



**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. 195/281-283/2014-RA/5812.

Date of Issue: 06/10/2021

ORDER NO. ³³⁷⁻³³⁹ /2021-CX (WZ) /ASRA/MUMBAI DATED 30-9-2021

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 Diamond Power Infrastructure Ltd.

Respondent : Commissioner (Appeals) of Central Excise & Customs,
Vadodara.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. VAD-
EXCUS-002-APP-650-652-13-14 dated 20-02-2014 passed
by the Commissioner (Appeals) of Central Excise & Customs,
Vadodara.

ORDER

These Revision Applications has been filed by M/s Diamond Power Infrastructure Ltd., Vadadala, Jarod Samlaya Road, Post Gardhiya, Tal. Savli, Dist Vadodara (Address shown in Google: Essen House, BIDD Gorwa, Vadodara-390016) (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. VAD-EXCUS-002-APP-650-652-13-14 dated 20-02-2014 passed by the Commissioner (Appeals) of Central Excise & Customs, Vadodara.

2. The issue in brief is that the applicant are the manufacturers of Cables & Conductors falling under Chapter 74,76 and 85 of the Schedule to the Central Excise Tariff Act, 1985 and filed three rebate claims with the Assistant Commissioner, Vadodara-II Commissionerate detailed as under:

Sr.No	ARE-1 No. & Date	Amount of Rebate (Rs)	Date of Export	Date of filing of rebate claim
1.	08/11/11-12 dated 26-11-11	4,95,636/-	30-11-2011	30-03-2013
2.	11/03/11-12 dated 22-03-12	62,030/-	31-12-2012	30-03-2013
3.	09/12/11-12 dated 09-12-11	4,45,177/-	13-12-2011	30-03-2013

Since the rebate claims were filed beyond the 'relevant date' i.e. after the statutory time limit of one year as prescribed under Section 11B of the Central Excise Act, 1944, the Applicant was issued 3 Show Cause Notices bearing nos V/18-140/Diamond/Reb/CD, V/18-141/Diamond/Reb/CD, V/18-142/ Diamond/Reb/CD, all dtd 10.05.2013. The Assistant Commissioner, Central Excise & Customs, City Division, Vadodara-II vide 3 Orders-in-Original Nos. CD/46/Reb/13-14, CD/47/Reb/13-14 and CD/48/Reb/13-14, all dated 10.10.2013, rejected the rebate claims on the ground of being time barred under the provisions of Section 11B of the Central Excise Act, 1944. Being aggrieved against the said Order-in-Originals, the Applicant then filed appeals along with the condonation of delay with the Commissioner (Appeals), Central Excise, Customs & Service

Tax, Vadodara. The Commissioner (Appeals) vide Order-in-Appeal No. VAD-EXCUS-002-650-652-13-14 dated 20-02-2014 held that the claims are time-barred and rejected their appeals and upheld the Order- in Originals.

3. Aggrieved, the Applicant had filed the appeal in CESTAT. CESTAT vide Order No. A/11472-11474/2014 dated 01-08-2014, held that as per Section 35B (1), Tribunal does not have jurisdiction to hear and decide the appeals against the Order of Commissioner (Appeal) as they pertain to rebate of duty of excise of goods exported to another country outside the territory of India. Hence COD application and appeals are disposed as non-maintainable and that the appellants are at liberty to file the appeals with the appropriate appellate authority. The Applicant then filed the current three Revision Applications (195/281-283/2014-RA) on the following grounds:

- (i) Delay in making the application was not with any malafide intention and the delay was on account of receiving the export documents from the third party exporter late. They further informed that they had a business dispute with the third party exporter and they had inordinately delayed in handing over the export documents which led to the delay in filing the rebate claims.
- (ii) They are regularly exporting their products to various countries and also executing deemed export orders and earning foreign exchange to Government of India.
- (iii) The Rebate amount involved in all the three cases are very huge and if they do not receive, there will be huge loss to the company. Non-receipt of the refund will affect the profitability of the Company.
- (iv) Hence, they have prayed for the condonation of delay and to set aside the Order in Originals and to pass an Order to admit and pay their rebate claim.

4. Personal Hearing was fixed for 17.04.2018, 05.12.2019 and 12.12.2019, but no one attended the hearing. Since there was a change in the Revisionary Authority, hearing was granted on 2.02.2021, 16.02.2021,

18.03.2021 and 25.03.2021, however no one appeared for the hearing. Hence the case is decided based on available records on merits.

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

6. Government observes that the issue involved in the instant Revision Applications is whether Applicant is entitled for the rebate claim which was rejected on the grounds of limitation. There is no dispute that these rebate claims were filed after one year from the relevant dates. The applicant has not given any valid reason for the delay. They have merely stated that they had a business dispute with the third party exporter and hence they received the export documents very late.

7 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 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.

8. The Government observes that the 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."*

9. The Government observes the Hon'ble Madras High Court has in its aforesaid judgment dated 18.04.2017 in the case of Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance [2017 (355) ELT 342(Mad)] held that the contention that no specific relevant date was prescribed in Notification No. 19/2004-CE(NT) was not acceptable in view of proviso (a) to sub-section (2) of Section 11B of the CEA, 1944.

10. 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)] which reads as under:

“Coming to the applicant’s contention that the time limitation of one year is not applicable to the rebate claims filed under Rule 18 and Notification No. 19/2004, the Government finds no legal force in this argument as for refunds and rebate of duty [under] Section 11B of the Central Excise Act is directly dealing statutory provision and it is clearly mandated therein that the application for refund of duty is to be filed with the Assistant/Deputy Commissioner of Central Excise before expiry of one year from the relevant date. Further in explanation in this Section, it is clarified that refund includes rebate of duty of Excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. In addition to time limitation, other substantive and permanent provisions like the authority who has to deal with the refund or rebate claim, the application of principles of undue enrichment and the method of payment of the rebate of duty, etc., are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation of rebate duty need not be repeated in Rule 18 and the areas over and above already covered in Section 11B have been left to the Central Government for regulation from time to time. But by combined reading of both Section 11B [of Central Excise Act, 1944] and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that Rule 18 is independent from Section 11B of the Act. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of filing rebate claim within 1 year is squarely applicable to the rebate of duty when dealt [with] by Assistant/Deputy Commissioner of a Division under Rule 18. Thus Section 11B and Rule 18 are interlinked and Rule 18 is not independent from Section 11B. 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. Raghavar (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

avertment 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.

6. In the light of the above discussions, the revision applications are rejected."

11. In view of the above, 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.

12. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. VAD-EXCUS-002-APP-650-652-13-14 dated 20-02-2014 passed by the Commissioner (Appeals) of Central Excise & Customs, Vadodara and therefore, upholds the same.

13. The Revision Application filed by the Applicant is dismissed being devoid of merits.

Shrawan
30/9/21
(SHRAWAN KUMAR)

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

337-339
ORDER No. /2021-CX (SZ) /ASRA/Mumbai Dated 30.09.2021

To,
M/s Diamond Power Infrastructure Ltd.
Essen House, BIDC Gorwa,
Vadodara 390016.

Copy to:

- ✓ 1. The Commissioner of CGST, Vadodara-I, GST Bhavan, Race course Circle, Vadodara-390007.
2. Commissioner (Appeals) Central Excise, Customs & Service Tax, Vadodara, 1st Floor, Annexe, Central Excise Building, Race Course Circle, Vadodara-390007
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
- ✓ 5. Spare Copy.