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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.198/56/2014-RA

Date of Issue:

ORDER NO. 629/2020-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.

Applicant : Commissioner of Central Excise, Rajkot.

Respondent : M/s Philips Carbon Black Ltd., Gujarat.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. RJT-EXCUS-000-APP-21-14-15 dated 02.05.2014 passed by the Commissioner(Appeals-I), Central Excise, Rajkot.

## ORDER

This Revision Application is filed by the Commission of Central Excise, Rajkot (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. RJT-EXCUS-000-APP-21-14-15 dated 28.04.2014 passed by the Commissioner(Appeals-I), Central Excise, Rajkot.

2. The issue in brief is that M/s Philips Carbon Black Ltd., Survey No. 47, Village - Mokha, Taluka-Mundra, District-Kutch, Gujarat (herein after as 'the Respondent'), manufacturer exporter had filed rebate claim of Rs. 41,72,751/- (Rupees Forty One Lakhs Seventy Two Thousand Seven Hundred and Fifty One Only) on 29.11.2012. The Deputy Commissioner, Central Excise, Division Gandhidham vide Order-in-Original No. 723/2012-13 dated 20.02.2013 rejected the rebate claim under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 on the grounds that the claim was not filed within one year from the date of sailing of vessel, so the claim was hit by the limitation of time as provided under Section 11B of Central Excise Act, 1944. Aggrieved, the Respondent then filed appeal with the Commissioner(Appeals-I), Central Excise, Rajkot who vide Order-in-Appeal No. RJT-EXCUS-000-APP-21-14-15 dated 28.04.2014 set aside the Order-in-Original dated 20.02.2013 and allowed the appeal.

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

- (i) The Appellate authority erred in holding that limitation prescribed under Section 11B cannot be made applicable, when the claim is filed under Notification No. 19/2004-CE.
- (ii) It is clear that the rebate claims are governed by Section 11B of Central Excise Act, 1944 and the limitation prescribed therein also applied to the rebate claim. In the current case, the goods were exported on 30.01.2011, whereas the rebate claim was filed on 27.02.2012 i.e. beyond a period of one year from the date of export. The rebate claim was, thus, clearly hit by the

limitation prescribed under Section 11B of the Act, and consequently not admissible, as rightly held by the adjudicating authority. In this they relied in the case of Everest Flavours Ltd [2012 (282) ELT 481 (Bom)] and Ashwin Fasteners of Ashwin Panchal [2010 (258) ELT 174 (Guj)]

- (iii) The Appellate authority has placed reliance on the judgment of the Madras High Court rendered in the case of Dorcas Market Makers Pvt. Ltd., Chennai [2012 (281)ELT 227 (Mad/HC)]. In this, a two member Bench of the Bombay High Court in the case of Everest Flavours Ltd. supra, disagreed with the said judgment passed by the single member judge in the case of Dorcas Market Makers Pvt. Ltd., Chennai. Thus, it appears that the Commissioner(Appeal) has erred in relying upon the case law of Dorcas Market Makers Pvt. Ltd., supra.
- (iv) When the statute has specifically brought within the sweep of Section 11B a claim for rebate, it cannot be postulated that Rule 18 of the Central Excise Rules, 2002 would operate independent of the provisions of Section 11B. Thus the finding the Commissioner(Appeal) that limitation prescribed under Section 11B cannot be made applicable when the claim is filed under Notification No. 19/2004-CE, is erroneous and contrary to the provisions of the Act. Moreover, notification being subordinate legislation, cannot prevail over the Act. The impugned order is, thus, liable to be set aside.
- (v) The Applicant prayed that the impugned Order-in-Appeal be set aside.
4. The Respondent filed cross objections on the following grounds:
- (i) The Order passed by the Commissioner(Appeal) is just and proper and do not require any interference.
- (ii) Respondent relied on the decision of a Division Bench of Madras High Court in Ford India Pvt Ltd Vs Assistant Commissioner of CE, Chennai [2011 (272) ELT 353 (Mad)] wherein, it had been held that a rebate claim, being a beneficial scheme, cannot be denied on mere technicalities. The Assessee is also wish to relied on the decision made in In Re : Dagger Forst Tools Ltd. - 2011 (271) E.L.T. 471 (G.O.1.) wherein, it had been stated that the rebate

claims filed in respect of the exports cannot be hit by limitation, even if certain documents are found to be incomplete and when the rebate claims had been returned. Technical deviation or procedural lapses ought to be condoned if there is sufficient proof of export of duty paid goods.

