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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.195/13-14/WZ/2020

1680

Date of Issue:

09.04.2022

ORDER NO 100-40/2022-CX (WZ)/ASRA/MUMBAI DATED 29.04.2022
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.

Applicants : M/s VE Commercial Vehicles Ltd,
Plot No 52/1,52/2,
Indore Ratlam Highway
Village Baggad, Distt Dhar.

Respondents : Commissioner of CGST, Indore

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. IND-EXCUS-
000-APP-311-312-18-19 dated 22.11.2018 passed by the
Commissioner (Appeals), CGST & CEX, Indore.

ORDER

These Revision Applications are filed by M/s VE Commercial Vehicles Ltd, Plot No 52/1, 52/2, Indore Ratlam Highway, Village Baggad, Distt Dhar (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. IND-EXCUS-000-APP-311-312-18-19 dated 22.11.2018 passed by the Commissioner (Appeals), CGST & CEX, Indore.

2. The facts of the cases in brief are that the applicant, on 25.06.2018, filed two rebate claims for Rs. 4,88,010/- in respect of goods cleared for export vide ARE-I No. 60/17-18 dated 27.04.2017 and for Rs.12,20,025/- in respect of goods cleared for export vide ARE-1 No. 60/17-18 dated 27.04.2017 and ARE-1 No. 61/17-18 dated 27.04.2017, under Rule 18 of the Central Excise Rules, 2002. The Adjudicating Authority rejected the said claims on the grounds that the conditions stipulated under Notification No 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules 2002 were not followed in as much as-

- (i) the excisable goods were not exported directly from the factory of the manufacturer.
- (ii) the triplicate copy of ARE-1 did not bear the seal and signature of the Range Officer, and that the applicant did not intimate the Range Officer within 24 hours of clearance for export;
- (iii) No certification of the authorized person that the goods were exported was found on the ARE-I as required in case of self-sealing and self-certification in-terms of procedure as Sr No 3(a)(xi) of the said Notification;
- (iv) Due to consolidated duty debit entry at the end of the month for the excisable goods cleared for domestic and export clearances, hence it was not possible to ascertain as to whether proper duty payment was made and as to whether sufficient balance was there in the applicants Cenvat Credit account or not;

(v) the goods cleared under ARE-I No. 60/2017-18 dated 27.04.2017 & under ARE-1 No. 61/2017-18 dated 27.04.2017 were exported on 01.05.2017 while the Rebate Claims were filed on 25.06.2018, and hence the claim was hit by time limitation of one year stipulated under Section 11B of the Central Excise Act, 1944.

4. Being aggrieved by the Orders-in Original, the applicant filed appeals before the Commissioner (Appeals), CGST & CEX, Indore. The Appellate Authority vide Order in Appeal No. IND-EXCUS-000-APP-311-312-18-19 dated 22.11.2018 rejected the appeal and upheld the Orders-in-Original. The Appellate Authority while passing the impugned Orders-in-Appeal observed as under:

i) that the Adjudicating Authority had rightly held that the two Rebate Claims were hit by the statutory time limitation of one year as stipulated under Section 11B(1) of the Central Excise Act, 1944 read with Explanation (b) (a) to the said Section.

ii) that in the present two cases, nothing had been brought on record which suggested that the delay in submission of claims was on account of Customs or any other Government Official.

iii) that the applicant had also not disputed that the two claims had been filed beyond the statutory time-limit.

iv) that the Appellate Authority, functioning under the Central Excise Act, 1944, was bound by the period of limitation prescribed by the statute and in respect of the two time-barred claims, the Appellate Authority had no alternative but to uphold the impugned Adjudication Orders without going into any other merits of the cases.

5. Being aggrieved by the impugned Order-in-Appeal, the applicant filed instant Revision Application on the following grounds:-

i) That there was no doubt that the goods cleared on payment of duty under ARE 1 No. 60/2017-18 and invoice Nos. 33107 & 33108 all dated 27.04.2017 were exported under shipping bill No. 5744524 and 5744459, both dated 28.04.2017 and date of shipment for the said goods was 01.05.2017. Similarly, the goods cleared on payment of duty under ARE-1 No. 61/2017-18 and invoice Nos. 33109 & 33113 all dated 27.04.2017 were exported under shipping bill nos. 5748672, 5748805, 5748811, 5748722, all dated 28.04.2017 and 5748846 dated 29.04.2017 and date of shipment for the said goods was 01.05.2017. This indicated that the goods were exported promptly within 4 days after clearance from the factory of the applicant.

ii) That the basic purpose of providing rebate by the Government of India is for encouragement of export. That the applicant, from their two units of Pithampur had exported goods valued Rs. 1378 Crores during 2017-18 and under the circumstances the benefit extended by the Government for exporting the goods must be enjoyed by the applicant.

iii) That the applicant was paying revenue to the tune of Rs. 1760 Crores from its plants at Pithampur and Baggad and it was certified that the delay occurred was due to late receipt of the relevant documents from the Customs department and in turn from the CHA of the applicant.

iv) That it should be appreciated that even after exporting the goods within 4 days after removal of the goods for export from the factory, there was genuine reason, as mentioned above, to file the rebate claim after one year from the date of the export.

v) That it is emphasized that Government of India has resolved that no rebate claim should be rejected on technical grounds of procedural lapses and the rebate claim stood eligible and may kindly be allowed.

