

REGISTERED SPEED POST



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. 195/04/WZ/2021-RA / 2405 Date of Issue: 12.10.2023

ORDER NO. 377 /2023-CX (WZ)/ASRA/MUMBAI DATED 12.10.23 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.

Subject : - Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Order-in-Appeal No. Pun-Excus-001-
App-255/2020-21 dated 31.12.2020 passed by the
Commissioner of Central Tax(Appeals-I) - Pune.

Applicant : - M/s. Maccaferri Environmental Solutions Pvt. Ltd.

Respondent: - Pr. Commissioner of CGST & Central Excise, Pune-I.

ORDER

The Revision application is filed by M/s. Maccaferri Environmental Solutions Pvt. Ltd. (hereinafter referred to as 'applicant') against the Order-in-Appeal No. Pun-Excus-001-App-255/2020-21 dated 31.12.2020 passed by the Commissioner of Central Tax (Appeals-I) - Pune.

2. Briefly stated, the facts of the case are that the applicant are engaged in the manufacture of excisable goods. They had filed a rebate claim for Rs. 30,19,844/- on 11.04.2019 in respect of duty paid on the goods cleared by them for exports during the month of March,2016 under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act,1944. As the claim was filed after the completion of a period of one year from the relevant date, a SCN was issued to the applicant, asking them to show cause, as to why the rebate claim should not be rejected. Rebate Sanctioning Authority rejected the rebate claim on the grounds of limitation of time. On being aggrieved by the Order-In-Original, the applicant had filed the appeal before the Appellate Authority, who vide the impugned OIA rejected the appeal on being time barred and upheld the OIO.

3. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:

- i. Impugned order has been issued without proper appreciation of law and provisions made thereof, is not sustainable in hands of law and needs to be set aside and/or dropped forthwith to meet the ends of justice.
- ii. Rule 18 of CER 2002 provide for Rebate of duty where if 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 subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.
- iii. In this regard, Notification No. 19/2004-Central Excise (NT) dated 06 September 2004 was sued to prescribe the conditions and limitation followed by procedures for claiming rebate. Said Notification was amended on 3 March 2016 through Notification No: 38/2016-Centre) and time limitation clause was introduced for claiming rebate. Post amendment, team can be filed within one year from relevant date.
- iv. Procedural requirements should not be held mandatory.
- v. the policy of Government of India is to provide refund/rebate of duty paid on inputs or export products. It is the policy of the country that exports should

be zero rated. No taxes should be exported. This is for the larger interest of the country for boosting the economy.

vi. Applicant has placed reliance on following case laws :

a) Mangalore Chemicals & Fertilizers Limited V Deputy Commissioner (1991(55) E.LT 437(S.C)]

b) Zandu Chemicals Ltd. Vs Union of India (2015(315) ELT.520(Bom.))

c) Bhagvandas Maganial Shah 2019(370) E.LT 1717(G.O.I.)

vii. In view of the above, the applicant requested to set aside the impugned Order-in-Appeal.

4. Personal hearing in this case was fixed for 04.07.2023, Mr. M.J. Gaikwad, consultant and Ms. Priya Paryani, consultant appeared online and submitted that rebate claim was rejected on time bar. They submitted that there is no doubt on export of duty paid goods. They further submitted that if rebate is not possible, then the cenvat credit may be returned to them.

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

6. Government observes that the Applicant had filed rebate claims, claiming rebate of Central Excise duty paid on exported goods in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. The original authority rejected the rebate claim as time barred as these claims were beyond the stipulated period of one year.

7. The Government finds that 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 dispatch 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. Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below.

“14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.

15. In Everest Flavours Ltd. v. Union of India [2012(282)ELT 481(Bom.)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree.”

10. In such manner, the Hon'ble High Court of Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it.

11. Government finds that Hon'ble Supreme court in case of SANSERA ENGINEERING LTD. Versus DEPUTY COMMISSIONER, LARGE TAX PAYER UNIT, BENGALURU dated 29.11.2022 held that subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Relevant paras of the judgment are reproduced as under:

“9. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, “refund” includes “rebate of duty” of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The “relevant date” is defined under Explanation (B) to Section 11B of the Act, which means 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 goods..... Thus, the “relevant date” is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the “relevant date” and in such

form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004 issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the 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.”

12. Government notes that Applicant has placed reliance on the following case laws :

- a) Mangalore Chemicals & Fertilizers Limited V Deputy Commissioner (1991(55) E.LT 437(S.C))
- b) Zandu Chemicals Ltd. Vs Union of India (2015(315) ELT.520(Bom.))
- c) Bhagvandas Maganial Shah 2019(370) E.LT 1717(G.O.I.)

The case laws cited by the Applicant differ in their specific facts and primarily pertain to the question of what constitutes procedural requirements or mandatory requirements. Therefore, the case laws are not applicable to the case in hand.

13. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that the Applicant has failed to act diligently in as much as they have failed to file rebate claim within the statutory time limit of one year from

the date of shipment of the export goods. Therefore, rebate claims on being time barred has been rightly denied to the Applicant.

14. In view of above position, Government finds no infirmity in the impugned Order-in-Appeal No. Order-in-Appeal No. Pun-Excus-001-App-255/2020-21 dated 31.12.2020 passed by the Commissioner of Central Tax(Appeals-I) - Pune and upholds the same.

15. Revision application is disposed off on the above terms.

Shrawan
12/10/23

(SHRAWAN KUMAR)

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

ORDER No. *377* /2023-CX (WZ) /ASRA/Mumbai Dated *12.10.23*

To,

1. M/s. Maccaferri Environmental Solution Pvt. Ltd., D-40, MIDC Ranjangain, Pune Nagar Road, Tal- Shirur, Pune -412220.
2. The Pr. Commissioner of CGST &CX, Pune-I, GST Bhavan, ICE House, Opp. Wadia College, Pune-411001.

Copy to:

1. The Commissioner of Central Tax(Appeals-I),Pune, 41/A, F wing, 3rd Floor, GST Bhavan, Sassoon Road,Pune-411001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.

