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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.195/527/2013-RA | 23/0

Date of Issue: 06/12/2018.

ORDER NO. 404/2018-CX (WZ)/ASRA/MUMBAI DATED 30-11-2018 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicants : M/s Naxpar Lab Pvt Ltd.

Respondent : Commissioner of Central Excise & Customs, Vapi.

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
SRP/185/VAPI/2012-13 dated 28.12.2012 passed by the
Commissioner(Appeals), Central Excise, Customs & Service
Tax, Vapi



ORDER

This Revision Application has been filed by M/s Naxpar Lab Pvt Ltd, Masat, Silvassa (hereinafter referred to as "the applicant") against the Order-in-Appeal No. SRP/185/VAPI/2012-13 dated 28.12.2012 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Vapi wherein he rejected the appeal filed by Applicant.

2. The issue in brief is that the Applicant, is engaged in the manufacture of excisable goods among others, namely, medicines falling under Chapter 30 of the CETA, 1985. The Applicant had filed 19 rebate claims totaling to Rs. 13,57,305/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The details of the filed rebate claims are as under:

Sl. No.	ARE-1 No & date	Rebate amount claimed (Rs.)	Date of clearance from the factory gate	LeT Export date	Date of filing in Division office
1	326/10-11 dt 10.2.11	72,434	10.2.11	17.2.11	13.3.12
2	325/10-11 dt 10.2.11	72,434	10.2.11	17.2.11	13.3.12
3	327/10-11 dt 11.2.11	72,434	11.2.11	17.2.11	13.3.12
4	303/10-11 dt 27.1.11	93,441	27.1.11	31.1.11	09.4.12
5	321/10-11 dt 2.2.11	23,184	27.1.11	05.2.11	09.4.12
6	323/10-11 dt 8.2.11	93,441	08.2.11	09.2.11	09.4.12
7	334/10-11 dt 21.2.11	39,156	21.2.11	23.2.11	09.4.12
8	331/10-11 dt 18.2.11	63,963	18.2.11	21.2.11	09.4.12
9	302/10-11 dt 24.1.11	93,548	24.1.11	25.1.11	09.4.12



10	310/10-11 dt 30.1.11	72,434	30.1.11	05.2.11	09.4.12
11	311/10-11 dt 30.1.11	72,434	30.1.11	05.2.11	09.4.12
12	313/10-11 dt 31.1.11	72,434	31.1.11	05.2.11	09.4.12
13	312/10-11 dt 30.1.11	72,434	30.1.11	05.2.11	09.4.12
14	316/10-11 dt 31.1.11	72,434	31.1.11	05.2.11	09.4.12
15	317/10-11 dt 31.1.11	72,434	31.1.11	05.2.11	09.4.12
16	314/10-11 dt 2.2.11	72,434	02.2.11	05.2.11	09.4.12
17	306/10-11 dt 28.1.11	93,441	02.2.11	01.2.11	09.4.12
18	309/10-11 dt 29.1.11	88,377	29.1.11	02.2.11	09.4.12
19	290/10-11 dt 06.1.11	44,414	06.1.11	07.1.11	09.4.12
	TOTAL (Rs.)	13,57,305			

On scrutiny of the rebate claim it was noticed that the Applicant had filed the above 19 rebate claims in the month of March and April 2012, hence, all the rebate claims were hit by time bar. The Applicant was issued a Show Cause Notice dated 30.04.2012 and same was adjudicated by the Assistant Commissioner, Central Excise & Customs, Division-II, Silvassa vide Order-in-Original No. 49/AC/SLV-II/Reb/12-13 dated 15.06.2012, wherein he rejected all 19 rebate claims having consolidated amount of Rs. 13,57,305/- under Section 11B of the Central Excise Act, 1944 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Being aggrieved, the Applicant then filed an Appeal with Commissioner(Appeals), Central Excise, Customs & Service Tax, Vapi who vide Order-in-Appeal No. SRP/185/VAPI/2012-13 dated 28.12.2012 rejected the appeal and upheld the Order-in-Original No. 49/AC/SLV-II/Reb/12-13 dated 15.06.2012.

