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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. 195/42/2014-RA / 2572

Date of Issue: 21.06.2022

ORDER NO. 637/2022-CX(WZ)/ASRA/MUMBAI DATED 16.6.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. Mahle Engine Components India Pvt. Ltd.

Respondent : Commissioner of Customs & Central Excise, Indore

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
IND/CEX/000/APP/192/2013 dated 23.12.2013 passed by
the Commissioner (Appeals), Customs & Central Excise,
Indore.

ORDER

This Revision Application is filed by M/s. Mahle Engine Components India Pvt. Ltd. situated at Plot No. 9 to 11, Sector-III, Industrial Area, Kheda, Pithampur (M.P.) (hereinafter referred to as "the Applicant") against Order-in-Appeal No. IND/CEX/000/APP/192/2013 dated 23.12.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Indore.

2.1 Brief facts of the case are that the Applicant had filed a rebate claim totally amounting to Rs.10,40,268/- under Rule 18 of the Central Excise Rules, 2002 for the duty paid on the export of finished goods namely 'Cam Shaft Cummins' falling under Chapter Heading No. 84099199 of the Central Excise Tariff Act, 1985. The rebate claim was filed on 16.02.2012 and it covered exports carried out between Nov'10 to May'11.

2.2 A Show Cause Notice was issued to the Applicant proposing to reject part of the rebate claim totally amounting to Rs.4,94,973/- on the ground of being time barred since it was filed beyond one year period of limitation as prescribed under Section 11B of the Central Excise Act, 1944. After due process of law, the Adjudicating Authority vide the Order-in-Original No. 279/DC/Demand/2012-13 dated 14.01.2013 rejected the rebate claim amounting to Rs.4,94,973/-, being time barred. Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

(a) That the Ld. lower appellate authority has erred in not granting re-credit of duty paid on export goods, in cenvat credit account, when the claim for rebate of duty has been rejected on ground of time bar.

(b) That there is no dispute that goods under consideration had been exported within the prescribed period of six months from the

date of clearance of goods from the factory of production. The applicant had paid duty on clearance of good for export is also not in dispute. The issue involved is whether the govt is entitled to retain the amount of duty paid on clearance of exported goods, when the claim of rebate of duty has been denied on any ground. Since, no tax/duty is payable/chargeable on export goods, the duty paid on the said goods deserves to be re credited to the cenvat credit account of the applicant, as the limitation of one year applies only to refund/rebate of duty in cash.

(c) Moreover, had the goods been cleared under bond, no duty would have been payable and only the amount of duty was to be debited in the bond and the same was to be credited, after the proof of export is submitted to the authorities concerned. So, when no duty was payable on export goods, the duty paid, if any, has to be regarded as deposit with the govt, and the same has to be returned to the applicant and cannot be allowed to be retained by the govt.

(d) That in any case, the duty paid on clearance of export goods was only in the nature of security and the same deserves to be returned to the applicant in the account from which it was paid, after the goods stand exported within the prescribed period. This amount can be retained by the govt only when the goods are not proved to be exported within six months from the relevant date. The Ld. Lower appellate authority has relied upon para 13.6 of the CBEC Manual to deny re credit to the applicant, whereas it can be pressed into service only if it is proved that goods were not exported within six months from the relevant date.

On the above grounds, the applicant has prayed that the impugned order may be set aside to the extent agitated above and the claim of the

applicant for re-credit of the said amount, which has been held to be time barred, may be allowed in cenvat credit account.

4. Personal hearing in the case was fixed for 29.03.2022. Shri D.K.Tyagi, Advocate attended the online hearing and submitted that their claim was rejected on time barred ground under Section 11B of the Central Excise Act, 1944. He submitted that they should be allowed re-credit of duty paid incase rebate is not sanctioned.

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

6. Government observes that the main issues in the instant case are whether a rebate claim filed after one year is time barred, being hit by limitation in terms of section 11B of the Central Excise Act, 1944 and whether in case a rebate claim is rejected, being time barred, re-credit of duty paid at the time of export can be allowed?

7.1 Government observes that the relevant portion of Section 11B of the Central Excise Act, 1944 reads as under:

Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

(1) Any person claiming refund of any ¹[duty of excise and interest, if any, paid on such duty] may make an application for refund of such ²[duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of ¹[duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such ²[duty and interest, if any,

paid on such duty] had not been passed on by him to any other person :

.....

Explanation. - For the purposes of this section, -

(A) "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;

(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

.....

Thus Government observes that the time limitation of one year for filing a rebate claim has been mandated in the statute. Further, no provision for extension of this period or for condonation of delay has been made.

7.2 Government observes that in the instant case the details of exports wherein rebate claim has been rejected are as under:

S. No.	ARE-1 No./Date	FOB Value (in Rs.)	Total duty paid (in Rs.)	Date of shipment
1	94/11.11.2010	16,29,608/-	1,72,712/-	22.11.2010
2	99/23.11.2010	2,65,147/-	26,555/-	09.12.2010
3	103/27.11.2010	2,75,061/-	29,277/-	08.12.2010
4	122/29.12.2010	25,37,612/-	2,66,429/-	11.01.2011

The rebate claim was filed was on 16.02.2012. Thus it is evident that rebate claim in respect of all the aforementioned four shipments is hit by limitation

of one year. It is well settled that a statutory requirement is to be complied mandatorily and cannot be foregone.

7.3 Government now takes up the other contention of the Applicant, viz. to re-credit the amount involved in the rebate rejected as 'no duty is required to be paid on export of goods'. Government observes that the relevant Rule 18 of the Central Excise Rules, 2002 reads as under:

RULE 18. Rebate of duty. — *Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.*

Explanation. - *For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.*

Government observes that the contention of the applicant that no duty is required to be paid on export of goods is a general one and the same need to be evaluated with appropriate limitations and conditions. An exporter is required to pay the applicable duty at the time of clearance of goods from the factory besides complying with other stipulated norms for claiming rebate. This duty paid at the time of export can be claimed as rebate under aforementioned Rule subject to compliance of specified conditions and limitations. In the instant case the applicant has not complied with the statutory requirement of filing the claim within one year of shipment of goods, resulting in rejection of their claim as time barred. Once a rebate claim is rejected as time barred, allowing re-credit of duty paid at the time of clearance will be legally untenable as it would tantamount to allowing rebate, which is actually time barred.

8. In view of the findings recorded above, Government finds no infirmity in the impugned Order-in-Appeal No. IND/CEX/000/APP/192/2013 dated 23.12.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Indore and hence upholds the same.

9. The impugned Revision Application is disposed of on the above terms.

Shrawan
10/6/22
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 637/2022-CX (WZ)/ASRA/Mumbai dated 10.6.2022

To,
M/s. Mahle Engine Components India Pvt. Ltd.,
Plot No. 9 to 11, Sector-III, Industrial Area,
Kheda, Pithampur (M.P.).

Copy to:

1. Commissioner of CGST,
Ujjain Commissionerate,
29, GST Bhavan, Administrative Area,
Bharatpuri, Ujjain - 456 010.

~~2. Sr. P.S. to AS (RA), Mumbai~~
3. Guard file
4. Notice Board.