



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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 195/228/17-RA/3350

Date of Issue: 28.07.2020

ORDER NO. 517/2020-CX (WZ) /ASRA/MUMBAI DATED 16.06.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Gayatri Colour Chem Industries., Ahmedabad.

Respondent : Commissioner of Central Excise, Ahmedabad-I.

Subject : Revision Application filed under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-001-APP-076-2016-17 dated 22.03.2017 passed by the Commissioner (Appeal-I), Central Excise, Ahmedabad.



**ORDER**

This Revision Application has been filed by M/s Gayatri Colour Chem Industries., Ahmedabad (hereinafter referred to as "the applicant") against Order-in-Appeal No. AHM-EXCUS-001-APP-076-2016-17 dated 22.03.2017 passed by the Commissioner (Appeal-I), Central Excise, Ahmedabad.

2. Brief facts of the case are that the applicant had filed rebate claim for Rs. 6,74,856/- (Rupees Six Lakh Seventy Four Thousand Eight Hundred Fifty Six only) under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notifications No. 21/2004 -CE (NT) and 19/2004- CE(NT) dtd. 06/09/2004 on 29/01/2016. On perusal of the said claim it was observed that the goods were exported on 14/12/2014 whereas rebate claim was filed on 29/01/2016 after expiry of one year from the date of export.

3. A Show Cause Notice dated 11.04.2016 was issued to the applicant by the original authority proposing to reject the said rebate claim for contravention of Section 11B of Central Excise Act, 1944. The Original authority, viz. the Assistant Commissioner of Central Excise, Divisionn-III, Ahmedabad- I, after following due process of law, rejected the rebate claim on the ground of limitation under the provisions of Section 11B of the Central Excise Act, 1944, vide Order in Original bearing No. MP/2261/AC/2016-17 dtd. 27.7.2016.

4. Being aggrieved by the said Order in Original, the applicant filed the appeal before Commissioner (Appeals-I), Ahmedabad, who vide Order in Appeal No. AHM-EXCUS-001-APP-076-2016-17 dated 22.03.2017 (impugned Order) upheld the Order in Original and rejected the appeal filed by the applicant.

5. Being aggrieved with the impugned Order, the applicant filed the present Revision Application mainly on the following grounds:

5.1 The adjudicating authority as well as first Appellate Authority have not appreciated the facts and circumstances of the case and therefore, the rebate claim denied/rejected by the said authority requires to be set aside;

5.2 There is no dispute about the export of goods, therefore, the substantive benefit of right for rebate cannot be denied. Even the Hon'ble SC in the case of Manglore Refinery case has held that all procedural aspect may be condoned when substantive benefit is admissible to the assessee. Therefore, their case is squarely covered the above judgment. Therefore, rebate cannot be denied on sole ground that the rebate is filed after one year;

They invite attention to judgment reported in 2012 (275) ELT 277 (G01) in the case of M/s. Reliance Ind. Ltd in the para 10. of the said,



judgment relying on judgment of Hon'ble Supreme Court held that an interpretation unduly restricting the scope of the beneficial provisions to be avoided so that it may not take away with one hand what the policy gives with the other and substantive benefit cannot be denied for procedural lapse but in our case, the procedural lapse on the part of the deptt. Therefore, looking to the above, rebate cannot be denied to that extent;

