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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, Cuffe Parade,
Mumbai - 400 005

F.No. 195/245/WZ/2019 1327

Date of Issue: 07.04.22

ORDER NO. 351/2022-CX (WZ)/ASRA/MUMBAI DATED 31.03.2022
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. Andrew Telecommunications India Private Limited

Respondent: Commissioner of CGST, Goa.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. GOA-EXCUS-000-APP-001-
2019-20 dated 26.04.2019 passed by the Commissioner (Appeals), Central
Tax, Goa.

ORDER

This Revision Application has been filed by M/s. Andrew Telecommunications India Private Limited, Plot No. N-2, Phase IV, Verna Industrial Estate, Verna, Goa – 403 722 (hereinafter referred to as “the Applicant”) against Order-in-Appeal No. GOA-EXCUS-000-APP-001-2019-20 dated 26.04.2019 passed by the Commissioner (Appeals), Central Tax, Goa.

2. Brief facts of the case are that the Applicant had filed five rebate claims totally amounting to Rs.55,17,633/- under Rule 18 of the Central Excise Rules, 2002 in the jurisdictional Division office on 25.07.2018 in respect of the goods exported in the month of May-June 2017 along with indemnity bond and certificate dated 12.07.2018 issued by the Maina Curtorim police Station regarding the loss of the original and duplicate copies of ARE-1 pertaining to said rebate claims. The rebate claims were rejected by the rebate sanctioning authority vide the Order-in-Original No. ACCEX(Div-IV)/12-R/2018-19 dated 15.11.2018 being time barred. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

(a) the Respondent erred in relying upon the judgment of Synco Industries Ltd. [2018 (362) ELT 190 (GOI)] and Mafatlal Industries Ltd. v/s. U01 [1997 (89) ELT 247 (S.C.)].

(b) it is not under dispute that the duty has been paid and the goods have exported and the Applicant is only claiming the rebate of the duty already paid. It is submitted that the interest of government is not harmed in anyway on the rebate claim in the present case.

(c) The Respondent in his order nowhere disputes that the goods have been exported. Further, the documents submitted by the Applicant in support of its rebate claim prove beyond doubt that the goods have been exported.

(d) Since the fact of export of goods has been established, it is the vested right of the Applicant to claim and receive the rebate of excise duty paid on the goods exported. The Applicant submits that the rebate is a substantive benefit provided to exporters and it is settled law that such substantive benefit cannot be denied for procedural infractions.

(e) Non-filing of rebate claim within the limitation period is a procedural lapse and as submitted above, substantive benefit of rebate provided to exporters cannot be denied for procedural lapses.

(f) In the case of Suksha International and Nutron Gems & Other [1989 (39) ELT 503 (S.C.)], the Hon'ble Supreme Court held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other.

(g) Reliance is further placed on the following judgments wherein it has been held that once it is established that the goods have been exported, the procedural lapses should be condoned and rebate be granted to the exporter:

- i Raj Petro Specialities v/ s. Union of India [2017 (345) ELT 496 (Guj.)]
- ii Re: Sun Pharmaceutical Industries Limited [2015 (328) ELT 792 (G.O.I.)]
- iii Re: Neptunus Power Plant Services Pvt. Ltd. [2015 (321) ELT 160 (GOI)]
- iv Re: Tricon Enterprises Pvt. Ltd. [2015 (320) ELT 667 (GOI)]
- v Ford India Pvt. Ltd. v/ s. Assistant Commissioner of C. Ex. [2011 (272) ELT 353 (Mad.)]
- vi Brahmos Aero Space Pvt. Ltd. v/ s. Cus, C.Ex. & ST, Hyderabad [2016 (342) ELT 127])
- vii Birla Vxl Ltd. v/ s. Collector of Central Excise [1998 (99) ELT 387]1
- viii Zandu Chemicals Ltd. v/s. Union of India [2015 (315) ELT 520 (Bom.)].

(h) the Commissioner (Appeals) erred in not following the ratio of the judgments referred above by the Applicant and has violated the principle of judicial discipline.

(i) the denial of rebate in the present case would amount to violation of principle of promissory estoppel as the goods were exported on the basis of government policy that the goods shall be exported and not the taxes levied on such goods.

4. Personal hearing in the case was fixed for 25.11.2021. Shri Abhijit Saha, Advocate and Ms. Saumya, C.A., appeared online on behalf of the respondent and submitted that time limit of Section 11B does not apply to rebate.

