

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. 195/604/13/RA / 5851

Date of Issue: 12/12/19

ORDER NO. 277 /2019-CX /ASRA/MUMBAI DATED 03.12.2019 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.

Applicant : M/s Gemsons Precision Engineering (P) Ltd.

Respondent : The Commissioner of Central Excise, Mumbai-V.

Subject : Revision Application filed, under section 35EE of the Central Excise ACT, 1944 against the Order in Appeal No. BR/25-26/M-V/2013 dated 21.03.2013 passed by the Commissioner (Appeals)-I, Central Excise, Mumbai Zone-I.

ORDER

1. This Revision Application has been filed by M/s Gemsons Precision Engineering (P) Ltd., Goregaon (East), Mumbai – 400 063 (hereinafter referred to as “the applicant”) against Order-in-Appeal No. BR/25-26/ M-V/2013 dated 21.03.2013 passed by the Commissioner (Appeals)-I, Central Excise, Mumbai Zone-I.

2. The brief facts of the case are that the applicant had filed rebate claims amounting to Rs. 2,27,848/- (Rupees Two Lakh Twenty Seven Thousand Eight Hundred and Forty Eight only) and Rs. 207,621/- (Rupees Two Lakh Seven Thousand Six Hundred Twenty One only) in terms of Rule 18 of Central Excise Rules, 2002 for Central Excise duty paid on the goods, i.e. Machinery Parts falling under Chapter 84799090 of Central Excise Act, 1985, exported out of India.

3. The Original adjudicating authority vide Order in Original No. 15-R/32/DC/GDN/2012 dated 28.01.2013 rejected rebate claim of Rs.2,27,848/- and vide Order in Original No. 16-R/33/DC/GDN/2012 dated 28.01.2013 rejected rebate claim of Rs.1,87,575/- (Out of Rs.2,07,621/-) being time barred.

4. Being aggrieved by the aforesaid Orders in Original the applicant preferred an appeal before Commissioner (Appeals)-I, Central Excise, Mumbai Zone-I who vide Order in Appeal No. No. BR/25-26/ M-V/2013 dated 21.03.2013 rejected appeals filed by the applicant.

5. Being aggrieved by impugned Order-in-Appeal the applicant has preferred the present Revision Application under Section 35 EE of Central Excise Act, 1944 before Central Government mainly on the following grounds

5.1 Export of goods in question was not disputed by the department nor there was any dispute regarding realization of foreign exchange, the rebate being incentive to the exporter, their claim should not have been denied on the grounds of only time bar. In this connection

there is a decision of High Court of Bombay in case of Uttam steel Ltd. Vs. UOI [2003(158) ELT 277 (Bom.) wherein it was held that Law of limitation is only procedural and not substantive law - For claims made beyond time, no provision made that accrued right to claim rebate would lapse - Therefore, only remedy is barred and not the right to claim rebate - Rule 12 of erstwhile Central Excise Rules, 1944 - Section 11B of Central Excise Act, 1944,

- 5.2 The above judgement is very clear and the Deputy Commissioner should not have denied the rebate claim sanction On the basis of above Bombay High Court decision. Ignoring the above decision is contempt of the Court.
- 5.3 The Commissioner (Appeals) should not have rejected both the appeals without giving speaking Order on the Bombay High Court decision.

6. A personal hearing held in this case was attended to by Shri M.R. Nadkarni, Consultant, on behalf of the applicant and reiterated the grounds of Revision Application and also made written submissions reiterating the same grounds. He also submitted that Commissioner (Appeals) has not given any speaking order on Bombay High Court decision in Uttam steel Ltd. Vs. UOI [2003(158) ELT 277 (Bom.) relied upon by them.

7. Government has carefully gone through the relevant case records available in case files, perused the impugned Orders-in-Original and Order-in-Appeal and considered oral & written submissions made by the applicant in their Revision Application.

8. Government observes that Original authority had rejected the refund claims of the applicant amounting to Rs.2,27,848/- and Rs.1,87,575/- holding that the said rebate claims filed by the applicant on 29.10.2012 were filed beyond the period of one year from the shipment and therefore time barred. Commissioner (Appeals) in his impugned Order observed that the claims were filed beyond the period of one year from the date of shipment as endorsed by the Customs authorities on the rear side of the Original and Duplicate copies of the ARE-1s and therefore become time barred. Commissioner (Appeals) further

observed that the appellant had not followed the proper procedure by not submitting the required documents within the time which is a mandatory provision and hence cannot be relaxed or seen through.

