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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

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F.No.195/11/2014-RA

Date of Issue:

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ORDER NO. 627 /2020-CX (WZ)/ASRA/MUMBAI DATED 14.09.2020 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.

Applicants : M/s Manish Chemicals, Ahmedabad

Respondents : Commissioner(Appeals-V), Central Excise, Ahmedabad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No 56/2013(Ahd-1)CE/AK/Commr(A)/Ahd dated 24.10.2013 passed by the Commissioner(Appeals-V), Central Excise, Ahmedabad.

## ORDER

This Revision Application is filed by M/s Manish Chemicals, 380/381-A, Phase-II, GIDC, Vatva, Near Water Tank, Ahmedabad - 382 445 (hereinafter referred to as "the Applicant") against Order-in-Appeal No 56/2013(Ahd-1)CE/AK/Commr(A)/Ahd dated 24.10.2013 passed by the Commissioner(Appeals-V), Central Excise, Ahmedabad.

2. Briefly the Applicant had filed a rebate claim dated 14.05.2013 for Rs. 2,17,338/- (Rupees Two Lakhs Seventeen Thousand Three Hundred and Thirty Eight Only) under Rule 18 of Central Excise Rules, 2002. The adjudicating authority, Assistant Commissioner, Central Excise, Division-III, Ahmedabad-I vide Order-in-Original No.MP/2040/AC/2013-Reb dated 12.08.2013 rejected the rebate claim as time barred as the goods were exported on 16.11.2009 and whereas the rebate claim was filed on 14.05.2013. Aggrieved, the Applicant then filed appeal with the Commissioner(Appeals-V), Central Excise, Ahmedabad who vide Order-in-Appeal No 56/2013(Ahd-1)CE/AK/Commr(A)/Ahd dated 24.10.2013 rejected the appeal and upheld the Order-in-Original dated 12.08.2013.

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

- (i) The criteria of excise duty refund/ rebate is that the goods must be exported and the payment must be received. In this case, they had already exported the goods and payment was received by them against same.
- (ii) They had not filed the full set of their rebate claim within the prescribed limit as per the Rule 18 of Central Excise Rules, 2002. They had not filled the claim within that period was not due their lapse or negligence. It was because of non-receipt of the original EP copy of Shipping Bill and ARE-1 from the customs, which is a much to

file excise rebate claim. They received the original EP copy of Shipping Bill and ARE-1 from Customs only on 04.05.2013 and then filed the rebate claim on 13.04.2013 which is within 10 days of receipt of the papers from the customs. If the Applicant would have received the papers within the prescribed time limit, then they would have definitely lodged the rebate claim within the prescribed time limit with the Central Excise Office, Ahmedabad, as they have been doing regularly.

- (iii) The Applicant had tried to submit the rebate claim with the Central Excise Office, Ahmedabad without ARE-1 and Shipping Bill within one year from the date of export, however, it was not accepted. Had it been accepted as an incomplete application issuing them the 'deficiency letter', their rebate claim would not have been debarred.
- (iv) The Applicant could not file the rebate claim within one year from the date of export because they did not receive the original ARE-1 and EP copy of Shipping Bill from the Customs, and which they received after 3 years and 6 month from the date of export. Immediately within 10 days of the receipt, they filed the rebate claim. Thus they have fulfilled all the conditions required to become eligible for the excise duty refund. The so-called non-compliance referred by the Commissioner(Appeal) is not for the fault or negligence/ignorance of the law of the Applicant.
- (v) Applicant prayed that they rebate claim be sanction at the earliest.

4. Applicant vide letter dated 10.10.2019 waived off personal hearing and requested matter to be decided on the ground of their documents as well on the basis of their statement of facts & appeal.

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

6. The issue involved in the instant Revision Application is whether Applicant is entitled for the rebate claim which was rejected on the grounds of limitation or not, even though such delay was due to delay in Customs Department issuing EP copy of the Shipping Bill and ARE-1.
7. 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 of Central Excise Rules, 2002 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 finds 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 had received EP copy of Shipping Bill and ARE-1 only 03.05.2013 from Customs and therefore delay has occurred. 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".*

8. Here in the current case, Government observes that the Applicant in their submission have stated that on 09.04.2011 *"We informed the C.Ex. Office, Ahmedabad the whole matter in details why we could not file our claim for Excise Rebate till then along with the supporting documents"* and subsequent letters dated 10.05.2011 and 09.06.2011 informing that they are waiting for the S/B, ARE- from Customs. Further, the Application submitted that *"We had tried to submit our rebate claim with the C.Ex Excise Office, Ahmedabad without ARE and S/B within one year from the date of export, however, it was not accepted. Had it been accepted by them as an incomplete application issuing us the 'deficiency letter', our rebate claim would not have been debarred."* However, no copies of the said letters were produced along with the submission before this authority. Government is in agreement with the findings of the Commissioner(Appeal) that

*"17. ....In this case, the rebate claim was filed after expiry of one year period from date of export. The appellant could have filed the rebate claim without the documents which were not available with appellant, but they have not filed the claim within stipulate time limit, hence, provision of Paragraph 2.4 of Chapter IX of the Manual Supplementary Instructions is not applicable in this case."*

Hence 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.

9. 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 – HELD : 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.*

10. The Government notes that the Hon'ble High Court Madras 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.


11. 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.

12. 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.

13. In view of the above position, Government finds no infirmity in the Order-in-Appeal No 56/2013(Ahd-1)CE/AK/Commr(A)/Ahd dated 24.10.2013 passed by the Commissioner(Appeals-V), Central Excise, Ahmedabad and therefore, upholds the same and rejects the Revision Application filed by the Applicant being devoid of merits.

14. So, ordered.

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

ORDER No. 627/2020-CX (WZ)/ASRA/Mumbai DATED 14.9.2020.

To,

M/s Manish Chemicals,  
(A Division of M/s Mcfills Enterprises Pvt Ltd.)  
380/381-A, Phase-II, GIDC,  
Vatva, Near Water Tank,  
Ahmedabad - 382 445.

Copy to :

1. The Commissioner of GST & CX, Ahmedabad South, Central Excise Bhavan, Ahmawadi, Ahmedabad - 380 015.
2. The Deputy / Assistant Commissioner, Division-III, Ahmedabad-I
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.