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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.195/206/14-RA /6938 Date of Issue: 24.11.2021

ORDER NO. 520 /2021-CX (WZ) /ASRA/MUMBAI DATED 16.11.2021 OF THE 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Shree Meenakshi Food Products Pvt. Ltd.,
Survey No. 179/1/5, Kuvapada Industrial Estate,
Silli, Silvassa – 396 230.

Respondent : The Commissioner, CGST, Vapi.

Subject : Revision Applications filed under Section 35EE of Central Excise Act, 1944 against Order-in-Appeal No. VAP-EXCUS-000-APP-580-13-14 dated 14.03.2014 passed by the Commissioner (Appeals), Central Excise, Vapi.

ORDER

This Revision application is filed by M/s Shree Meenakshi Food Products Pvt. Ltd., Silvassa (hereinafter referred to as the 'applicants') against the Orders-in-Appeal No. VAP-EXCUS-000-APP-580-13-14 dated 14.03.2014 passed by the Commissioner (Appeals), Central Excise, Vapi.

2. The applicants are manufacturers of Pan Masala with Gutkha falling under CSH 24039990 of the First Schedule to the Central Excise Tariff Act, 1985. The impugned goods are notified under Section 3A of Central Excise Act, 1944. The applicants are clearing the said notified goods for home consumption as well as for export. The applicants are working under Compounded Levy Scheme and the duty is levied under Section 3A read with Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rues, 2008 (hereinafter referred as "PMPM Rules") as notified under Central Excise Notification No. 30/2008-CE(NT) dated 01.07.2008. As per these rules, the factor relevant to the production of notified goods shall be the number of packing machines in the factory of manufacturer under Rule 5 of the PMPM Rules. The duty payable is to be calculated under Rule 7 of the said PMPM Rules read with Notification No. 42/2008-CE dated 01.07.2008, on the number of operating packing machines in the factory during the relevant period. The applicant filed a rebate claim towards duty of Excise paid on the goods exported as per the procedure prescribed under Notification No. 32/2008-CE (NT) dated 01.07.2008 alongwith the supporting documents. The rebate claim was rejected by the Deputy Commissioner, Division-IV, Silvassa vide OIO No. 622/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013.

3. Aggrieved by the OIO dated 30.09.2013, the applicant filed appeal before the Commissioner(Appeals). After following the due process, the Commissioner(Appeals) found that the applicant had not declared the product "Goa 1000 Gutkha Red Strip 2.00 gms MRP Rs. 2.50"; that the applicant had not satisfied the condition of Rule 14A(ii) of the PMPM Rules inasmuch as they had used non-duty paid materials for manufacture of notified goods; that there was no link between the goods exported in two

containers mentioned in the shipping bill and the goods cleared from the applicants factory in six vehicles in a situation where the goods had not been stuffed under central excise or customs supervision; that the particular product was not declared and not entered in the daily stock register(DSA); that the amount of rebate claimed was more than the market price of the goods and that the rebate claim had been filed beyond the period of limitation under Section 11B of the CEA, 1944 which had not been contested by the applicant. The Commissioner(Appeals) therefore rejected the applicants appeal vide OIA No. VAP-EXCUS-000-APP-580-13-14 dated 14.03.2014.

4. Thereafter, the applicant has filed revision application on the following grounds:

(a) there was violation of natural justice by the adjudicating authority as they were not given time to file reply to the show cause notice and no personal hearing was granted to them.

(b) there was no time bar in filing rebate claim as the due date for filing rebate claim commences from the date of receipt of export remittances as per recent judicial pronouncements. Moreover, the ARE-1 countersigned by the export staff was not sent to the applicant in time due to which there was delay in filing the claim.

(c) they had declared the MRP of the product and the brand name "Goa 1000 Gutkha" and the number of machines proposed to be used for manufacturing the concerned product in Form 1. Duty had been discharged on the product "Goa 1000 Gutkha" of the specified MRP.

(d) reliance was placed upon Section 10 of the Trade and Merchandise Act, 1958 to contend that unless product had been registered with limitation of colour, product is deemed to be registered for all colours. Hence, they contended that the brand of the product would not differ when the colour of strip was mentioned on the product.

(e) the samples of the product had been drawn by BMC & Customs Department. The history of test samples, carting report were available with the Customs Department. Therefore, it could be verified that the goods cleared from the factory were the same as those exported.

(f) they have followed the procedures laid down under Notification No. 19/2004-CE(NT) dated 06.09.2004. Apart from central excise and customs, various third party agencies like Municipal Corporation, Steamer Agents, Chemical Examiners etc. have perused the documents and goods and then allowed them for export. The words "Red Strip" do not make the goods any different brand or type necessitating new brand description and duty payment on that account. Moreover, the chemical analysis test report by customs makes it amply clear that the goods were nothing other than "Goa 1000 Gutkha".

