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**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, Cuff Parade,
Mumbai- 400 005

F NO. 195/516A/13-RA / 47

Date of Issue: 21/01/2025

ORDER NO. 280/2019-CX (WZ) /ASRA/MUMBAI 03.12.2019 DATED
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 Bectochem Organics.

Respondent : Commissioner of Central Excise, Surat-II.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. CCEA-SRT-
II/SSP-146/u/s 35A(3) (Final Order) dated 11.12.2012 passed
by the Commissioner (Appeals), Central Excise, Customs &
Service Tax, Surat-II.

ORDER

This Revision Application are filed by M/s Bectochem Organics, Plot No. A-1/3815, GIDC, Ankleshwar (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CCEA-SRT-II/SSP-146/u/s 35A(3) (Final Order) dated 11.12.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II.

2. The brief facts of the case are that the Applicant had filed 11 rebate claims amounting to Rs.9,38,635/- (Rupees Nine Lakhs Thirty Eight Thousand Six Hundred and Thirty Five Only) along with documents on 17.05.2012 in respect excisable goods which were exported on different dates ranging from 04.02.2010 to 25.11.2010. The Assistant Commissioner, Central Excise & Customs, Division-I, Ankleshwar, Surat-II Commissionerate vide Order-in-Original No. ANK-UNN/549 to 559/R/12-13 dated 01.06.2012 rejected said 11 rebate claims as the same were filed after the due dates – relevant dates as specified under the provisions of under Section 11B of Central Excise Act, 1944. Being aggrieved against the said Order-in-original, the Applicant then filed appeal with the the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II, who vide Order-in-Appeal No. CCEA-SRT-II/SSP-146/u/s 35A(3) (Final Order) dated 11.12.2012 rejected their appeal as they had not complied with the legal provisions for claim of rebate of duty paid on goods for export as prescribed under Notification No. 19/2004-CE(NT) dated 06.09.2004 (herein after as 'Notfn 19/2004') read with Rule 18 of Central Excise Rules, 2002 (herein after as 'CER') and Section 11B of the Central Excise Act, 1944 (herein after as 'CEA'), and their appeal failed on merit.

3. Aggrieved, the Applicant has filed the current Revision Application on the following grounds:

- 3.1 That the Order-in-Appeal was not only improper & unjustified, but also is not based on any of the legal grounds of the law as he neither considered the factual position nor considered the

substantial evidences in respect of the export of the goods and rejected the appeal.

- 3.2 That the rebate claim had been submitted after due date because their employee who was dealing with the rebate claims had left the company in October 2011 and had not handed over the relevant papers and kept in his drawer. Even he did not inform that the documents as proof of exports have been received. When their head office had made inquiry about the status of the rebate claims, they found that no rebate claims had been prepared or filed. Thereafter, the Applicant then prepared and filed the rebate claims, but meantime the time limit was over.
- 3.3 That Notfn.19/2004 does not prescribe any time limit to file rebate claim. Further, even Rule 18 of CER and Section 11B of the CEA does not prescribe any time limit to file rebate claim.
- 3.4 That the time limit prescribed under the provisions of Section 11B of the CEA cannot be make applicable to the rebate claims filed under the provisions of Rule 18 of CER read with Notfn 19/2004 in as much as neither in the Notfn.19/2004 nor under the provisions of Rule 18, it has been mentioned that the time limit as prescribed in the provisions of Section 11 of the CEA for filing rebate claim of duty paid on exported finished goods shall be applicable. Further, in the earlier Notification No. 41/1994-CE(NT) dated 12.09.1994, the time limit for filing rebate claim was specifically mentioned but in the existing relevant Notification time limit has not been prescribed. In this they relied in the case of M/s Dorcas Market Makers Pvt Ltd vs CCE [2012-TIOL-108-HC-MAD-CX]
- 3.5 That form ARE-1 itself is application for rebate claim in as much as it bears each and every detail for sanctioning rebate claim. Further, after export on getting the document as proof of exports,

the same can be submitted in support of the ARE-1 submitted as application for rebate claim.

3.6 That both the lower authorities have not disputed that the fact the duty has been paid and goods have duly been exported. It is now settled legal position that on account of procedural and technical lapses, rebate claim cannot be denied when the export and duty payment are not in dispute. If the fact regarding export is not being disputed then mere submission of rebate claims delayed by some period, cannot be basis for denial of rebate claim. In this they relied on few cases law.

3.7 That they prayed to set aside the Order-in-Appeal CCEA-SRT-II/SSP-146/u/s 35A(3) (Final Order) dated 11.12.2012 and allow the present appeal in full with consequential relief.

4. A Personal hearing in this case was held 23.08.2019. Shri Vinay Kansara, Advocate and Shri Tushif Shaikh, Accountant, appeared on behalf of the Applicant.

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

6. Government observes that the issue involved in the instant Revision Application is whether Applicant is entitled for the rebate claim which was rejected on the grounds of limitation or not

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 despatch 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. Government also places its reliance on the GOI Order Nos. 366-367-CX, dated 07.12.2017 in RE : DSM Sinochem Pharmaceutical India Pvt Ltd. [2018 (15) GSTL 476 (GOI)].

10. Government notes that the statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim has to be treated as time barred.

10. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. CCEA-SRT-II/SSP-146/u/s 35A(3) (Final Order) dated 11.12.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II in respect of Applicant's 11 rebate claims amounting to Rs. 9,38,635/- and, therefore, upholds the same and dismisses the Revision Applications filed by the Applicant being devoid of merits.

11. So, ordered.


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

ORDER No. ~~280~~/2019-CX (WZ) /ASRA/Mumbai Dated 03.12.2019

To,
M/s Bectochem Organics,
Plot No. A-1/3815, GIDC,
Ankleshwar-393 002

Copy to:

1. The Commissioner of GST & CX, Surat, New Central Excise Building, Chowk Bazaar, Surat 395 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.