3. Being aggrieved, the Applicant then filed this Revision Application on the following grounds:



- 3.1 They filed the rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004, wherein no limitation is prescribed for claiming the rebate. Rule 18 of Central Excise Rules, 2002, which prescribes no time limit. Under this Rule, the Central Government issued a Notification No. 19/2004-CE(NT) dated 06.09.2004 prescribing conditions, limitation and procedures and other details elaborately. The Assistant Commissioner and Commissioner(Appeals) had erroneously rejected the claim on limitation by invoking the provisions contained under Section 11B of Central Excise Act, 1944.
- 3.2 There was no dispute whatsoever with regard to procedure followed as specified under the Notification No. 19/2004-CE(NT) dated 06.09.2004, payment of duty on exports and the documents filed along with rebate claims prescribed under the said notification issued under Rule 18 of Central Excise Rules, 2002.
- 3.3 Attention of the Hon'ble Commissioner was drawn to the earlier Notification 41/94 dated 12.09.1994 issued in respect of claiming rebate of duty for earlier period, where in Clause (iv) it has been specifically stated that the claim of rebate of duty has to be made within the time limit prescribed under Section 11B of Central Excise Act, 1994, whereas, no such condition has been prescribed under the present Notification No. 19/2004-CE(NT) dated 06.09.2004. Accordingly, for rebate claims filed under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004, the limitation provided under Section 11B of Central Excise Act, 1994 would not be applicable. In this they relied on the decision of Hon'ble High Court of Madras in the case of Dorcas Market Makers Pvt Ltd Vs Commissioner of Central Excise [2012 (281) ELT 227]. The decision made in the said judgement by the



Hon'ble High Court based on the Supreme Court judgment is aptly applicable in their case.

- 3.4 In spite of repeated submission in their reply to the notice and also in the appeal, the rebate section of the department refused to accept the rebate claims filed in January 2012 on the ground of not obtaining stay order with respect to other matters, that too before the due dates and the department failed to verify the said facts while passing the impugned orders.
- 3.5 They prayed that the Order-in-Original dated 28.12.2012 be set aside and to allow their appeal in full with consequential relief.

4. A personal hearing in the case was held on 15.02.2018 which was attended by Shri S Mukhopadya, Assistant Commissioner and Shri P.K. Banania, Supdt, Range-V, Division VII. Silvassa, Daman Commissioner on behalf of the Respondent. Since the Applicant was not present, in the interest of justice another opportunity of personal hearing was given. The Department informed the Applicant of the date of personal hearing and the Applicant vide their letter dated 16.02.2018 acknowledged the letter. However, on the date of hearing, only the Respondent was present and no one from the Applicant's side attended. The Respondent reiterated the Order-in-Appeal and Order-in-Original and pleaded that the same be upheld and Revision Application be dismissed.

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

6. The Government observes that the Applicant had filed 19 rebate claims totaling to Rs. 13,57,305/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. All the ARE-1 were in the months of January and February 2011, wherein the rebate claims were filed in the months of March and April 2012 that is



after the lapse of time limit of one year as stipulated under Section 11B of Central Excise Act, 1944 (details in Para 2 above).

7. 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 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. As per explanation B(a)(i) of Section 11B, the relevant date for filing rebate claim 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”.

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.

8. 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. Further, Government observes that



identical issue has been decided by the Government vide Revision Order No. 10/2015-CX dated 14.05.2015, the ratio of the same is squarely applicable to this case.

9. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. SRP/185/VAPI/2012-13 dated 28.12.2012 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Vapi and therefore upholds the same and dismisses the Revision Application filed by the Applicant being devoid of merits.

9. So, ordered.

(Handwritten Signature)
30.11.18

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

ORDER No. 404/2018-CX (WZ)/ASRA/Mumbai DATED 30.11.2018.

To,
M/Naxpar Lab Pvt Ltd.,
Plot No. 120, Masat Ind. Estate,
Masat, Silvassa

Copy to:

1. The Commissioner of CGST & Service Tax, Vapi.
2. The Commissioner(Appeals), Central Excise, Customs & Service Tax, Vapi.
3. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