(g) it can be seen from the string of documentation that the goods were manufactured, removed from the factory and exported. The aspect of duty payment had been verified by the Departmental Officers. They further stated that the brand "Goa 1000 Gutkha" which had been declared and "Goa 1000 Gutkha red or green" were not different brands. They averred that if it was a different brand, the product would have been registered by an art work. The chain of documentation from the ARE-1 to the shipping bills demonstrate that the same goods which have been removed from the factory have been exported.

(h) the additional description of goods as "Red Strip" in the documents is superfluous and is to be condoned. Substantial benefit should not be denied for non-critical objections.

(i) the case law in CCE vs. Avis Electronics Pvt. Ltd.[2000(117)ELT 571(Tri-LB)] which has been relied upon by the Commissioner(Appeals) was not relevant to the facts of the present case as that case law pertains to MODVAT credit where there is loss of duty paying documents.

(j) the facts of the case In Re : Kaizen Organics Ltd.[2012(283)ELT 743(GOI)], M/s Kaizen Organics Ltd. did not have drug licence nor manufactured the exported goods whereas in the applicants case they have licence to manufacture the exported goods. Therefore, this case law relied upon by the Commissioner(Appeals) was not inapplicable.

(k) the applicant placed reliance upon the case laws In Re : Shrenik Pharma Ltd.[2012(281)ELT 477(GOI)], In Re : Ace Hygiene Products Pvt. Ltd.[2012(276)ELT 131(GOI)], In Re : Sanket Industries[2011(268)ELT

125(GOI)] and Leighton Contractors (India) Pvt. Ltd.[2011(267)ELT 422(GOI)].

(l) they have exported goods under DFIA scheme in terms of licence issued by the DGFT and hence were entitled to procure duty free inputs. In so far as the allegation of having contravened the provisions of Rule 14A of the PMPM Rules is concerned, the applicant submitted that no material used in the manufacture or processing of notified goods had been removed from their factory or warehouse. It was pointed out that the SCN does not llege receipt of materials from any other manufacturer from any factory or warehouse without payment of duty for subsequent utilization in manufacture of exported notified goods.

(m) the observation that the rebate amount was more than the FOB value and contravenes condition (vi) of Notification No. 32/2008-CE(NT) was wrong. The applicant explained that the FOB value was less due to the market strategy to gain market access, that their goods were being sold at cost price The applicant further averred that since duty is paid on the MRP of the goods, hence MRP should be considered as the market price of the goods.

(n) there was no evidence of fraud or suppression of fact or clandestine removal of goods and no material evidence. The ratio of the case laws do not render the applicant ineligible for rebate. If there was any procedural lapse on their part, it was unintentional and should be condoned as per the settled legal position as was done by the proper authority in the order in original.

5. The applicant was granted personal hearings in the matter on 16.01.2020, 22.01.2020, 25.02.2020, 19.03.2021 & 26.03.2021. However, none appeared on behalf of the applicant. Since sufficient opportunities have been granted to the applicant, the case is now taken up for decision on the basis of the available records.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal. Before going into the merits of the case, Government seeks to address the grounds raised by the applicant alleging violation of natural justice. In this regard, it is

observed that the applicant has failed to avail of the five opportunities of personal hearing granted to them in these revisionary proceedings. The applicant is clearly not diligent and has squandered away opportunities of being heard. Nevertheless, the Commissioner(Appeals) has granted the applicant a hearing and the applicant has been heard by him. Government concurs with the findings recorded by the Commissioner(Appeals) in this regard.

7.1 The issue that the applicant had filed the rebate claim beyond one year of the date of export was a ground for rejection of rebate claim before the original authority and for rejection of their appeal by the Commissioner(Appeals). In this regard, the applicant has contended that the reference date for counting the period of limitation is the date of receipt of export remittances as per "recent judicial pronouncements". It has also been submitted that the ARE-1 countersigned by the export staff had not been sent to them on time due to which also there was delay in filing the claim.