9. Government observes that Hon'ble Bombay High Court in the matter of Uttam Steel Ltd. v. UOI [(2003 (158) E.L.T. 274 (Bom.))] had held that law of limitation is only procedural and not substantive law, for claims made beyond time, no provision made that accrued right to claim rebate would lapse, therefore only remedy is barred and not the right to claim rebate.

10. Government observes that the aforesaid decision of the Hon'ble Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a case where the refund claim was filed beyond the period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Hon'ble Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under :

"32. In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May, 1999 and 10th June, 1999, the due date for application of rebate of duty was 20th November, 1999 and 10th December, 1999 respectively. However, both the applications were made belatedly on 28th December, 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May, 2000, wherein the limitation for applying for refund of any duty was enlarged from 'six months' to 'one year'. Although the amendment came into force with effect from 12th May, 2000, the question is: whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May, 2000?"

11. Moreover, Government observes that the Union of India had filed Civil appeal No. 7449 of 2004 against the aforesaid Hon'ble Bombay High Court Order in Uttam Steel Ltd. and Hon'ble Supreme Court vide its Order dated 05.05.2015 [2015(319)E.L.T. 598 (S.C.)] has reversed and set aside Hon'ble Bombay High Court Order dated 12.08.2003., by observing as under :-

13. Shri Bagaria's argument based on the proviso to rule 12(1) would obviously not have any force if Section 11B were to apply of its own force. 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. Equally, the argument that on a bond being provided under Rule 13, the goods would have been exported without any problem of limitation would not hold as the exporter in the present case chose the route under Rule 12 which, as has been stated above, is something that can only be done if the application for rebate had been made within six months. We, therefore, allow the appeal and set aside the Bombay High Court judgment dated 12-8-2003.

In view of the above, reference made by the applicant to case law, viz. Uttam Steel Ltd. v. UOI [(2003 (158) E.L.T. 274 (Bom.)] is not relevant.

12. Government also observes that while dealing with the issue whether limitation of one year is applicable to the rebate claims filed under Rule 18 and Notification No. 19/2004, GOI in its Order No. 366-367/2017-CX, dated 7-12-2017 In Re : Dsm Sinochem Pharmaceuticals India Pvt. Ltd. reported in [2018 (15) G.S.T.L. 476 (G.O.I.)] observed as under:-

"5.This issue regarding application of time limitation of one year is dealt [with] 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. 481 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. [2015 (321) E.L.T. 45 (Mad.)] and even distinguished Supreme Court's decision in the case of M/s. Raghuvar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.)]. Hence, the applicant's reliance on the decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. is not of much value. The above averment of the applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed at 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 for infinite period".

13. Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd. [reported in 2017 (355) E.L.T. 342 (Mad.)] and upholding the rejection of rebate claim filed beyond one year of export in its order dated 18.04.2017 cited the judgment of same Hon'ble High Court Madras In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), which 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 :-

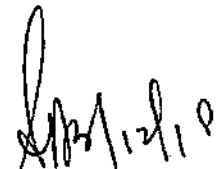
"8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different 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."

14. Government, applying the ratio of the aforesaid judgments holds that 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.

15. In view of above discussion, Government finds no infirmity in Order in Appeal No. BR/25-26/ M-V/2013 dated 21.03.2013 passed by the passed by the Commissioner (Appeals)-I, Central Excise, Mumbai Zone-I and hence upholds the same.

16. Revision Application is thus dismissed being devoid of merit.

17. So, ordered.


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

ORDER No. 277/2019-CX (WZ) /ASRA/Mumbai Dated 03.12.2019

To,

M/s Gemsons Precision Engineering (P) Ltd.,
Plot No. 9, Dewan Shah Udhyog Nagar,
Opp. IPOL Oil Company,
Waliv Phata, Vasai (East), Palghar-401208

Copy to:

1. The Commissioner of CGST & CX Palghar, 5th Floor, Kendriya GST Bhawan, BKC Bandra (E) , Mumbai 400 051.
2. The Commissioner CGST & CX (Appeals-III), 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug Parel, Mumbai 400 012.
3. The Deputy / Assistant Commissioner Division-I, CGST & CX Palghar, 1st Floor, Khodiyar Bhavan, Above Icici Bank, Manikpur Road, Vasai(W), Thane, 401202.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.