



**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

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F NO. 195/154/14-RA

Date of Issue:

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ORDER NO. 633 /2020-CX (WZ) /ASRA/MUMBAI DATED 15.09.2020  
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 : M/s Sripathi Paper and Boards Pvt. Ltd.

Respondent : Commissioner of Customs, Central Excise & Service Tax,  
Madurai.

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.03/2014 dated  
03.02.2014 passed by the Commissioner of Central Excise  
(Appeals), Madurai.

**ORDER**

This Revision Application is filed by M/s Sripathi Paper and Boards Pvt. Ltd. Namarkarithanpatti Village, Sukkiravarpatti, Anaikuttam (P.O.), Sivakassi (herein after as 'the Applicant') against the Order-in-Appeal No. TNL-CEX-000-APP-003-2014 dated 03.02.2014 passed by the Commissioner of Central Excise (Appeals), Madurai.

2. The Applicants are manufacturer of Kraft Paper falling under CETII of 4810 of Central Excise Tariff Act, 1985. The Applicant had filed rebate claim dated 27.07.2012 amounting to Rs. 19,83,341/- in respect of Duplex Board exported by them vide various ARE-1s during the period from July 2011 to October 2011. The said claim was filed with the Sivakasi Central Excise Divisional Office on 21.08.2012. On scrutiny of the claims, it was found that in case of 13 shipments (ARE-1s), the claim had been filed after the expiry of statutory period of one year, from the date of export. The Assistant Commissioner, Central Excise, Division Sivakasi vide Order-in-Original No. 55/2013 (Rebate) dated 24.06.2013 sanctioned rebate amounting to Rs. 13,70,852 and rejected the rebate claim to the tune of Rs. 6,12,489/- as time barred as per the provisions of Section 11B of the Central Excise Act, Aggrieved, with that part of the Order-in-Original where the rebate claim to the tune of Rs. 6,12,489/- was rejected as time barred, the Applicant filed appeal with the Commissioner of Central Excise (Appeals), Madurai who vide Order-in-Appeal No. TNL-CEX-000-APP-003-2014 dated 03.02.2014 rejected their appeal and upheld the Order-in-Original dated 24.06.2013

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

- (i) The time limit of one year will not apply to rebate claim made under Notification No. 19/2004-CE(NT) dated 06.09.2004 in terms of Rule 18 of Central Excise Rules, 2002. The goods were exported by the Applicant in terms of Rule 18 of Central Excise Rules, 2002. As per this rule, an exporter can export goods on payment of duty and can claim the same as rebate from the Government. There is another option given to the exporter whereby he can claim rebate of excise duty paid on materials used in the manufacturing or processing of export.
- (ii) The rebate claims are subject to conditions and limitations prescribed by Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended. Para 2 of this Notification prescribed the conditions and limitations.
- (iii) There is no dispute with regard to the fact that they filed the rebate claim before the Assistant Commissioner of Central Excise having jurisdiction over the factory along with the original copy of the application (ARE-1).
- (iv) There is no time limit of one year from the date of shipment prescribed in the Notification for claiming the rebate amount. Further, there is no time limit prescribed in Rule 18 of Central Excise Rules, 2002 also for claiming the rebate amount. In the absence of any time limit both in the rule as well as in the notification issued under the said Rule, the rejection of rebate claim on the grounds of time limit is bad in law and unsustainable. In this regard they relied upon the case of Dorcas Market Makers Pvt. Ltd Vs Commr. of C.Ex., Chennai [2012-TIOL-108-HC(MAD)].
- (v) Hence the time limit of one year referred to in the SCN was totally beyond the scope of rule 18 and Notification No. 19/2004-CE(NT) issued there under. Therefore, the Applicant prayed that their claim of rebate of Rs. 6,12,489/- may kindly be allowed.

(vi) The Applicant prayed that the impugned order be set aside and allow their appeal be allowed.

4. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No	OIA No. & dt	Revision Application date recd	No. of delay	Application for COD date
1	TNL-CEX-000-APP-003-2014 dated 03.02.2014 passed by the Commr. of Central Excise (Appeals), Madurai (recd on 25.02.2014)	F.NO. 195/154/14-RA 28.05.2014	03 days delay	Filed on 27.06.2014

Appellant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

5. Personal hearing in this case was fixed on 09.01.2020 and Shri M Saravanan, Consultant appeared on behalf of the Applicant. The Applicant submitted that the COD of 2 days may be allowed. The Applicant reiterated the written submissions filed with the Revision Application.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government first proceeds to discuss the issue of delay in filing this revision application. The revision application is filed with a delay of 3 days and Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

8. The issue involved in the instant Revision Application is whether Applicant is entitled for the rebate claims amounting to Rs. 6,12,489/- which was rejected on the grounds of limitation or not.

9. The Applicant has relied on the judgment of the Hon'ble Madras High Court in the matter of Dy. Commissioner of C. Ex., Chennai Vs. Dorcas Market Makers Pvt. Ltd. [2012-TIOL-108-HC(MAD)]. The Government however finds that the same 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;.....

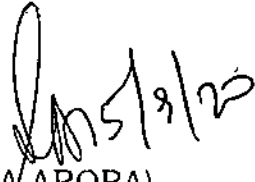
8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different 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."

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 Order-in-Appeal No. TNL-CEX-000-APP-003-2014 dated 03.02.2014 passed by the Commissioner of Central Excise (Appeals), Madurai and, therefore, upholds the same and dismisses the Revision Applications filed by the Applicant being devoid of merits.

13. So, ordered.

  
(SEEMA ARORA)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No ~~633~~/2020-CX (WZ) /ASRA/Mumbai Dated 15.09.2020 .

To,  
M/s Sripathi Paper and Boards Pvt. Ltd.  
Namarkarathanpatti Village,  
Sukkiravarpatti,  
Anaikuttam (P.O.),  
Sivakassi.

Copy to:

1. The Commissioner of Customs, Central Excise & Service Tax, Madurai.
2. The Asstt. Commissioner of Central Excise, Sivakasi Division, Central Revenue Building, 1/749, Thiruthangal, Pallatti Road, Sivakasi - 626 130.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.