7.2 On going through the records, it is observed that the goods covered under ARE-1 No. 038/11-12 dated 02.09.2011 were exported on 13.09.2011. Therefore, in terms of Section 11B of the CEA, 1944 the due date for filing rebate claim would be 12.09.2012. However, the applicant has filed rebate claim on 23.11.2012. There is a delay of 72 days in filing the rebate claim. The submission of the applicant regarding the ARE-1 countersigned by the export staff not having been sent to them cannot justify the delay or extend limitation. Remarkably, there was a delay of 72 days in filing the rebate claim which translates into 437 days after the date of export. The applicant being a regular claimant of rebate was surely conversant with rebate procedures and also mindful of the limitation period prescribed for filing rebate claim. Even assuming that the applicant had not received the triplicate copy of ARE-1 from the Superintendent or Inspector of Central Excise in terms of the procedure detailed at para (3)(xii) of Notification No. 19/2004-CE(NT) dated 06.09.2004 or the original/duplicate copy of ARE-1 from the Customs in terms of the procedure detailed at para (3)(xv) of Notification No. 19/2004-CE(NT) dated 06.09.2004, the applicant could very well have filed rebate claims on the basis of the copies of ARE-1

available with them and cured the deficiency after obtaining the document from the concerned authority. Any diligent applicant who was in their position would have persistently followed up for the document and filed the claim in good time. Other than the bald assertion made by them about non-receipt of countersigned ARE-1, the applicant has not submitted any proof to show that they had difficulty in obtaining the copy of ARE-1. The claim of the applicant that the ARE-1 countersigned by the export staff was not sent to them for over a year is not supported by any documents. This appears to be an afterthought. The applicant was duty bound to adhere to the limitation prescribed in Section 11B of the CEA, 1944 and hence their submissions on this count are untenable.

8.1 Moving further, Government notes that although the applicant has alluded to "recent judicial pronouncements" holding that the reference date for counting the period of limitation would be the date of receipt of export remittances, they have not cited any single judgment to substantiate this argument. This submission is in the nature of an *ipse dixit*. The judgments on the aspect of limitation under Section 11B have consistently held that it commences from the date of exportation. Reliance is placed upon judgments of the courts where the limitation specified under Section 11B of the CEA, 1944 and its scope has been discussed.

(a) Everest Flavours Ltd. vs. UOI[2012(282)ELT 481(Bom.)]

> *"12. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as mandatory requirement of law."*

(b) Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance[2017(355)ELT 342(Mad.)]

> *"26. Admittedly, the goods were exported on 10-11-2008 and 15-11-2008. Thereafter, the appellant paid additional duty on 15-11-2008. The claim of rebate of duty made by the appellant company on 27-11-2009 by claiming that period of*

limitation is within one year under Section 11B of the Act. Therefore, Issue No. 1 is answered against the assessee."

8.2 It would be clear from the reading of these judgments that the commencement of period of limitation for filing rebate claim under Section 11B of the CEA, 1944 must be reckoned from the date of exportation of goods. The Hon'ble Delhi High Court has discussed this issue while delivering their judgment in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)]. While doing so their Lordships also recorded their respectful disagreement with the views expressed by the Hon'ble High Court of Gujarat and the Hon'ble High Court of Rajasthan with regard to situations where the assessee is unable to obtain documents required for filing rebate claim and its effect on limitation. The relevant text of the judgment is reproduced below.

"13. We find ourselves unable to accede to either submission.

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, the rebate claim of the petitioner was required to be filed within one year of the export of the goods.

15. In Everest Flavours Ltd. vs. 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.

16. We also record our respectful disagreement with the views expressed by the High Court of Gujarat in Cosmonaut Chemicals[2009(233)ELT 46(Guj.)] and the High Court of Rajasthan in Gravita India Ltd.[2016(334)ELT 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."

8.3 The judgments cited above delivered by the Hon'ble High Courts are the most contemporary exposition of the scope of limitation under Section

11B of the CEA, 1944. They do not leave any doubt about the fact that limitation for filing rebate claims would commence from the date of exportation of goods. Moreover, the plea that the rebate claim could not be filed for 437 days after the exportation of goods due to the non-receipt of ARE-1 signed by export staff also does not come to the rescue of the applicant. The rebate claim filed by the applicant is hit by limitation and hence it fails at the threshold itself. Therefore, the Government does not find it necessary to delve into the merits of the case as the rebate claim is time barred.

9. Government therefore upholds the OIA No. VAP-EXCUS-000-580-13-14 dated 14.03.2014 passed by the Commissioner(Appeals), Vapi. The revision application filed by the applicant is dismissed being devoid of merits.

Shrawan 16/11/21

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

To

M/s. Shree Meenakshi Food Products Pvt. Ltd.,
Survey No. 179/1/5, Kuvapada Industrial Estate,
Silli, Silvassa – 396 230

ORDER NO. 520 /2021-CX (WZ) /ASRA/MUMBAI DATED 16.11.2021

Copy to :

1. The Commissioner of CGST & Central Excise, Daman, GST Bhavan, RCP Compound, Vapi – 396 191.
2. The Commissioner of GST & CX, Surat Appeals, 3rd floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat- 395 017.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.