



**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. 195/910/13-RA / 508

Date of Issue: 12/12/19

ORDER NO. 288/2019-CX (WZ) /ASRA/MUMBAI DATED 5.12.2019
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 DOW Agrosience India Pvt Ltd.

Respondent : Commissioner (Appeals), Central Excise, Pune-II.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.PUN-EXCUS-
002-APP-082-13-14 dated 29.08.2013 passed by the
Commissioner (Appeals), Central Excise, Pune-II

ORDER

This Revision Application is filed by M/s DOW Agrosience India Pvt. Ltd., 1st Floor, Block B, 02 Godrej Business District, Pirojshanagar, LBS Marg, Vikhroli(West), Mumbai 400 079 against the Order-in-Appeal No. PUN-EXCUS-002-APP-082-13-14 dated 29.08.2013 passed by the Commissioner (Appeals), Central Excise, Pune-II

2. The brief facts of the case are that the Applicant, manufacturer exporter, had filed 04 rebate claims dated 02.12.2011 amounting to Rs.1,54,229/- (Rupees Four Lakhs Fifty Four Thousand Two Hundred and Twenty Nine Only). On preliminary scrutiny, following discrepancies were found:

- (i). The rebate claims of the following ARE-1s were time barred under the provisions of Section 11B of the Central Excise Act, 1944, as the said claims were not filed within one year from the date of export.
 - (a) ARE-1 No. 66 dated 04.11.2010
 - (b) ARE-1 No. 74 dated 07.12.2010
 - (c) ARE-1 No. 93 dated 02.02.2011
 - (d) ARE-1 No. 97 dated 14.02.2011
- (ii). ~~The claims were not submitted in duplicate.~~ _____
- (iii). Revenue Stamp receipts on original copies were not submitted
- (iv). As per Circular No. 527/23/2000-CE dated 05.05.2000, shipping bills should be properly attested. Here the Shipping Bills enclosed with the claims were not properly attested.

Hence the Assistant Commissioner, Central Excise, Division Ratnagiri vide letter F.No. V(RC)18/Refund/Misc/09 dated 16.03.2012 returned the rebate claims for further necessary action. Aggrieved, the Applicant then filed appeal

with the Commissioner (Appeals), Central Excise, Pune-II who Order-in-Appeal No. PUN-EXCUS-002-APP-082-13-14 dated 29.08.2013 dismissed their appeal as time barred.

3. Aggrieved, the Appellant then filed the current Revision Application on the following grounds:

- 3.1 The filing of rebate claims was delayed due the concerned staff quitting their organization. Hence the claim shall be allowed considering the delayed caused due to change of concerned person. This is merely a procedural lapse and may kindly be condoned and rebate be allowed.
- 3.2 The rebate claim was not barred by the period of limitation as it is only a procedural law and not substantive law. To allow the rebate claim, the primary condition is that the excisable goods have been exported, and in the present case there is no dispute on the facts that the goods have been exported. Once the exisable goods have been exported the right to get the rebate of duty arises to the exporter. The provision stated under Section 11B of the Central Excise Act, 1944 are only procedural in nature. Neither Rules nor Section 11B contemplates that if the rebate claim is not filed within the period of one year the right accrued to the exporter lapses. It is substantive right of the exporter and substantive law does not barred by the procedural lapses. In this they relied in the cases law in Uttam Steel Vs UOI [2003 (158) ELT 274 (Bom.)] and in the case of Dorcas Market Makers Pvt. Ltd Vs Commr. of C.Ex., Chennai [2012-TIOL-108-HC-MAD-CX]. Hence the refund claim be allowed.

4. A Personal hearing in this case was fixed on 18.01.2018, 05.02.2018 and 26.08.2019, however none appeared for the Applicant. On behalf of the Respondent, the Assistant Commissioner, CGST, Division-V, Ratnagiri vide letter F.No. V(RC)18-910,911 & 912/DOW/13 dated 22.08.2019 (received on 26.08.2019) submitted that the statutory provision for refund in Section 11B brings within its purview, a rebate of excise duty on goods exported out of India or materials used in the manufacture of such goods, Rules 18 cannot be read independent of the requirement of limitation prescribed in Section 11B and relied in the cases law in Collector of C.E. Chandigarh Vs Doaba Co-opertive Sugar Mills [1988 (37) ELT 478 (S.C.) and IN RE: Life Long India Ltd vide GOI Order Nos 355-357/2017-CX dated 07.12.2017 [2018 (363) ELT 811 (GOI)]

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 appellant 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 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 04 rebate claims 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. ~~289~~ 2019-CX (WZ) /ASRA/Mumbai Dated 5.12.2019.

To,
M/s DOW Agrosience India Pvt. Ltd.,
1st Floor, Block B,
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Copy to:

1. The Commissioner of CGST, Kolhapur Commissionerte, Vasant Plaza,
Near Bagal Chowk, Rajaram Road, Kolhapur 416 001.
2. The Assistant Commissioner, CGST, Division-V, Ratnagiri, CGST Bldg,
Jail Road, Ratnagiri-415 612.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. ~~Spare Copy.~~