

REGISTERED
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.195/738/2013-RA
F.No.195/781/2013-RA
F.No.195/28/SZ/2017-RA

15821

Date of Issue: 09.10.2020

615-617

ORDER NO. /2020-CX (WZ)/ASRA/MUMBAI DATED 04.09.2020 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 : 1 & 2. M/s Rollon Hydraulics Pvt. Ltd.
3. M/s TMI Rollon Engineering Pvt. Ltd.

Respondent : 1, 2 & 3. Commissioner of Central Excise (Appeals-I) Bangalore

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal Nos. 243 &
244/2013-CE dated 16.05.2013 and 235/2013-CE dated
13.05.2013 passed by the Commissioner of Central Excise
(Appeals-I) Bangalore and Order-in-Appeal No. 122/2017-CE
dated 04.08.2017 passed by the Commissioner of Central Excise
(Appeals-II) Bangalore.

ORDER

These Revision Applications are filed by the M/s Rollon Hydraulics Pvt. Ltd. and M/s TMI Rollon Engineering Pvt. Ltd., 4th Phase, 8th Cross, Peenya Indl. Area, Bangalore - 560 058 (hereinafter referred to as "the Applicants") against the Orders-in-Appeal Nos. 243 & 244/2013-CE dated 16.05.2013 and 235/2013-CE dated 13.05.2013 passed by the Commissioner of Central Excise (Appeals-I) Bangalore and Order-in-Appeal No. 122/2017-CE dated 04.08.2017 passed by the Commissioner of Central Excise (Appeals-II) Bangalore.

2. The issue in brief is that the Applicants are engaged in manufacture of precision turned components falling under Chapter Heading No. 8481 of the Central Excise Tariff Act, 1985. The Applicants had filed rebate claims and was issued Show Cause Notices for rejecting the rebate claims on the grounds of limitation of time alleging that the claims had been filed after statutory period of one year from the Lct Export date. The adjudicating authority the Assistant Commissioner/Joint Commissioner of Central Excise, E-2 Division, Bangalore-II Commissionerate vide respective Order-in-Original rejected their rebate claims as time barred. Aggrieved, the Applicants then file Appeals before the Commissioner of Central Excise (Appeals-I)/ (Appeals-II) Bangalore. The Commissioner(Appeals) then vide respective Order-in-Appeals reject the appeals. The details are as given below:

Sr.No.	Rebate claim (Rs) and date	Nos. of ARE 1	Period of ARE 1s	O in O No. & date	O in A No. & date	Revision Application No
1	3,42,197 dt 2.4.12 3,37,078 dt 3.4.12	13 nos 26 nos	22.4.10 to 10.5.10 30.10.09 to 18.1.10	105/2012(R) dt 25.6.12 106/2012(R) dt 25.6.12	243 & 244/2013- CE dated 16.05.2013 235/2013 CE dated 13.05.2013	F.No.195/731/2013-RA
2	1,87,306 dt 22.6.11	24 nos	11.5.10 to 14.6.10	91/2011(R) dt. 25.10.11	122/2017 CE dated 04.08.2017	F.No.195/781/2013-RA
3	1,71,837 dt 23.4.14	09 nos	14.3.13 to 29.5.13	271/2014(R) dt. 5.9.14		F.No.195/28/SZ/2017-RA

3. Being aggrieved, the Applicants then filed the current three Revision Applications on the following grounds :

- (i) The Applicants submit that orders of the lower authorities are erroneous and unsustainable in law.
- (ii) They could not submit the rebate claims within one year as they had not realized the export realization within that time.
- (iii) For availing the rebate of duty, the primary requirement is the export of excisable goods. In this case, there is no dispute about the export of goods. Rule provides that once it is established that the goods have been actually exported, then even if some or all the requirements set out in the notification issued are not fulfilled, the exporter will be entitled to rebate of duty.
- (iv) Under Rule 18 read with Notification No. 19/2004-CE NT dated 06.09.2004 (as amended), the claim of rebate of excise duty accrues as soon as the excise duty paid goods are exported. Neither Rule 18 nor Section 11B contemplates that if the application for rebate of duty is not made within the period of limitation, the accrued right to rebate of duty lapses. The Applicants had claimed the rebate on the basis of Notification No. 19/2004-CE NT dated 06.09.2004 and they had fulfilled all the conditions of the notification.
- (v) Nowhere in the above Notification or in the Rule 18 of the Central Excise Rules, 2002, talks about the submission of claim within one year. There is also no mention about the applicability of limitation under Section 11B of Central Excise Act, 1944.
- (vi) The Notification No. 19/2004-CE NT was issued in supersession of earlier Notification No. 41/94-CE(NT) dated 12.12.1994. Para 1(iv) of the Notification No. 41/94-CE(NT) wherein the time limit was prescribed as per Section 11B. However, the Government has consciously omitted the above condition of submission within the time

limit prescribed under Section 11B in the present Notification No. 19/2004-CE NT. Thereby the rebate claim submitted by the Applicants are not time barred. In this they relied in the case of Dorcas Market Makers Pvt. Ltd Vs Commissioner of C.Ex.(Appeals), Chennai [2012-TIOL-108-HC-MAD-CX]