- (iii) It was more so as Department has not disputed export of duty paid goods, and correlation between goods cleared from Unit where they were manufactured to those from where they were exported stood established. Neither the Lower Authority nor the Appellant Commissioner had contested the crucial fact and therefore it can be said that the all the substantial condition of the notification 19/2004-CENT) had been fulfilled.
- (iv) It is a settled legal position that for availing the rebate of duty, the primary requirement is the export of excisable goods. Rule 18 specifically provides that once it is established that the goods have been actually exported then even if some or all of the requirements set out in the notification issued under Rule 18 are not fulfilled, the exporter will be entitled to rebate of duty. Under Rule 18, the claim for rebate of excise duty accrues as soon as the excise duty paid goods are exported. Section 11B of the Act provides limitation within which the claim for rebate of duty is required to be made. 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. Therefore, if the application for rebate of duty is not made within the period of limitation prescribed under Section 11B only, the remedy is barred and not the substantive right to claim rebate of duty accrued under Rule 18. In other words, the limitation prescribed under Section 11B only deals with the procedural law and not the substantive law. The reliance was place on the case of M/s Uttam Steel Limited vs UOI [2003 (158) E.L.T. 274 (Born.)].
- (v) In view of the above judgment delivered by the various courts, it can be say and submit that the rebate claim which is substantial incentive for the exporter cannot be rejected merely on purely technical / procedural ground and therefore the delay occurred in the filing of the said rebate claim ought

to be condone considering the fact that all the other conditions are satisfied by the Respondent and the Lower Appellate Authority had done so. Accordingly Rejection of rebate was bad as substantive fact of export was not in doubt and rebate being a beneficial scheme; it should have been interpreted liberally. Therefore the contention of the Appellant Commissioner is proven to be redundant only and therefore the appeal is not tenable in law and accordingly must not be entertained by your kind lordship in the interest of justice.

- (vi) It is basic intention of the Government of India that the export goods should not contained taxes and therefore various inventive schemes are also made available to the exporter to adduce the export quantum and also to afford the exporter to compete with the other international player in cost effective manner. Therefore if the exporter is not allowed to gain the duty amount on account of some procedural requirements, the Central Excise department is also not allowed to unjustly enriched from the duty amount which is paid in respect of exported goods and therefore the amount of rebate must be restored in the Cenvat credit account again if the benefit is not available to the Respondent.
- (vii) The ground taken by the Commissioner(Appeal) was just procedural and it cannot have a bearing on the substantive requirement of rebate claim and therefore the Order-in-Appeal must be considered as just and proper and does not required any interference

5. A personal hearing in these cases were fixed on 15.06.2018, 16.01.2010 and 22.01.2020. On 22.02.2020, Shri S.C. Sahoo, Assistant Commisisoner, Central Excise, Gandhi Nagar attended the hearing on behalf of the Applicant and none appeared on behalf of the Respondent. The Applicant submitted that the Order-in-Appeal has erred on limitation point and reiterated the grounds of revision application. Applicant relied upon earlier GOI orders.

6. 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.

7. The issue involved in the instant Revision Application is whether Respondent is entitled or not for the rebate claims under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 which was rejected on the grounds of limitation.

8. The Respondent's argues that under Rule 18, the claim for rebate of excise duty accrues as soon as the excise duty paid goods are exported. Section 11B of the Act provides limitation within which the claim for rebate of duty is required to be made. 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. Therefore, if the application for rebate of duty is not made within the period of limitation prescribed under Section 11B only, the remedy is barred and not the substantive right to claim rebate of duty accrued under Rule 18. In other words, the limitation prescribed under Section 11B only deals with the procedural law and not the substantive law. Government finds that the Respondent in their rebate claim had not given any reason for the delay in the filing the rebate claim within one year.

9. The refunds and rebate of duty are governed by Section 11B of the Central Excise Act, 1944. In addition to limitation of time, other substantive 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 of 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.

10. Further there is no provision under Section 11B, to condone any delay. Respondent 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 Respondent had 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 by the adjudicating authority.

11. 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. The relevant Paragraph of the order is extracted hereunder :-

29. *In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), it has been held as follows :*

5. *The claim for refund made by the appellant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-*

*"(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;.....*

*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."*

12. Therefore, 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



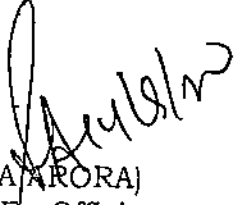
from the relevant date. Government finds no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

13. 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.

14. In view of the above position, Government finds no infirmity in the Order-in-Original No. 723/2012-13 dated 20.02.2013 and set asides the Order-in-Appeal No. RJT-EXCUS-000-APP-21-14-15 dated 28.04.2014 passed by the Commissioner(Appeals-I), Central Excise, Rajkot.

15. The Revision application is allowed on above terms

16. So ordered.

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

ORDER No. 629/2020-CX (WZ)/ASRA/Mumbai DATED 14.09.2020.

To,  
The Commissioner of Central Goods & Service Tax,  
Plot No. 82, Sec-8,  
Opp Ramleela Maidan, Kutch,  
Gandhidham- 370 201.

Copy to:

1. M/s Philips Carbon Black Ltd., 31 Netaji Subhas Road, Kolkata-700 001
2. The Deputy Commissioner of Central Goods & Service Tax, Plot No. 82, Sec-8, Opp Ramleela Maidan, Kutch, Gandhidham- 370 201.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.