

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. 195/273/WZ/2019-RA

2236

Date of issue: 21.04.2023

ORDER NO. 233/2023-CX (WZ)/ASRA/MUMBAI DATED 19.4.2023
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.

Applicant : M/s. Polycab Wires Private Limited

Respondent: Commissioner of CGST & CX, Daman

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. CCESA-
SRT(APPEALS)/PS-318/2019-20 dated 26.08.2019 passed by
the Commissioner(Appeals), CGST & Central Excise, Surat.

ORDER

This Revision Application has been filed by M/s. Polycab Wires Private Limited (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. CCESA-SRT(APPEALS)/PS-318/2019-20 dated 26.08.2019 passed by the Commissioner(Appeals), CGST & Central Excise, Surat.

2. Brief facts of the case are that the applicant is engaged in manufacturing of excisable goods falling under Ch.85 of Central Excise Tariff Act,1985. They had filed 3 rebate claims totally amounting to Rs.10,61,889/- on 27.03.2018 under Notification No.19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002, in respect of goods exported by them. However, the rebate sanctioning authority vide Order-in-Original No. DMN-IV/AC/REF/09/19-20 dated 09.07.2019, rejected the rebate claims on the ground that the rebate claims had been filed beyond the period of one year from the date of export. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) Ld. Commissioner (Appeals) have given findings in para 5.2 stating that the rebate claims were filed beyond the period of one year and therefore were time barred in terms of Section 11B of the Central Excise Act, 1944 without appreciating the material facts on record that the two rebate claims were filed on 30.11.2015 and one rebate claim was filed on 30.01.2016 which were instructed to withdraw since the application was lacking for want of some documents. Subsequently, the applicant filed rebate claims on 27.03.2018 with all documents which cannot be considered that the rebate claims were filed for the first time on 27.03.2018. In this case, the date of export/shipment of the goods are 13.01.2015, 06.01.2015 & 26.02.2015 and the rebate claims were initially filed on 30.11.2015 and 30.01.2016 which are within the period of one year and

therefore it cannot be considered as time bar in terms of Section 11B of the Act. Thus, the findings of Ld. Commissioner (Appeals) are perverse and not in accordance with law and therefore the said order is prayed to set aside allowing appeal with consequential relief.

(b) Ld. Commissioner (Appeals) has given findings in para 5.3 relying upon para 2.4 of Chapter 9 of Central Excise Manual. In this para 2.4, it is made clear that — "*Consequently, submission of refund claim without supporting documents will not be allowed Even if claim is filed by post or similar the claim should be rejected or with query memo (depending upon the nature/importance of documents filed);*" Thus, it is clear that if the rebate claims have been filed within prescribed time limit then the question of Section 11B do not come in the picture for any procedural requirement of submitting documents when the application was already made. This has been supported by following judgments:

- i. Kujal Builders Pvt. Ltd Vs. Commissioner (Appeals-I) ST, New Delhi -2018 (10) GSTL 374 (Tri-Del);
- ii. Dagger Forst Tools Ltd -2011 (271) ELT 471(Gol)
- iii. Shasun Pharmaceuticals Ltd. v/s Joint Secretary, MF (D.R.), New Delhi - 2013 (291) ELT 189 (Mad.)

(c) In spite of settled law on issue, Ld. Commissioner (Appeals) rejected the appeal without appreciating that the rebate claims were required to be rejected or returned in case supporting documents are not there which is not the case of the department. On the contrary the rebate applications were withdrawn on insistence of concerned authority which were submitted again along with required documents which cannot result into barring provision of Section 11B of the Act. In view of this, the findings of Commissioner (Appeals) are not sustainable in law and required to set aside allowing appeal with consequential relief.

(d) The applicant is filing specific affidavit to the effect that on the insistence of concerned authority, the rebate claims were withdrawn as directed and to re-file along with all documents. Thus, the time limit for filing rebate claims from the first time is to be considered which is within one year and the rebate claims are not time barred.

(e) Ld. lower authorities have erred in not appreciating the judgments cited which are very relevant to the facts of the present case to consider that the initial application's date is the main date and submission of further documents cannot result into disentitlement under Section 11B of the Act invoking limitation period. In view of this, the findings of Ld. lower authorities contrary to the settled law accepted by revenue is in total violation of principles laid down for Section 11B interpretation in a particular circumstance. In view of this, the said orders are prayed to be set aside allowing rebate claims in the interest of justice.

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal and grant consequential relief.

4. Personal hearing in the case was fixed for 24.01.2023. Shri Raj Vyas, Advocate, attended the hearing online and submitted that initial submission of rebate claims was on 30.11.2015 and 31.01.2016, which were returned for submitting complete claims. Later on, claims were resubmitted on 27.03.2018. He requested to take original date for limitation. He referred to two judgments of High Courts. He requested to allow their claims.

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

6. Government observes that the main issue in the instant case is whether the rebate claims filed after one year are time barred, being hit by limitation in terms of section 11B of the Central Excise Act, 1944.

7.1 Government observes that the applicant, had filed 03 rebate claims totally amounting to Rs.10,61,889/- on 09.12.2015 & 14.02.2016 for rebate of duty paid on finished goods cleared to a SEZ unit under 3 ARE-1s. However, since the documents were not complete in all respects, the applicant withdrew all the said rebate claims on the same day and resubmitted them on 27.03.2018. As the applicant had resubmitted the rebate claims after expiry of one year from the relevant date and were hence found to be time barred, the original authority rejected the same vide impugned OIO.