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

6. Government observes that the main issue in the instant case is whether the rebate claims filed after one year are time barred, being hit by limitation in terms of section 11B of Central Excise Act, 1944.

7.1 The applicant has contended that the time limit prescribed by Section 11B of the Central Excise Act, 1944 is a procedural lapse and has relied upon various judgments wherein it had been held that once it is established that the goods have been exported, the procedural lapses should be condoned and rebate be granted to the exporter. In this regard, Government observes that this aspect has been deliberated in detail by the Adjudicating Authority in the impugned Order-in-Original (at para 13, 14 and 15):

13. Before going into merits of the case, I would like to extract the relevant provisions under the Act, Rules & notification

1) Section 11B of the Central Excise Act, 1944

Section 11B. Claim for refund of duty -

(1) Any person claiming refund of any ¹[duty of excise and interest, if any, paid on such duty] may make an application for refund of such ²[duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the

relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of ¹[duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such ²[duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

- (2)
- (3).....
- (4).....
- (5).....

Explanation. - For the purposes of this section, -

(A) "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;

(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

II) Rule 18 of the Central Excise Rules, 2002

RULE 18. Rebate of duty. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable

goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation. - For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

III) Notification No. 18/2016 amends Notification No.19/2004 dated 6.9.2004:

18/2016-Central Excise (N. R) dated: March 1, 2016. In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002, the Central Government hereby makes the following further amendments in the Notification Number 19/2004-Central Excise (N.T.), dated the 6th September, 2004, in the Ministry of Finance, Department of Revenue published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1) vide number G.S.R. 570(E), dated the 6th September, 2004, namely: (2) under heading (3) Procedures in Paragraph (b), in sub-paragraph (1) after the shall be lodged, the words figures, letter and brackets before the expiry of the period specified in section 11B of the Central Excise Act 1944 (1 of 1944) be inserted

14. From a plain reading of the above, it is seen that 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 per Explanation (A) to Section 11B. As such the rebate of duty on the goods exported is allowed under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E (N.T.), dated 06.09.2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. It is also observed that the time limitation has been specifically prescribed under Section 11B and it is mandatory requirement for the assessee to file the rebate application before the expiry of one year from the relevant date. Further, the relevant date has also been defined under Section 11B(B) of said Act which means that 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, 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.

15. *By issuance of Notification No. 18/2016, the Government has amended the Notification Number 19/2004-Central Excise (N.T.), dated the 6th September, 2004, by inserting the words, "figures, letter and brackets before the expiry of the period specified in section 11B of the Central Excise Act 1944 (1 of 1944)". Thus, the condition of fulfilment of filing a rebate application before the expiry of one year from the relevant date has been categorically mandated under the Statute read with relevant notifications issued time to time.*

Thus, Government observes that filing of rebate claim before expiry of one year from the relevant date is a statutory requirement and is therefore to be mandatorily followed.

7.2 Government further observes that Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as CER) has been made by the Central Government in exercise of the powers vested in it under Section 37 of the Central Excise Act, 1944 (hereinafter referred to as CEA) to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B. Moreover, Section 37 of the CEA by virtue of its sub-section (2)(xvi) through the CER specifically institutes Rule 18 thereof to grant rebate of duty paid on goods exported out of India. Notification No. 19/2004-CE(NT) dated 06.09.2004 and Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the CER, 2002 to set out the procedure to be followed for grant of rebate of duty on export of goods. The applicant's contention that the prescribed time limit for filing a rebate claim is a procedural requirement does not stand to reason because the same is part of Section 11B making it a statutory requirement. Further, all doubts in this regard have been placed to rest vide Notification No.18/2016 dated 1.3.2016 whereby Notification No. 19/2004-CE(NT) dated 06.09.2004 has been amended by incorporating the limitation of period specified in section 11B of CEA.

8. Government also notes that rebate claims filed after one year, being time barred, cannot be sanctioned has been categorically held in plethora of

judgments, some of which are cited below:-

8.1 The Supreme Court in the case of Collector of Central Excise, Chandigarh v/s Doaba Co-op Sugar Mills Ltd. as reported in 1988 (37) E.L.T.478 (S.C.) has held in para 6 as under:

"It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the act and the Rules framed there under have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed there under must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail."

