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GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 (DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
 Mumbai-400 005

F.No.195/68/SZ/17-RA/5489 Date of Issue : 17.09.2020
~~08.2020~~

ORDER NO 579/2020-CX (SZ) / ASRA / MUMBAI/ DATED 04.08.2020
 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 Advanced Flourine Technologies Pvt. Ltd.,
 Hindustan Fluorocarbons Ltd. Complex,
 Survey No. 405, Gneshgadd, Mamidpally,
 Sangareddy, Medak Dist., Telangana.

Respondent : The Commissioner of Central Excise, Hyderabad.

Subject : Revision Application filed, under Section 35EE of
 the Central Excise Act, 1944 against the Order-in-
 Appeal No. HYD-EXCUS-001-APP-39/17-18 dated
 16.06.2017 passed by the Commissioner of Central
 Excise (Appeals), Hyderabad.

ORDER

The Revision Application is filed by M/s Advanced Flourine Technologies Pvt. Ltd., Medak Dist., Telangana (herein after referred to as 'the applicant') against the Order in Appeal No. HYD-EXCUS-001-APP-39/17-18 dated 16.06.2017 passed by the Commissioner of Central Excise (Appeals), Hyderabad in respect of Order in Original No.62/2016-R(C.E.) dated 31.05.2016 passed by the Assistant Commissioner of Central Excise, Hyderabad - I Commissionerate.

2. Brief facts of the case are that the applicants are manufacturer of excisable goods viz. TELOMER TG-1 (Perfluoro Hexyl Ethylene Iodide) and TELOMER TG-2 (Perfluoro Alkyl Ethyl Iodide) both falling under Ch. 29032900 of First Schedule to the Central Excise Tariff Act, 1985. The applicant had filed two rebate claims under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The details are as under :-

ARE-1 No./ Date	Rebate Amount	Shipping No./Date	Bill Date of Export	Date of Filing Rebate Claim
3/2014 dt. 07.08.2014	3578776	4303647/07.08.2014	07.08.2014	15.12.2015
5/2014 dt. 07.11.2014	4015782	5022226/07.11.2014	10.11.2014	15.12.2015

The Rebate Sanctioning Authority rejected both the above mentioned claims on the grounds that the same were filed beyond the statutory limit prescribed under Section 11B of the Central Excise Act, 1944 i.e one year from the date of export.

3. Aggrieved by the said order, the Applicant filed appeals before Commissioner (Appeal) on the grounds that there is no time limit prescribed for filing such claims under Notification No. 19/2004-CE dated 06.09.2004. The Appellate Authority vide impugned order in

appeal upheld the Order in Original. The Appellate Authority observed that :

3.1 The aspect of specific inclusion of 'rebate' in the definition of 'refund' under Section 11B of the Central Excise Act, 1944 has been discussed in the case of M/s Everest Flavours Ltd Vs UOI [2012(282)ELT 481 (Bom.)].

3.2 The limitation of time under Section 11B has to be complied with by the claimant of rebate which is a mandatory requirement of law.

4. The applicant contested the impugned Order in Appeal passed by the Appellate Authority in the instant Revision Application on following grounds that :

4.1 There is no other reasons for rejecting the rebate claims of the applicant other than on the single ground of exceeding the limitation prescribed under Section 11B of the Central Excise Act, 1944.

4.2 The limitation period of 1 year prescribed under Section 11B of the Central Excise Act, 1944 does not apply to the claims of rebate made by the applicant.

5. Personal Hearing was held on 29.10.2018. Shri M. Walia, Managing Director attended on behalf of the applicant. In view of change in the Revision Authority, a fresh personal hearing was granted to the applicant on 09.12.2019. However, the applicant did not attend the same. No one attended the personal hearing on behalf of the department. Therefore, the case is taken up for decision on the basis of documents available on record and submission made by the applicant.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions.

7. It is observed that the impugned rebate claims were rejected on the ground that the same were filed beyond the statutory time limit prescribed under Section 11B of the Central Excise Act, 1944. On examination of the revision application and other relevant records, it is noticed that the applicant had exported the goods on 07.08.2014 and 10.11.2014 whereas the rebate claims were filed on 15.12.2015. Thus the applicant had filed the rebate claim beyond the period of one year from the date of export of goods. The Adjudicating Authority rejected the drawback claim being time barred.

8.1 The Government finds that Rule 18 of the CER, 2002 has been made by the Central Government in exercise of the powers vested in it under Section 37 of the Central Excise Act, 1944 including Section 11B of the CEA, 1944. Moreover, the Explanation (A) to Section 11B explicitly sets out that for the purposes of the section "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. The 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 covers the entire Rule 18 within its encompass. Likewise, the third proviso to Section 11A(1) of the CEA, 1944 identifies "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" as the first category of refunds which is payable to the applicant instead of being credited to the Fund. Finally yet importantly, the Explanation (B) of "relevant date" in clause (a) specifies the date from which limitation would commence for filing refund claim for excise duty paid on the excisable goods and the excisable goods used in the manufacture of such goods. It would be apparent from these facts that Section 11B of the CEA, 1944 is purposed to cover refund of rebate within its ambit. If the contention of the applicant that Section 11B is not relevant for processing rebate claims is accepted, it would render these references to rebate in Section 11B superfluous.