- 5.4 They rely on the judgment 2009 (233) ELT 46 (HC) in the case of Cosmonaut Chemicals & Anr. Versus Union of India & Anr. wherein the Hon'ble HC held that delay in filing rebate claim had not occurred because of any laxity on art of the petitioner but it was because of the lapse on part of the Customs authorities in returning the export permission (promotion) copy of shipping bill late over which the petitioner had no control. Appeal of assessee allowed. Therefore, the rebate claim ought to be allowed by setting aside the OIA.
- 5.5 In Rule 18 of CER, 2002 , no where it is clarified that the rebate claim should be filed within one year from the date of payment. The rule further clarify that procedure should be followed as per Notification. The Rule is prevailing of over the Notification. Therefore, on this ground , the rebate is not deniable in addition to following ruling given by the Hon'ble HC. Reliance is placed on the judgment reported in 2012 (281) ELT 227 (Mad) wherein the Hon'ble HC held that Rebate could not be rejected on ground of limitation - It was more so as even Rule 18 of Central Excise Rules, 2002 did not prescribe it. [para 8] Rebate - Claim of - Limitation - Rule 18 of Central Excise Rules, 2002 is not subject to Sections 11A and 11B of Central Excise Act, 1944 - In that view, rebate cannot be rejected on ground of limitation, [para 8] Writ jurisdiction - Alternative remedy - Article 226 of Constitution of India 195, [para 9] Writ petition allowed . Therefore, on this ground, rebate is admissible to them.
- 5.6 In judgment reported in 2015 (326) ELT 265 wherein the Hon'ble P & H HC held that Rule 18 of Central Excise Rules, 2002 does not impose any condition or limitation for exporting of goods on payment of duty. Rejection of rebate claim on limitation ground is not well founded. Impugned order set aside. Rebate claim to be processed in accordance with law on the basis that it is not barred by period of limitation prescribed under Section 11B of Central Excise Act, 1944. Petition allowed. Their case is squarely covered by the above judgment and rebate claim is not deniable as per ruling given by the Hon'ble HC. Similarly in case of other judgment reported in 2015 ( 321) ELT 45 wherein Madras HC held that Assessee exported goods on payment of duty under claim of rebate. Rebate was rejected on limitation ground under Section 11B of Central Excise Act, 1944. Assessee actually exported goods, therefore, their entitlement to refund is not in doubt. In the absence of any prescription in the scheme, rejection of refund on limitation ground is unjustified. Petition of revenue dismissed.

The judgment cited by the deptt in its order is not applicable to the present case. therefore, on this ground, rebate is not deniable.



In view of the above , their case is squarely covered by the above case Law and therefore , on this ground , the rebate is not deniable.

6. A Personal hearing in this case was held on 09.12.2019 and Shri Smit Patel, Manager, appeared for hearing on behalf of the applicant and reiterated the submission filed through Revision Application and stated that the theirs is a small firm and requested for leniency and condone delay in filing rebate claim.

7. 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.

8. In the instant case, the rebate claim filed by the applicant was rejected by the Original Authority as the same had not been filed within stipulated period of one year from the relevant date (i.e. date of Shipment/ export specified under Section 11B of Central Excise Act, 1944. The applicant in its reply to show cause notice dated 11.04.2016 had admitted that the goods cleared for export vide ARE-1 No. 29 dtd. 30/11/2014 were exported on 14/12/2014 whereas the rebate claim was filed by them on 29/01/2016 after expiry of one year from the date of export. The reason for late filing the rebate claim was that the concerned person had left the job without any notice to them. Later on when it came to knowledge about rebate claim, it was filed.

9. However, applicant has submitted that Hon'ble SC in the case of Manglore Refinery case has held that all procedural aspect may be condoned when substantive benefit is admissible to the assessee. The applicant further submitted that relying on the aforesaid judgment of Hon'ble Supreme Court, Government in the case of M/s. Reliance Ind. Ltd. [2012 (275) ELT 277(GOI)] in the para 10 of its order held that an interpretation unduly restricting the scope of the beneficial provisions to be avoided so that it may not take away with one hand what the policy gives with the other and substantive benefit cannot be denied for procedural lapse. Therefore, rebate cannot be denied on sole ground that the rebate is filed after one year. The applicant also relied upon High Court Gujarat judgment in Cosmonaut Chemicals Vs UOI. [2009 (233) E.L.T. 46 (Guj)] wherein the Hon'ble High Court held that that delay in filing rebate claim had not occurred because of any laxity on the part of the petitioner but it was because of the lapse on part of the Customs authorities in returning the export permission (promotion) copy of shipping bill late over which the petitioner had no control. Therefore, the rebate claim ought to be allowed to them by setting aside the OIA. The applicant further placed reliance on judgments of Hon'ble Madras High Court in Dorcas Market



**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)*

11. 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.* Further, there is no provision under Section 11B, to condone any delay.