8.2 The Hon'ble High Court of Gujarat in the case of Alembic Glass Ind. Ltd. v. Union of India reported at 1992 (60) ELT .64 (Guj.) held in para 11, as under:

"That the claim was required to be made within the prescribed period of Six months from the relevant date. The relevant date would be the date on which the goods re-entered the factory. In this case it would be January 4, 1988 and January 9, 1988 as provided in sub clause (b) of Clause B of Explanation to Section 11 B of the Act. Thus the period of six months would expire on July 8, 1988 while the claim has been preferred on March 29, 1989. The Assistant Collector is bound by the provisions of the statute. This is the law laid down by the Supreme Court in the case of Collector of Central Excise, Chandigarh v. M/s. Doaba Co-op. Sugar Mills Ltd. reported in AIR 1988 SC 2052 1988 (37) E.L.T.478 (S.C.). In that case the department sought to invoke the provisions of Section 11A of the Act and attempted to make recovery of the amount of duty after the period of limitation prescribed under Section 11A of the Act. The Supreme Court inter alia observed that " But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed there under must be adhered to. The authorities functioning under the

Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail". The Supreme Court referred to its earlier decision in the case of Miles India v. Assistant Collector of Customs - 1987 (30) EL7.641 (S.C.). In that case the Supreme Court observed that the Customs Authorities were justified in disallowing the claim for refund as they were bound by the period of limitation provided under the relevant provisions of the Customs Act, 1962. Similarly in the instant case also, the Asst. Collector, who decided the refund claim was bound by the provisions of the Act and the Rules. Therefore, the refund claim rejected on the ground that the claim is made beyond the period of limitation is also eminently just and proper."

8.3 In a latest case, the Hon'ble High Court of Karnataka in the case of M/s. Sansera Engineering Ltd. reported in 2021 (378) E.L.T. 747 (Kar.), held in para 12 as under:

12. A reading of Section 11B of the Act makes it explicitly clear that claim for refund of duty of excise shall be made before the expiry of one year from the relevant date. The time prescribed under Section 11B of the Act was earlier six months which was later on amended on 12-5-2000 by Section 101 of the Finance Act, 2000. Rule 18 of the Central Excise Rules and the Notification dated 6-9-2004 did not prescribe any time for making any claim for refund as Section 11B of the Act already mandated that such application shall be filed within one year. Section 11B of the Act being the substantive provision, the same cannot yield to Rule 18 of the Rules or the Notification dated 6-9-2004. As rightly held by the Learned Single Judge, the Notification dated 1-3-2016 was mere reiteration of what was contained in Section 11B of the Act, and therefore, the Law as declared by the Hon'ble Supreme Court in Uttam Steel (supra) is applicable to the facts of this case. In that view of the matter, the judgment of the Madras High Court in the case of Dorcas Market Makers Pvt. Ltd., (supra) is not applicable to the facts of this case. As a matter of fact, the Madras High Court in the case of Hyundai Motors India Ltd. v. Department of Revenue, Ministry of Finance reported in 2017 (355) E.L.T. 342 (Mad.) did not subscribe to the law declared in Dorcas Market Makers Pvt. Ltd., (supra) and held that the time prescribed under Section 11B of the Act is applicable.

9. In view of the above position, Government finds that adherence to time limit for filing claims is not a procedural requirement, rather it is a substantive requirement. The Government further observes that the rebate claim filed after one year's time limit stipulated under Section 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 is clearly hit by time limitation clause and cannot be entertained. As such it is rightly rejected and Government does not find any infirmity in the impugned Order-in-Appeal upholding the rejection of said claim as time barred.

10. In view of the findings recorded above, Government upholds the impugned Order-in-Appeal No. GOA-EXCUS-000-APP-001-2019-20 dated 26.04.2019 passed by the Commissioner (Appeals), Central Tax, Goa and rejects the revision application filed by the applicant.

11. The impugned Revision Application is disposed of on the above terms.

Shrawan
31/3/22
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. *351 /2022-CX (WZ)/ASRA/Mumbai dated 31.03.2022*

To,
M/s. Andrew Telecommunications India Pvt. Ltd.,
Plot No. N-2, Phase IV, Verna Industrial Estate,
Verna, Goa - 403 722.

Copy to:

1. Commissioner of CGST, Goa,
GST Bhavan, EDC Complex,
Plot No. 6, Patto,
Panaji, Goa - 403 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.