

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  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No. 195/109/WZ/2018-RA

256

Date of Issue:

19.01.2023

ORDER NO. 22/2023-CX (WZ)/ASRA/MUMBAI DATED 17.1.2023 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.

Subject : - Revision Application filed under Section 35EE of the Central  
Excise Act, 1944 against Order-in-Appeal No. CCESA-  
SRT(Appeals)/Ps-637/2017-18 dated 19.02.2018 passed by  
the Commissioner of CGST & Central Excise (Appeals) - Surat.

Applicant : - M/s. Blue Star Limited

Respondent: - Commissioner of CGST & Central Excise , Daman.

**ORDER**

The Revision application is filed by M/s. Blue Star Limited (hereinafter referred to as 'applicant') against the Order-in-Appeal No. CCESA-SRT(Appeals)/Ps-637/2017-18 dated 19.02.2018 passed by the Commissioner of CGST & Central Excise (Appeals) - Surat.

2. Brief facts of the case are that Applicant had filed five rebate claims under Notification No.19/2004 C. Ex. (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944. The details are as:

| Sr. No. | ARE-1 No/Date              | S/B No. & Date                                  | Airway Bill/M.R. No. | Date of flight leaving India/Sailing | Rebate claim filed date | Rebate Claim amount(Rs.) |
|---------|----------------------------|---|----------------------|--------------------------------------|-------------------------|--------------------------|
| 1       | 0048/2015 dated 06.05.15   | 9442530 dated 07.05.15                          | 3401                 | 09.05.15                             | 09.05.2016              | 32524                    |
| 2       | 0032/2015 dated 27.04.15   | 9244674 dated 27.04.15 & 9281166 dated 29.04.15 | 165800 & 165799      | 03.05.15                             | 09.05.2016              | 194248                   |
| 3       | 0025/2015 dated 25.04.15   | 9193589 dated 24.04.15                          | 165708               | 29.04.15                             | 09.05.2016              | 431256                   |
| 4       | 0029/2015 dated 25.04.2015 | 9230541 dated 27.04.15                          | 165870               | 03.05.15                             | 09.05.2016              | 182041                   |
| 5       | 0026/2015 dated 24.04.2015 | 9193822 dated 24.04.15                          | 165871               | 03.05.15                             | 09.05.2016              | 221098                   |
|         |                            |   |                      |                                      | Total                   | 1061167                  |

The said claims were returned vide the letter F. No. SLV-III/Rebate /Blue Star/2015-16 dated 24.05.2016 and has reported that the rebate claims were time barred i.e. the claimant has filed the same after expiry of time limit of one year as prescribed under section 11B of Central excise Act, 1944. Accordingly a Show Cause Notice bearing F. No.V/Ch.84/73-77/Reb/2016-17 dated 28.06.2016 was issued to the applicant. The adjudicating authority has found that the applicant had filed all the five refund claims on 09.05.2016 and date of Flight leaving India/sailing of ships were 29.04.2015, 03.05.2015 and 09.05.2015 in the said claims i.e. the above claims were filed after expiry of one year. Hence, the adjudicating authority found that the said rebate claims were filed after expiry of one year from the relevant date and rejected the rebate claims amounting to Rs.

10,61,167/-). Being aggrieved by the Order in Original, the Applicant filed appeal before Commissioner of CGST & Central Excise (Appeals) - Surat who vide Order-in-Appeal No. CCESA-SRT(Appeals)/Ps-637/2017-18 dated 19.02.2018 rejected the appeal on being time barred and upheld the OIO.

3. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:

- i. that on the facts and in circumstances of the case and without prejudice to any other grounds taken herein, the O-1-A passed by the Ld. Commissioner is liable to be set aside as it is contrary to the facts on record as well as the settled position of law and has been passed without considering the statutory provisions.
- ii. Notification no. 19/2004 (supra) as applicable during the period prior to 01.03.2016 has nowhere in the entire procedure, limitations or conditions, specified any time limitation regarding filing of rebate claim and per se, there is no time limit for filing of rebate claim under said Notification as applicable at the time of export. Further, Rule 18 of the CE Rules, by itself does not stipulate a period of limitation in respect of rebate claim. The said Notification does not give any reference to time limit given under section 11B of CE Act as applicable at the time of export i.e. before 01.03.2016.
- iii. Further, clause 3(b) of the notification which provides for 'Presentation of claim for rebate to Central Excise' specifies the procedure to be followed while lodging the refund claim. It may kindly be noted that this clause also does not prescribe any limitation period for filing the rebate claim. Besides, said Notification does not give any reference to time limit given under section 11B of CE Act for filing the rebate claim. Thus, the claim of rebate should be filed before expiry of the period specified in Section 11B of the CE Act, is completely incorrect and therefore, not tenable-in-law.
- iv. However, the Ld. Commissioner has considered the date of application of rebate claim as relevant date for applying the time limit of one year which is grossly unjustified. Notification 18/2016-C.E. (N.T.) dated 01.03.2016 shall be applicable for the export of goods undertaken after 01.03.2016 and not for the application of rebate claim made after 01.03.2016. It would be grossly unfair if the same is considered for the application made after 01.03.2016 which pertains to goods exported before 01.03.2016. The time available with the Applicant for filing rebate claim was less than three months after the issue of notification. Albeit, the time limit if applicable for claiming rebate on

the goods exported before 01.03.2016, it should be reckoned from 01.03.2016.

v. Applicant has placed reliance on certain case laws:

a. Dy. Commissioner of C. Ex., Chennai Vs. Dorcas Market Makers Pvt. Ltd. (2015 (321) E.L.T. 45 (Mad.)

b. JSL Lifestyle Ltd. Vs. Union of India [2015 (326) E.L.T. 265(P&H).

vi. In view of the above, the applicant requested to set aside the impugned Order-in-Appeal.

4. Personal hearing in this case was fixed for 02.11.2022, Mr. Debtime Chakraborty, Head of Tax Administration and Mr. Niranjana Nayak, Sr. Manager appeared online on behalf of the Applicant and submitted that goods were exported prior to the amendment in notification 19/2004 i.e. prior to 01.03.2016. They referred to case of Dorcas Metal. They also submitted that procedural requirement should not take away their substantive right.

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Order in Original and Order-in-appeal.

6. Government observes that the respondent had filed rebate claims, claiming rebate of Central Excise duty paid on exported goods in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. The original authority rejected these rebate claims as time barred as these claims were beyond the stipulated period of one year.

7. 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 dispatch 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."*

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. Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below.

*“14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.*

*15. In Everest Flavours Ltd. v. Union of India [2012(282)ELT 481(Bom.)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree.”*

10. In such manner, the Hon'ble High Court of Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it.

11. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that the Applicant has failed to act diligently in as much as they have failed to file rebate claim within the statutory time limit of one year from the date of shipment of the export goods. Therefore, rebate claims on being time barred has been rightly denied to the Applicant.

12. In view of above position, Government finds no infirmity in the impugned Order-in-Appeal No. CCESA-SRT(Appeals)/Ps-637/2017-18 dated 19.02.2018 passed by the Commissioner of CGST & Central Excise (Appeals) - Surat and upholds the same.

13. Revision application is disposed off on the above terms.

*Shrawan*  
17/1/23  
(SHRAWAN KUMAR)

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

ORDER No. 22/2023-CX (WZ) /ASRA/Mumbai Dated 17.1.2023

To,

1. M/s. Blue Star Limited, Survey No. 265/5, Demni Road, Dadar Silvassa, Dadar & Nagar Haveli-396191.
2. The Commissioner of CGST & C.Ex., Daman, GST Bhavan, RCP Compound, Vapi-396191.

Copy to:

1. The Commissioner of CGST & Central Excise Appeals Commissionerate, 3<sup>rd</sup> Floor, Magnus Mall, Althan Bhimrad Canal Road, Near Atlantas Shopping Mall, Althan, Surat- 395017.
2. Sr. P.S. to AS (RA), Mumbai.
- ✓ 3. Guard file.