12. In this regard, Government refers to and rely on GOI Order Nos. 355-357/2017-CX, dated 7-12-2017 in Re: Life Long India Ltd. [2018 (363) E.L.T. 811 (G.O.I.)] wherein, while holding that time "*limitation of 1 year expressly specified in Section 11B of Central Excise Act, 1944 and refund includes rebate of duty and condition of filing rebate claim within 1 year squarely applicable to rebate of duty when dealt by Assistant/Deputy Commissioner of Division under Rule 18 of Central Excise Rules, 2002*" Government of India at para 7 of its Order observed as under:-

7. *After having first claimed that they had initially submitted their rebate claims before one year, their second argument is that the limitation period of one year is not specified under Rule 18 of the Central Excise Rules, 2002 and Section 11B of the Central Excise Act is not relevant for the rebate of duty. However, their above contention is not found legally tenable as for refunds and rebate of duty Section 11B of the Central Excise Act is directly dealing statutory provision and it is clearly*



Makers Pvt. Ltd. V UOI [ 2012 (281) E.L.T. 227 (Mad.)] and 2015 (321) E.L.T. 45 (Mad.) wherein Hon'ble High Court held that Rule 18 of Central Excise Rules, 2002 is not subject to Sections 11A and 11B of Central Excise Act, 1944 and in that view, rebate cannot be rejected on ground of limitation and that Assessee actually exported the goods and their entitlement to refund is not at all in doubt ; in absence of any prescription in the scheme, the rejection of application for refund as time-barred is unjustified. The applicant also referred to judgment of Hon'ble P & H High Court in Jsl Lifestyle Ltd. V UOI [2015 (326) E.L.T. 265 (P & H)] wherein Honble P& H High Court held that Rule 18 of Central Excise Rules, 2002 does not impose any condition or limitation for exporting of goods on payment of duty. Rejection of rebate claim on limitation ground is not well founded; impugned order set aside; Rebate claim to be processed in accordance with law on the basis that it is not barred by period of limitation prescribed under Section 11B of Central Excise Act, 1944. In view of the case laws discussed above, the applicant has pleaded their case is squarely covered by these case laws and therefore, on this ground, the rebate is not deniable.

10. 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 the Act. 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 duty and interest, if any, paid on such duty has been paid under protest.**



mandated therein that the application for refund of duty is to be filed with the Assistant/Deputy Commissioner of Central Excise before expiry of one year from the relevant date. Further in explanation in this Section, it is clarified that 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. In addition to time limitation, other substantive and permanent provisions like the authority who has to deal with the refund or rebate claim, the application of principle of undue enrichment and the method of payment of the rebate of duty, etc. are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation [to] rebate duty need not be repeated in Rule 18 and the areas over and above already covered in Section 11B have been left to the Central Government for regulation from time to time. But by combined reading of both Section 11B and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that Rule 18 is independent from Section 11B of the Act. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of filing rebate claim within 1 year is squarely applicable to the rebate of duty when dealt by Assistant/Deputy Commissioner of a Division under Rule 18. Thus Section 11B and Rule 18 are interlinked and Rule 18 is not independent from Section 11B. This issue regarding application of time limitation of one year is dealt by Hon'ble High Court of Bombay in detail in the case of *M/s. Everest Flavour v. Union of India*, 2012 (282) E.L.T. 48 wherein it is held that since the statutory provision for refund in Section 11B specifically covers within its purview a rebate of Excise duty on goods exported, Rule 18 cannot be independent of requirement of limitation prescribed in Section 11B. In the said decision the Hon'ble High Court has differed from the Madras High Court's decision in the case of *M/s. Dorcas Market Makers Pvt. Ltd.* and even distinguished Supreme Court's decision in the case of *M/s. Raghavar (India) Ltd.* The decision of the Supreme Court in the case of *Union of India v. M/s. Dorcas Market Makers Pvt. Ltd.* - 2015 (321) E.L.T. 45 (Mad.) relied upon by the applicant is clearly a decision not on the merit of the case as the departmental SLP is dismissed at the admission stage itself. The other decision in the case of *JSL Lifestyle Ltd. v. Union of India* - 2015 (326) E.L.T. 265 (P&H), relied upon by the applicant, is decided purely by relying upon the Supreme Court's decision in the case of *Raghavar India v. Collector of Central Excise, Jaipur*, 2000 (118) E.L.T. 311 (S.C.), which has been decided in totally different context whether the time limitation stipulated in Section 11A of the Central Excise Act could be applied to the recovery of Modvat credit under the erstwhile Central Excise Rule 57-I which did not have any reference to Section 11A. The Apex Court held that the time limit of Section 11A cannot be applied under Rule 57-I which is a specific provision and there is no reference of Section 11A in Rule 57-I. The application of the above referred decision of Supreme Court in *Raghavar India* has been considered by the Bombay High Court in the context of rebate of duty for the reason that Section 11B of the Central Excise Act expressly include rebate of duty in the definition of refund