7.2 Government observes that the applicant has contended that the rebate claims were withdrawn by them as per advice of jurisdictional authorities. However, no evidence has been adduced to support this claim. The affidavit filed by them in this regard cannot be accepted as evidence as the relevant Act and rules made thereunder do not have any such provision. Further, the applicant has not assigned any reason for the abnormal delay of more than two years in resubmission of claims from the date of withdrawing them, viz. 09.12.2015 & 14.02.2016.

8. Government finds the case laws relied upon by the applicant as non-relevant in the instant matter:

The matter involved in the case of M/s. Kujjal Builders P. Ltd. was of refund of excess service tax paid inadvertently, for which the assessee was constantly communicating with the Department. Therefore, the Hon'ble Tribunal allowed the appeal against the Order rejecting the claim on the grounds of limitation of time. However, in the instant case the applicant suo moto withdrew the claim and thereafter communicated with the Department on the subject after two years.

In the case of M/s. Dagger Forst Tools Ltd., the rebate claim filed was returned by Department after scrutiny as ARE-1s were not having endorsement of Customs Department. On resubmission, the rebate claims were rejected on the grounds of limitation. However, Appellate authority, allowed the appeal and quashed the Order of original authority. The Revisionary Authority upheld the OIA and rejected the application of the

Department on the grounds that the matter falls under stipulations mentioned in para 2.4 of chapter 9 of Central Excise manual: *'In case any document is not available for which Central Excise or Customs Department is solely accountable the claim may be received so that the claimant is not hit by limitation period.'* However, in the instant case, the applicant has not specified as to which documents were lacking in their claims for compliance of which they required a period of more than two years. Further, there is nothing on record to indicate that the Department had carried out any scrutiny of the claims before they were withdrawn by the applicant.

Similarly, in the case of M/s. Shasun Pharmaceuticals Ltd., the Hon'ble High Court observed that the Department had retained the application for rebate of duty, in Form C, and returned the certain documents for confirmation of date of shipment to the claimant. Further, the Hon'ble Court observed the delay occurred on part of Shipping Corporation of India Ltd. to confirm the date of shipment. Therefore, it was held that the initial date would be considered at date of filing the rebate claim. As already discussed, this is not the scenario in the instant matter.

9. Government relies on the case law of M/s. Sudhir Papers Ltd. [2012 (276) E.L.T. 304 (Kar.)], wherein the Hon'ble High Court of Karnataka while dealing with the question *"(1) If the claim made is refunded on defects being pointed out and a fresh claim is made curing such defects whether the said claim may be treated as a continuation of the earlier claim?"* held as follows:

It is not in dispute that the claim for refund is for the period from 1-11-2000 to 31-3-2001. The claim for refund of excise duty paid was made on 29-11-2001, that is well within the time. However, when the revenue issued a notice pointing out the defects in the said claim and also called upon the assessee to produce the supporting documents it was open to the assessee to produce the supporting documents or file an amended claim but the assessee did not choose to amend the claim or produce the supporting documents. It chose to withdraw the earlier claim made to cure the defect and filed a fresh claim. The said withdrawal was made on 27-2-2002. After the said withdrawal a fresh claim was made

on 6-3-2002 but was acknowledged on 7-3-2002. The claim which is made on 7-3-2002 is a fresh claim. It is not a continuation of earlier claim. If there was no defect earlier and when the earlier claim was pending consideration if one more claim Petition is filed giving correct facts to substantiate the said claim interpreting this provision liberally it is possible for this Court to take a view so far as limitation is concerned the date to be reckoned from 30-12-2001. When the claim was made and the subsequent claim is only in the nature of an amendment to the chargeable claim the question of limitation could have been held to be in favour of the assessee. But once when the defects are pointed out instead of complying with the same by producing the documents to substantiate the claim, the claimant withdrew the earlier claim, then the claim for refund ceases to exist. Therefore when a fresh claim is made on 7-3-2002 the limitation is to be computed from that day. If limitation is to be computed from that day the claim for refund from 1-1-2002 up-to 6-3-2002 was clearly barred by time. However, the claim for refund from 7-3-2002 up-to 31-3-2002 was well within the time. Therefore though the authorities justified in holding that claim is barred by time to the extent of rejecting the claim from 7-3-2001 to 31-3-2001, the said order is incorrect. To that extent, the order passed by the authorities requires to be modified.

10. In view of the findings recorded above, Government upholds the Order-in-Appeal No. CCESA-SRT(APPEALS)/PS-318/2019-20 dated 26.08.2019 passed by the Commissioner (Appeals), CGST & Central Excise, Surat and rejects the impugned Revision Application.


(SHRAWAN KUMAR)

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

ORDER No. 233/2023-CX (WZ)/ASRA/Mumbai dated (9.4.23)

To,

M/s. Polycab Wires Pvt. Ltd.,
Plot No. 74/8-11,38/1-6,41/4-9,42/1-2,
43/1-3,44/1-3,45/1-2, Daman Industrial Estate,
Village Kadaiya, Daman – 396 210

Copy to:

1. Commissioner of CGST & CX, Daman,
GST Bhavan, RCP Compound,
Vapi – 396 191
2. Shri Kaushik I. Vyas,
401, Shivanjali Apartment,
Rangeela Park, Ghod Dod Road,
Surat – 395 007.
3. Sr. P.S. to AS (RA), Mumbai
4. ~~Guard file.~~