rule 18 also provides conditions and procedures for granting rebate of duty. Punjab & Haryana High Court in the above referred decision in the case of *JSL Lifestyles Ltd.* has not agreed with the judgment of the Bombay High Court in the case of *M/s. Everest Flavours* without giving any cogent reason and the only reason given for disagreement is that the Bombay High Court has not dealt with the observations of the Supreme Court in Paras 14 and 15 of the decision in the case of M/s *Raghuvar India* or with the line of reasoning therein. On examining the aforesaid paras 14 & 15 of the Supreme Court's decision it is, however, noticed that no different reasoning has been given and the Supreme Court has just emphasized in these paras to strengthen their main view in earlier paras that Section 11A is general in nature and the scheme of Modvat is not made subject to Section 11A of the Act. But still the Punjab & Haryana High Court has disagreed from the decision of Bombay High

Court in the case of *M/s. Everest Flavours* and without considering the structure and text of Section 11A and Rule 18 of Central Excise Rules. Since Section 11B of Central Excise Act specifically deals with the rebate of duty also and contains a provision for limitation period of 1 year for filing an application for rebate claim, unlike Section 11A having no reference to recovery of Modvat credit as dealt by the Hon'ble Supreme Court in the case of *Raghuvar India,* the decision of the Bombay High Court in the case of *M/s. Everest Flavours* is much reasoned, fully in accordance with the statutory provision in Section 11B and the decision of Punjab & Haryana High Court is apparently *per incurium* as Section 11B is not discussed and analyzed at all. Therefore, with due respect to the Punjab & Haryana High Court, the decision in the above case of *M/s. JSL Lifestyles Ltd.* cannot be given precedence over the Bombay High Court's decision in the case of *M/s. Everest Flavours.* Thus Government finds that in none of the above mentioned decisions, except in the case of M/s. Everest Flavours, the relevance and application of Section 11B in the context of rebate claim has been considered. The above averment of the Applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed 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 to linger on for infinite period.

11. Further, the Hon'ble Supreme Court has also held in the case of *UOI Vs Kirloskar Pneumatics Company [1996 (84) ELT 401(SC)* that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time-limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may be bound by the time-limit of the said Section. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. Governemnt finds that the ratio of this Apex Court judgment is squarely applicable to this

case. As Section 11B of the Central Excise Act, 1944 provides for the time-limit and there is no provision to extend this time limit. As such the rebate claim is clearly time-barred as it was filed after the time-limit specified under Section 11B of CEA.

12. In view of the above position, Government finds no infirmity in the Order-in-Appeal No US/199 to 201/RGD/2012 dated 29.02.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai in respect of Applicants rebate claim No.13032 dated 11.10.2011 for Rs. 8,35,307/- and, therefore, upholds the same and rejects the Revision Applications filed by the Applicant being devoid of merits.

13. So, ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 187/2020-CX (WZ)/ASRA/Mumbai DATED 30.08.2019.

To,
M/s Garden Silk Mills,
Village- Jolwa,
Tal-Palsana,
Surat

Copy to:

1. The Maritime Commissioner, Central Excise, Raigad
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.