*claim and this Section is exclusively dealing with the areas of refund as well as rebate of duty for which Rule 18 also provides conditions and procedures for granting rebate of duty. Punjab & Haryana High Court in the above referred decision in the case of JSL Lifestyles Ltd. has not agreed with the judgment of the Bombay High Court in the case of M/s. Everest Flavours without giving any cogent reason and the only reason given for disagreement is that the Bombay High Court has not dealt with the observations of the Supreme Court in para 14 and para 15 of the decision in the case of Raghuvar India or with the line of reasoning therein. On examining the aforesaid paras 14 & 15 of the Supreme Court's decision it is, however, noticed that no different reasoning has been given and the Supreme Court has just emphasized in these paras to strengthen their main view in earlier paras that Section 11A is general in nature and the scheme of Modvat is not made subject to Section 11A of the Act. But still the Punjab & Haryana High Court has disagreed from the decision of Bombay High Court in the case of M/s. Everest Flavours and without considering the structure and text of Section 11A and Rule 18 of Central Excise Rules. Since Section 11B of Central Excise Act specifically deals with the rebate of duty also and contains a provision for limitation period of 1 year for filing an application for rebate claim, unlike Section 11A having no reference to recovery of Modvat credit as dealt by the Hon'ble Supreme Court in the case of Raghuvar India, the decision of the Bombay High Court in the case of M/s. Everest Flavours is much reasoned, fully in accordance with the statutory provision in Section 11B and the decision of Punjab & Haryana High Court is apparently per incurium as Section 11B is not discussed and analyzed at all. Therefore, with due respect to the Punjab & Haryana High Court, the decision in the above case of M/s. JSL Lifestyles Ltd. cannot be given precedence over the Bombay High Court's decision in the case of M/s. Everest Flavours. Thus in none of the above mentioned decisions, except in the case of M/s. Everest Flavours, the relevance and application of Section 11B in the context of rebate claim has been considered. The above averment of the applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed any time without any time limit which is not only against Section 11B of the Central Excise Act but is also not in the public interest as per which litigations cannot be allowed to linger on for infinite period.*

13. Government further observes that Hon'ble Karnataka High Court in Sansera Engineering Pvt. Ltd. V Dy. Commissioner, Bengaluru [2020 (371) E.L.T. 29 (Kar.)] while holding vide its judgment dated 22-11-2019 that 'any Notification issued under Rule 18 has to be in conformity with Section 11-B of the Act and the decision of Original Authority rejecting the claim of rebate made by the petitioners as time-barred applying Section 11-B of the Act to the Notification No. 19 of 2004 cannot be faulted with' has distinguished the case laws relied upon by the applicant in the present Revision application.