- (vii) The Applicants refute the reason mentioned in the Order-in-Original denying the rebate. In para 3 of the Order-in-Original, the Assistant Commissioner states that *"as per 11B(2)(a) of the CEA 1944 states tht the 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. Thus rebate of duty paid on goods removed for export very much covered under Sec. 11B. Therefore the limitation is applicable to rebate claims under Rule 18 of CE Rules 2002."* The above statement is factually incorrect and not relevant to the facts of the case. The Section 11B(2)(a) states to refund the rebate instead of crediting to the Fund. Thus, the reason given by the adjudicating authority is incorrect and the same is liable to be set aside on this ground alone.
- (viii) The Applicants prayed that the Orders-in-Original be set aside and consequential relief may be allowed.

4. A personal hearing in these cases were held on 10.12.2019 which was attended by Shri Prabhat B.H. and Shri Jayesh Upadhyay, both authorized representatives, on behalf of the Applicants. The Applicants submitted that BRC was delayed due to delay in remittances, hence there was delay in filing rebate claims.

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. Government observes that the issue involved in the instant Revision Application is whether Applicants are entitled for the rebate claims which was

rejected on the grounds of limitation or not, even though such delay was due to reason that the Applicants had not realized the export realization within that time.

7. The Applicant's argument 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. This contention is not found legally tenable as for refunds and rebate of duty, Section 11B of the CEA is the relevant statutory provision. 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. Hence, Government find that 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 the rebate claim within 1 year is squarely applicable to the rebate of duty when dealt under Rule 18. Rule 18 is not independent from Section 11B. Further there is no provision under Section 11B, to condone any delay. Applicant has argued that they could not submit the rebate claims within one year as they had not realized the export realization within that time. In this regard, the provisions of Para 2.4 of Chapter of CBEC's Excise Manual of Supplementary Instructions are very clear which state that

"In case any document is not available for which Central Excise or Customs Department is solely accountable, the claim may be received so that the claim is not hit by time-limitation period".

Here in the current case, Government finds that the Applicant failed to take appropriate care to comply with the laid down statutory time-limit and therefore, the rebate claim was rightly rejected as time-barred.

8. Government relies on the judgment of the Hon'ble Supreme Court dated 09.02.2016 in the case of UOI Vs Concord Fortune Minerals (I) P. Ltd. [2017 (349) ELT 3 (S.C.)]

Writ jurisdiction not to be invoked to act contrary to law – Appeal against judgment of Single Judge disposed of by making stray observation relating to letter which was not on record before Division Bench Neither merits of case gone into nor adjudication done on views of Single Judge Also, liberty granted to writ petitioner to prefer appeal and if within time as indicated, to be heard on merit – IELD : In respect of statutory provisions governing limitation, even while acting under Article 226 of Constitution of India High Court has to enforce rule of law and ensure that authorities/ organs of States act in accordance in accordance with law – Writ jurisdiction cannot be invoked for directing authorities to act contrary to law - Matter remanded to Division Bench for re-hearing appeal on merits [paras 3,4,5,6]

Appeals allowed.

9. The Government notes that the Hon'ble High Court Madras who while dismissing writ petition filed by Hyundai Motors India Ltd., [reported in 2017 (355) E.L.T. 342 (Mad.)] upheld the rejection of rebate claim filed beyond one year of export by citing the judgment of In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai reported in 2015 (324) E.L.T. 270 (Mad.) and held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder :-

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."*

10. 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.

11. 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.

12. In view of the above position, Government finds no infirmity in the Orders-in-Appeal Nos. 243 & 244/2013-CE dated 16.05.2013 and 235/2013-CE dated 13.05.2013 passed by the Commissioner of Central Excise (Appeals-I) Bangalore and Order-in-Appeal No. 122/2017-CE dated 04.08.2017 passed by the Commissioner of Central Excise (Appeals-II) Bangalore and therefore, upholds the same and rejects the Revision Applications filed by the Applicants being devoid of merits.

13. So ordered.

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

615-617
ORDER No. /2020-CX (WZ)/ASRA/Mumbai DATED 04.09.2020.

To,
M/s Rollon Hydraulics Pvt. Ltd.
M/s TMI Rollon Engineering Pvt. Ltd.,
4th Phase, 8th Cross, Peenya Indl. Area,
Bangalore - 560 058.

Copy to:

1. The Commissioner of CGST & Central Excise(Appeals-I), 16/1, 5th floor, SP Complex, Lalbagh Road, Bangalore - 560 027
2. The Commissioner of Central Tax, North West Commissionerate, Bangalore, 2nd floor, South Wing, BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru - 560 051.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.