

SPEED POST



**F. No. 195/99-100/18—R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 2/3/21.....

Order No. 35-36 / 2021-CX dated 01-03-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 130-131(SRM)CE/JDR/2017 dated 10.10.2017 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur.

Applicant: M/s. Mehrul Industries (India), Chittorgarh (Rajasthan)

Respondent: The Commissioner of CGST, Udaipur (Rajasthan)

ORDER

Two Revision Applications Nos. 195/99-100/2018—R.A. dated 18.05.2018 are filed by M/s. Mehrul Industries (India), Chittorgarh (hereinafter referred to as applicant) against Order-in-Appeal No. 130-131(SRM)CE/JDR/2017 dated 10.10.2017 passed by Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur wherein the appeals against Order-in-Original Nos. 85-86/2015-CE (Rebate), both dated 27.01.2015, passed by the Assistant Commissioner, Central Excise & Service Tax Division, Chittorgarh, have been rejected.

2. The brief facts leading to the present proceedings are that the applicant had filed 2 rebate claims, totally amounting to Rs. 4,80,557/-, of duty paid on exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The rebate claims were rejected by the original authority on the ground that the claims were filed after expiry of one year from the date of export. Aggrieved, the applicant filed appeals with the Commissioner (Appeals) who rejected their appeals on the same ground. The revision application is filed in the ground that they received the documents required to file the rebate claims from Customs after one year from the date of export and thus claims could not be filed within the limitation period. Hence, the rebate should not have been rejected as the delay was caused due to inaction/mistake of the department.

3. The applicant filed the subject revision application on 18.05.2018. They had received the Order-in-Appeal on 12.10.2017 and should have filed the revision application by 12.01.2018 i.e. the filing is late by 128 days. As per the Application for condonation of delay filed by the applicant, due to oversight, instead of filing revision application before the Government against the impugned Order-in-Appeal, they filed appeals before CESTAT where the said appeals were dismissed as non-maintainable vide Final Order No. 50752-50753/2018 dated 23.02.2018. Since revision applications have been filed within 3 months of the CESTAT order, the delay is condoned by the Government.

4. Personal hearing was held on 16.02.2021 and 23.02.2021, in virtual mode. Sh. Pankaj Malik, CA, appeared for the applicant and submitted that the exports were made in May, 2013 whereas the relevant documents were given to them by the Customs only in August, 2014. Therefore, they could file the rebate claims only thereafter. In the circumstances, the limitation should be counted from the date of receipt of documents by them. On being pointed out that no evidence of late receipt of the documents was produced before Commissioner (Appeals) despite opportunity being granted nor the evidence has been produced with the revision application, Sh Malik subsequently produced photocopies of the EP Copies of the Shipping Bills showing print dates as 02.08.2014 and 11.07.2014. Upon being pointed out that Let Export dates on the Shipping Bills were 15.04.2013 and 23.05.2013 and print of the EP copies was available much earlier, Sh. Malik claimed that the print date is the date

when EP copy is first permitted to be printed by the department. He also drew attention to copies of certain test memos placed on record to claim that the Shipping Bills were assessed provisionally but no document was produced to confirm this contention nor was he in a position to explain the test memos. None appeared for the respondent and no request for adjournment has been received from them. Hence, the matter is being taken up for disposal on the basis of records and facts available.

5.1 The Government has examined the matter. It is not in dispute that the rebate claims were filed after a period of one year from the date of export. As per Section 11B of the Central Excise Act, 1944, any person claiming any refund of duty of excise may make an application for refund of such duty before expiry of one year from the relevant date. Further, as per Clause (A) of the Explanation to Section 11B, the “ ‘refund’ includes rebate of duty of excise on excisable goods exported out of India or on excisable material used in the manufacture of goods which are exported out of India”. Clause (B) of the Explanation reads as under:-

“(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;”*

Thus, in terms of Section 11B, a claim for rebate of duty of excise on excisable goods exported out of India has to be filed within one year from the date on which the ship or the aircraft on which such goods are loaded, leaves India.

5.2 The Government observes that the Hon'ble Bombay High Court has, in the case of M/s Everest Flavours Ltd. vs. Union of India [2012 (282) ELT 481 (Bom)], held that

“Where the statute provides a period of limitation, in the present case in section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law.”

It is further observed that the Hon'ble Delhi High Court has, in the case of M/s Orient Micro Abrasives Ltd. vs. Union of India [2020 (371) ELT 380 (Del.)], agreed with the decision in Everest Flavours (supra) and has held that :

“20. Section 11B(1) of the Act read with Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of goods, where against rebate is claimed. There is no provision which permits relaxation of this stipulated one year time-limit.”

5.3 In the instant case, the rebate claims have been admittedly filed beyond the period of limitation of one year, which cannot be relaxed. In any case, the ground for seeking such relaxation, i.e. alleged delay in release of documents by Customs, is itself not established. Hence, the Government finds no infirmity in the orders of the lower authorities.

6. The revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Mehrul Industries (India),
G-11, RIICO Industrial Area,
Kapasan, Distt.- Chittorgarh
Rajasthan

G.O.I. Order No. 35-36/21-Cx dated 01-2-2021

Copy to:-

1. Commissioner of CGST & Central Excise, Udaipur
2. Commissioner (Appeals), Central Excise & CGST, Jodhpur.
3. Sh. Pankaj Mallik, Pankaj Mallik & Co. Chartered Accountant
4. PA to AS (Revision Application)
5. ~~Spare Copy~~
6. Guard File

 ATTESTED
(Ashish Tiwari)
Assistant Commissioner (R.A.)