vi) The applicant has relied on the following case laws in support of their contention

- i) Gravita India Ltd vs. UOI [2016(334) E.L.T. 321 (RAJ.)]
- ii) Commr. of S.T. Noida vs Atrenta India Pvt Ltd [2017 (48) S.T.R. 361 (All.)]
- iii) Formica India Division vs. Collector of Central Excise [1995(77)ELT 511 (SC)]
- iv) Trivon Enterprises Pvt Ltd [2015 (320) E.L.T. 667 (G.O.I.)]
- v) Zandu Chemicals Ltd vs UOI [2015 (315) E.L.T. 520 (Bom.)]
- vi) Sanket Industries Ltd. [2011 (268) ELT 125 (GOI)]

6. Personal hearing in this case was scheduled on 02.12.2021. Shri Rabi Sankar Roychoudhury, Advocate and Shri Chimanlal Dangi, Consultant appeared for hearing on behalf of the applicant and reiterated the submissions pertaining to the instant case.

7. Government has carefully gone through the relevant case records, written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7.1 Government observes that the issue involved in the instant Revision Applications is whether the 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.

7.2 Government observes that the rebate claim filed by the applicant was rejected by the Original Adjudicating Authority as the same was not been filed within stipulated period of one year from the relevant date specified under Section 11B of Central Excise Act, 1944. The applicant has contended that the delay was on account of late receipt of documents from the customs and subsequently by the CHA and the same is to be considered as procedural lapse.

7.3 Government observes that applications for rebate of Central excise duty paid on excisable goods, consequent on their export, are required to be filed within one year of the date of their export, under Section 11B of Central Excise

Act, 1944. Sub-Section (1) of the Section 11B, and the relevant clauses of the explanation to Section 11B, for ready reference, are reproduced below: —

“11B. Claim for refund of duty and interest, if any, paid on such duty.

— (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such 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 (1) 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 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 duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act:]

Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

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.

(Emphasis supplied)

7.4 From the above, it would be seen, (i) refund claims are required to be made within one year of the "relevant date" (ii) the expression "refund" includes rebate of excise duty paid on goods exported outside India, the condition of filing the rebate claim within 1 year is squarely applicable to the rebate of duty when dealt with under Rule 18 of the Central Excise Rules 2002 which is not independent from Section 11B, *ibid*.

8. Government also observes that Hon'ble High Court Madras dismissed writ petition filed by Hyundai Motors India Ltd. [reported in 2017 (355) E.L.T. 342 (Mad.)] and upheld the rejection of rebate claim filed beyond one year of export in its order dated 18.04.2017. Hon'ble High Court in the said Order dated 18.04.2017 cited its own Order in Delphi-TVS Diesel Systems Ltd. vs. CESTAT, Chennai, reported in [2015 (324) E.L.T. 270 (Mad.)], which had held that Rules cannot prescribe a different period of limitation or a different date for commencement of the period of limitation. The relevant paragraphs of the order are 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."*

8.1 Government also places its reliance on the GOI Order Nos. 366-367-CX, dated 07.12.2017 in the case of DSM Sinochem Pharmaceutical India Pvt Ltd. [2018 (15) GSTL 476 (GOI)].

9. 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.

10. Government also observes that non filing of an application for refund/rebate of duty before expiry of one year from the relevant date in contravention of the provisions of Section 11B of Central Excise Act, 1944, is not a condonable technical ground. 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.

11. Government also notes that the applicant has relied on the decision in the case of *M/s Gravita India Ltd vs. UOI* [2016(334) E.L.T. 321 (RAJ.)]. Government observes that the facts of the said case is different from the facts and circumstances of the instant case as in that case the judgement has been passed by the Hon'ble High Court by invoking writ jurisdiction and the petitioner was able to convince the Hon'ble High Court with evidences and dates that the delay in filing was on account of delayed handing over of the documents to them by the Customs officials. In the instant case the applicant has just made a sweeping submission that the delay occurred due to late receipt of the relevant documents from the Customs department and in turn from the CHA.

11.1 Further Government notes that the facts of other case laws relied upon by the applicant pertained to rejection of refund/rebate claims for procedural deviations and technical lapses.

11.2 As the aforesaid decisions have been rendered in the context of different set of facts as discussed above, the reliance on the same by the applicant is also misplaced and cannot be applied to the instant case.

12. In the light of the discussion hereinbefore, Government holds that rebate claims filed after the time limit of one year stipulated under Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002, is clearly hit by time limitation clause and cannot be entertained. Government, therefore, does not find reason to modify Order-in-Appeal No.

IND-EXCUS-000-APP-311-312-18-19 dated 22.11.2018 passed by the Commissioner (Appeals), CGST & CEX, Indore and therefore upholds the same.

13. The Revision Application is thus rejected being devoid of merit.

Shrawan
29/04/22

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

ORDER No. ¹⁰⁰⁻401/2022-CX (WZ)/ASRA/Mumbai DATED 29.04.2022

To,
M/s VE Commercial Vehicles Ltd,
Plot No 52/1,52/2,
Indore Ratlam Highway
Village Baggad, Distt Dhar.

Copy to:

1. The Commissioner of CGST, Ujjain, 29 GST Bhavan, Administrative Area, Bharatpuri, Ujjain 456 010.
2. The Commissioner (Appeals), Indore, Manik Bagh Palace, Post Box No. 10, Indore 452014 (M.P.)
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board
5. Spare Copy.