Further, reliance placed on Hon'ble High Court Gujarat judgment in *Smolant Chemicals Vs UOI*. [2009 (233) E.L.T. 46 (Guj)] wherein the Hon'ble





High Court had held that 'delay in filing rebate claim had not occurred because of any laxity on part of the petitioner but it was because of the lapse on part of the Customs authorities in returning the export permission (promotion) copy of shipping bill late over which the petitioner had no control', would also not come to the aid of the applicant as nowhere in the Revision Application did the applicant mention as to how delay in filing the rebate claim in the instant case was attributable to delay by Customs Department in issuing EP copies of the Shipping Bills. Moreover, Hon'ble High Court of Delhi in its decision dated 27.11.2019 in W.P.(C) 7683/2019 filed by M/s Orient Micro Abrasives Limited (petitioner) has observed as under :-

**16.** We also record our respectful disagreement with the views expressed by the High Court of Gujarat in *Cosmonaut Chemicals 2009 (233) E.L.T. 46 (Guj.)*, and the High Court of Rajasthan in *Gravita India Ltd. 2016 (334) E.L.T. 321(Raj)*, to the effect that, where there was a delay in obtaining the EP copy of the Shipping Bill, the period of one year, stipulated in Section 11B of the Act should be reckoned from the date when the EP copy of the Shipping Bill became available. This, in our view, amounts to rewriting of Explanation (B) to Section 11B of the Act, which, in our view, is not permissible.

**19.** Periods of limitation, stipulated in taxing statutes, are sacrosanct. It is settled, as far back as in *Cape Brandy Syndicate vs. Inland Revenue Commissioners (1921) 2 K.B. 403*, thus: —

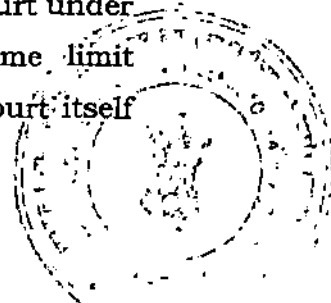
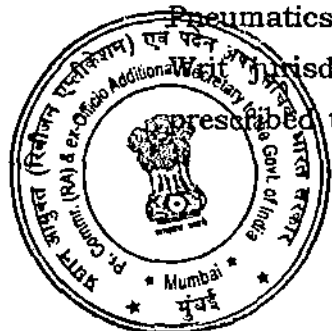
*Under a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.*

used.

**20.** Section 11(B)(1) of the Act read with the Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of the goods, where against rebate is claimed. There is no provision which permits relaxation of this stipulated one year time limit.

**21.** We, therefore, find no reason to disturb the concurrent view of all three authorities below i.e. the AC, the Commissioner (Appeals) and the Revisionary Authority, that the rebate claim of the petitioner merited rejection, as it was barred by time.

15. Further, Hon'ble Supreme Court has also held in the case of *UOI v. Kirloskar Pneumatics Company* reported in 1996 (84) E.L.T. 401 (S.C.) that High Court under its jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself



may not be bound by the time limit of the said Section. In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. The ratio of this Apex Court judgment is squarely applicable to this case. As Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision to extend this time limit. As such the refund claim is clearly time barred as it was filed after the time limit specified under Section 11B of Central Excise Act, 1944.

16. In the light of the detailed discussions hereinbefore, the Government holds that the rebate claim filed by the applicant has correctly been held to be hit by bar of limitation by the lower authorities. Government, therefore, upholds Order-in-Appeal No. AHM-EXCUS-001-APP-076-2016-17 dated 22.03.2017 passed by the Commissioner (Appeal-I), Central Excise, Ahmedabad.

17. The Revision Application is rejected being devoid of merit.

18. So, ordered.

(SEEMA ARORA)

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

ORDER No. 517/2020-CX (WZ) /ASRA/Mumbai DATED 16.06.2020.

**ATTESTED**

To,

M/s Gayatri Colour Chem Industries.,  
Plot No. I 5624 & 5625, Phase-II, GIDC, Vatva,  
Ahmedabad- 382 445, Gujarat (India).

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

Copy to:

1. The Principal Commissioner of CGST, Ahmedabad South, 7th Floor, CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad-380015.
2. The Commissioner Of CGST, (Appeals) CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad-380015.
3. Deputy/Assistant Commissioner Division-III, CGST, Ahmedabad South, 2nd Floor, CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