8.2 Moreover, Section 37 of the CEA, 1944 by virtue of sub-section (2)(xvi) through the CER, 2002 specifically institutes Rule 18 thereof to grant rebate of duty paid on goods exported out of India. Notification No. 19/2004-CE(NT) dated 06.09.2004, Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the CER, 2002 to set out the procedure to be followed for grant of rebate of duty on export of goods.

9.1 The applicant has placed reliance upon various judgments in the support of their arguments. The decision of Docras Market Makers Pvt.Ltd. was discussed and considered by the Bombay High Court in the case of Everest Flavours Ltd. It is observed by the Bombay High Court that Madras High Court has not accorded due regard to the specific provision of explanation (A) to Section 11B of the Act under which the expression 'Refund' is defined to include rebate of duty of excise on excisable goods exported out of India. The Supreme Court's decision in the case of Collector of Central Excise, Jaipur Vs Raghuvar (India) Ltd. – (2005) 5 SCC 299-2002-TIOL-711-SC-CX-LB, on the basis of which Madras High Court took a decision in the case of Docras Market Makers Pvt. Ltd. is also distinguished and not found applicable for the detailed reasons given therein. Incidentally, the Special Leave to Appeal(Civil) CC No. 17561 of 2015 filed by the Deputy Commissioner of Central Excise, Chennai against the Judgment and Order dated 26.03.2015 of the Madras High Court in Writ Appeal No. 821 of 2012[2015(321)ELT 45(Mad)] has been dismissed *in limine* by the Supreme Court. With regard to the judgments of the Hon'ble High Courts relied upon by the applicant, it is observed that these judgments have been delivered in exercise of the powers vested in these courts in terms of Article 226/Article 227 of the Constitution of India. Needless to say, no statute passed by Parliament or State Legislative Assembly or any existing law can abridge the powers vested in the High Courts which is known as writ jurisdiction of the High Court under Article 226 of the Constitution of India. However, the irrefutable fact in the present case is that the

Central Excise Act, 1944 provides for a period of limitation in Section 11B of the CEA, 1944. The powers of revision vested in the Central Government under Section 35EE of the CEA, 1944 are required to be exercised within the scope of the CEA, 1944 which includes Section 11B of the CEA, 1944. In other words, notwithstanding the mitigating circumstances or compelling facts, there can be no exercise of powers in revision outside the scope of the Central Excise Act, 1944. Thus, there is a great difference in the degree of powers exercisable by the High Courts and creatures of statute.


9.2 Similarly the judgment of the Hon'ble Bombay High Court in Uttam Steel Ltd.[2003(158)ELT 274(Bom)] has been reversed by the Hon'ble Supreme Court in Civil Appeal No. 7449 of 2004 decided on 05.05.2015 reported at [2015(319)ELT 598(SC)]. Also, the Hon'ble Madras High Court has in its judgment dated 18.04.2017 in the case of Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance[2017(355)ELT 342(Mad)] held that the contention that no specific relevant date was prescribed in Notification No. 19/2004-CE(NT) was not acceptable in view of proviso (a) to sub-section (2) of Section 11B of the CEA, 1944.

10. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that there is no provision in Law where quasi-judicial or judiciary is empowered to amend / rewrite the statute rather they have to decide the issue within the frame work of the statute. Further, it is opined that If such extension of relaxation is deliberated by quasi-judicial authority then there is no need for keeping any time limit in the statute. In the instant case, the applicant has failed to act diligently in as much as they have failed to file rebate claim with the available documents within the statutory time limit of one year from the date of shipment of the export goods. Therefore, the rebate claims filed by the applicant have correctly been held to be hit by bar of

limitation by the Commissioner (Appeals), Hyderabad in the impugned order.

11. The Order-in-Appeal No. HYD-EXCUS-001-APP-39/17-18 dated 16.06.2017 by the Commissioner (Appeals), Hyderabad is upheld. The revision application filed by the applicant is dismissed as being devoid of merits.

12. So ordered.


 (SEEMA ARORA)
 Principal Commissioner & Ex-Officio
 Additional Secretary to Government of India.

579
ORDER No./2020-CUS (SZ) /ASRA/

DATED 04.08.2020

To,

M/s Advanced Flourine Technologies Pvt. Ltd.,
 Hindustan Fluorocarbons Ltd. Complex,
 Survey No. 405, Gneshgadd, Mamidpally,
 Sangareddy, Medak Dist., Telangana.

Copy to:

1. The Commissioner of Central Tax, CGST, Medchal Commissionerate, H. No. 11-4-649/B, Lakdi ka Pul, Hyderabad-500 004.
2. The Assistant Commissioner of Central Excise, Medak Divison, Plot No. 328, S.S.R. Arcade, Mathrusri Nagar, Miyapur, Hyderabad 500 049.
3. The Commissioner of CGST(Appeals), 7th floor, Kendriya Shulka Bhavan, Opp. L.B.S. Stadium, Basheerbagh, Hyderabad- 500 004.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.