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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.195/03 & 04/WZ/2020 | 6725 Date of Issue: 13 .09.2023

ORDER NO. 357-358 /2023-CX (WZ) /ASRA/Mumbai DATED 12.09.2023 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 Kirloskar Brothers Limited, Accounts Department, Kirloskarwadi, Taluka Palus, District – Sangli – 416308.
Respondent	:	Commissioner of CGST & Central Excise, Kholapur Commissionerate, Vasant Plaza Commercial Complex, 4th & 5th floor, Rajaram Road, Bagal Chowk, Kolhapur – 416 001.
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. PUN-EXCUS-001-APP-127/2019-20 and PUN-EXCUS-001-APP-128/2019-20, both dated 23.10.2019 passed by the Commissioner of Central Tax (Appeals -I), Pune.

(Appeals) should have condoned the delay in filing of the claims; that they had filed their rebate claims as soon as they received the copy of the ARE-1s either from the CHA or Department or filing of an FIR; that hence the Commissioner (Appeals) should have taken the same into consideration and allowed their claim;

(e) That the it is intent of the legislature that taxes should not be exported and hence procedural lapses should not be held against them to deny their claim for rebate; that the Commissioner (Appeals) had not taken into account various decisions of the Tribunal that computation of the time limit should be taken from the time the documents were available with them; that the Commissioner (Appeals) found that the ARE-1 pertaining to two consignments were submitted to the Department in the month of June 2017 and that these should have been converted into claims for rebate as they had inadvertently paid Central Excise duty on these clearances; that there was no specific format for application of rebate claims and hence rebate claims of Rs.2,68,566/- were well within the prescribed time limit; that taking back the ARE-1s from the Department was merely procedural; that the time when the ARE-1s were in the custody of the Department should be taken into consideration while deciding their claim; that hence the delay should be condoned.

In view of the above, the applicant prayed that the subject Orders-in-Appeal be set aside and their rebate claims sanctioned.

4. Personal hearing in the matter was granted to the applicant and the respondent. Shri Prathamesh Chauhan, Advocate appeared online on behalf of the applicant. He submitted that rebate claims were rejected on the ground of time bar as it was filed after one year. He further, submitted that initially ARE-1s were submitted in time, however, same were recalled. He requested to allow the claim as export of duty paid goods is not in dispute. He requested tends time to make additional submissions.

5. Government has gone through the case records available, the written and oral submissions and also perused the impugned Orders-in-Original and Orders-in-Appeal.

6. Government finds that the issue involved in the present case is limited to deciding whether the impugned Orders-in-Appeal are proper in upholding the rejection of rebate claims of the applicant for being time barred. Government finds that the applicant, neither during these proceedings nor before the lower authorities, have challenged the fact that in all the cases covered by the impugned Orders-in-Appeal, the rebate claims were filed after a period of more than year from the date of export. Government finds that the goods were exported on 19.11.2016, 16.11.2016 and 02.11.2016 and that both the rebate claims with respect to the above exports were filed on 18.01.2018. These dates have not been disputed by the applicant. Thus, Government finds that it is an admitted position that the rebate claims in question have been filed after one year from the date of export. Government finds that the applicant has submitted that in two cases, viz. ARE-1 no.0362 and ARE-1 No.06060, they had submitted the copies of the ARE-1s to the Department as proof of export and that they had to recall the same from the Department to file their claim leading to the delay in filing of the rebate claim. Government has thoroughly examined the Revision Application filed by the applicant and finds that the applicant has not submitted any evidence in support of this claim. Further, Government finds that the applicant cannot pass the blame for delay on to the Department, as in this case the goods were cleared for export on payment of duty and there was no requirement to submit copy of the ARE-1 to the Department as proof of export. Thus, Government finds that this reason cited by the applicant, that the delay in two cases was attributable to the Departmental authorities, to justify the late filing of the rebate claims, will not hold good and rejects the same. Further, Government finds that the applicant has submitted that in the other cases it was their CHA who had misplaced the relevant documents which had led to the delay and has sought that such delay be condoned. Government finds that this request of the applicant to be without any legal basis and contradictory to the provisions governing the grant of rebate and the time limit prescribed for the same under the Central Excise Act, 1944 and hence rejects the same.

7. Having held so, Government proceeds to examine whether the impugned order was correct to hold that the rebate claims were time barred and hence liable to be rejected. Government notes that the applicant has submitted that the delay in filing the claims is merely a procedural infraction and hence their claims should be allowed. Government finds that

Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.

10. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002 Rules and notification dated 6.9.2004 can be said to be a subordinate legislation. The subordinate legislation cannot override the parent statute. Subordinate legislation can always be in aid of the parent statute. At the cost of repetition, it is observed that subordinate legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory. If the submission on behalf of the appellant that as there is no mention/reference to Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 and therefore the period of limitation prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate of duty is accepted, in that case, the substantive provision – Section 11B of the Act would become otiose, redundant and/or nugatory. If the submission on behalf of the appellant is accepted, in that case, there shall not be any period of limitation for making an application for rebate of duty. Even the submission on behalf of the appellant that in such a case the claim has to be made within a reasonable time cannot be accepted. When the statute specifically prescribes the period of limitation, it has to be adhered to.

11. It is required to be noted that Rule 18 of the 2002 Rules has been enacted in exercise of rule making powers under Section 37(xvi) of the Act. Section 37(xxiii) of the Act also provides that the Central Government may make the rules specifying the form and manner in which application for refund shall be made under section 11B of the Act. In exercise of the aforesaid powers, Rule 18 has been made and notification dated 6.9.2004 has been issued. At this stage, it is required to be noted that as per Section 11B of the Act, an application has to be made in such form and manner as may be prescribed. Therefore, the application for rebate of duty has to be made in such form and manner as prescribed in notification dated 6.9.2004. However, that does not mean that period of limitation prescribed under Section 11B of the Act shall not be applicable at all as contended on behalf of the appellant. Merely because there is no reference of Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 on the applicability of Section 11B of the Act, it cannot be said that the parent statute – Section 11B of the Act shall not be applicable at all, which otherwise as observed hereinabove shall be applicable with respect to rebate of duty claim.

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15. In view of the above and for the reasons stated above, it is observed and held that while making claim for rebate of duty under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable. In the present case, as the respective claims were beyond the period of limitation of one year from the relevant date, the same are rightly rejected by the appropriate

authority and the same are rightly confirmed by the High Court. We see no reason to interfere with the impugned judgment and order passed by the High Court. Under the circumstances, the present appeal fails and deserves to be dismissed and is accordingly dismissed."

In light of the above, Government finds that the claims for rebate in the present case having been filed after a period of one year from the relevant date are hit by the limitation prescribed in Section 11B of the Central Excise Act, 1944 and are hence time barred and accordingly holds so. Thus, Government does not find any infirmity in the impugned Orders-in-Appeal and upholds the same.

9. The subject Revision Applications are rejected.

Shrawan 12/9/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 357-358/2023-CX (WZ) /ASRA/Mumbai dated 12.09.2023

To,

M/s Kirloskar Brothers Limited,
Accounts Department,
Kirloskarwadi, Taluka Palus,
District – Sangli – 416308.

Copy to:

1. Commissioner of CGST & Central Excise, Kholapur Commissionerate, Vasant Plaza Commercial Complex, 4th & 5th floor, Rajaram Road, Bagal Chowk, Kolhapur – 416 001.
2. Commissioner of Central Tax (Appeals -I), Pune, 41/A, F Wing, 3rd floor, GST Bhavan, Sasoon Road, Pune – 411 001.
3. Shri Prathamesh Chavan, M/s India Law Alliance, Surya Mahal, 1st floor, 5, Burjorji Bharucha Marg, Fort, Mumbai – 400 023.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.