

SPEED POST



F.No. 195/104/2018-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6th FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 24/3/21.....

Order No. 64/2021-CX dated 24-3-2021 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal Nos. CHD-EXCUS-001-APP-525-528-17-18 dated 28.02.2018 passed by the Commissioner (Appeals), CGST & CE, Chandigarh.

Applicants : M/s Vardhman Polytex Ltd., Solan

Respondent : Commissioner of CGST, Shimla.

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## ORDER

A revision application no. 195/104/2018-RA dated 28.05.2018 has been filed by M/s Vardhman Polytex Ltd., Solan (hereinafter referred to as the applicant) against Order-in-Appeal nos. CHD-EXCUS-001-APP-525-528-17-18 dated 28.02.2018, passed by the Commissioner (Appeals), CGST, Chandigarh, wherein the appeal filed by the applicant against Orders-in-Original Nos. 1050-1053/AC/R/Baddi/2017 dated 29.09.2017 has been rejected.

2. Brief facts of the case are that the applicant is engaged in the manufacture of Grey Cotton Yarn falling under CETH 5205 of the Central Excise Tariff Act, 1985. The applicant filed four rebate claims, totally amounting to Rs. 22,41,678/-, with the jurisdictional central excise authorities under Section 11B of Central Excise Act, 1944 read with Rule 18 of Central excise Rules, 2002 in respect of duty paid on goods exported by them. The said rebate claims were rejected by the Assistant Commissioner, CGST Division, Baddi on the grounds that the claims were submitted after the expiry of period of one year, as provided under Section 11B of the Central Excise Act, 1944. Aggrieved, the applicant filed an appeal before Commissioner (Appeals) which was rejected on the same grounds. The instant revision application has been filed on the ground that the limitation provided under Section 11B of Central Excise Act, 1944 is not applicable in the case of rebate filed under Rule 18 of Central Excise Rules, 2002, as the relevant notification no. 19/2004-CE(NT) dated 06.09.2004, containing the procedure to be adopted for claiming rebate, did not specify any limitation, as on the date when subject exports took place.

3. Personal hearing was held on 19.03.2021, in virtual mode. Sh. Rupender Singh, Advocate, appeared for the applicant. He reiterated the contents of revision application and, with reference to the compilation filed, highlighted the following:

(i) The exports in the present case were made on 21.10.2014, 09.03.2015 and 10.03.2015 and rebate claims were filed on 29.05.2017.

(ii) The relevant notification 19/2004-CE(NT) was amended, vide notification no.18/2016-CE(NT) dated 01.03.2016 to adopt the limitation specified in Section 11B for the purposes of rebate.

(iii) Since the exports in the present case were made before the amendment made, vide notification dated 01.03.2016, the limitation period under Section 11B cannot be applied in these cases. He relied upon the case of Kusum Lamba Vs. Commissioner of Central Excise, Indore [2019(366) ELT43 (SC)] in this behalf.

(iv) The amendment cannot be applied retrospectively to deny their substantive right. He referred to case of Mithilesh Kumari Vs. Prem Behari Khare [1989(40) ELT 257 (SC)].

No one attended the hearing for the respondents and no request for adjournment has also been received. Hence, the matter is taken up for decision on the basis of facts available on record.

4.1 The Government has examined the matter. It has been admitted that the subject rebate claims were filed after one year from the date of export of goods. The issue that is required to be decided is whether the limitation period provided in the Section 11B of the Central Excise Act, 1944 shall be applicable, as contended by the department, or, since, there was no provision specifying limitation in the notification no. 19/2004-CE(NT) at the time of exports, no limitation would apply, as contended by the applicant.

4.2 The Government observes that as per Clause (A) of the Explanation to Section 11B, "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable material used in the manufacture of goods which are exported out of India. Further, as per Clause (B) of the said Explanation "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 were 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 dispatch of goods by the Post Office concerned to a place outside India;”

Thus, Section 11B not only provides that the rebate of duty of excise is a type of refund of duty, the relevant date for determining limitation in the cases of rebate is also specifically provided. As such, on a plain reading of Section 11B, there should be no scope for doubt that the limitation provided under Section 11B shall be applicable to the cases of rebate.

4.3 The applicant has disputed this plain and unambiguous reading of Section 11B on the grounds that the notification no. 19/2004-CE(NT) that specifies the ‘conditions and limitations’ and the ‘procedures’ for claiming the rebate of excise duty on excisable goods exported under Rule 18 did not specify any limitation at the time exports took place in the present case. Since, subsequently, vide amendment dated 01.03.2016, such limitation was adopted in the notification no. 19/2004-CE(NT), therefore, limitation would apply only for the exports made on after 01.03.2016. In this regard the judgment of the Hon’ble Madras High Court in the case of *Deputy Commissioner of Central Excise, Chennai vs. Dorcas Market Makers Pvt. Ltd.* [2015(321) ELT45(Mad.)] has been heavily relied upon.

4.4 The Government observes that in the Dorcas’s case, the exports had been made during the period 01.07.2006 to 31.01.2007, when

there was no limitation prescribed under the notification no. 19/2004-CE(NT). The Hon'ble High Court after noticing the provisions of the Explanation under Section 11B, held that Rule 18 has to be construed independently of the provisions of Section 11B and accordingly upheld the position, now, canvassed by the applicant.

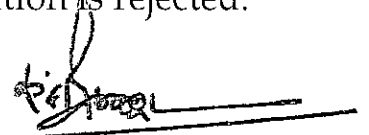
4.5 On the other hand, the Hon'ble Bombay High Court in the case of *Everest Flavours Ltd. vs. Union of India* [2012(282) ELT481(Bom)] has held that "*Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law*". Similarly, in the case of *Orient Micro Abrasives Ltd. vs. Union of India* [2020(371) ELT380(Del.)] the Hon'ble Delhi High Court has agreed with the decision in the case of *Everest Flavours Ltd.* (supra) and has held that "*20. Section 11B (1) of the Act read with the Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of the goods, whereagainst rebate is claimed. There is no provision which permits relaxation of this stipulated one year time-limit*". It is to be observed that the date of export in case of *Everest Flavours Ltd.* was 12.02.2006 whereas in the case of *Orient Micro Abrasives Ltd.* the exports took place between 06.06.2012 to 08.06.2012.

4.6 The Government further observes that in a matter relating to the limitation in respect of claim of rebate of central excise duty paid on excisable goods exported under Rule 12 of the Central Excise Rules, 1944 (i.e., the Rules preceding the Central Excise Rules, 2002), the Hon'ble Supreme Court has held that the requirement of Section 11B cannot be waived or dispensed with by subordinate legislation. This case of *Union of India vs. Uttam Steel Ltd.* [2015(319) ELT598(SC)] arose out of an appeal filed against the judgment of the Hon'ble Bombay High Court wherein the High Court had observed that the "*right to rebate of duty accrues under Rule 12 on export of goods. That right is not obliterated if application for rebate of duty is not filed within the period of limitation prescribed under Section 11B. In fact, Rule 12 of the Excise Rules*

*empowers the excise authorities to grant rebate of duty even if some procedural requirements are not fulfilled." In appeal, the Hon'ble Supreme Court, following the ratio of the judgment by the nine-judge bench in Mafatlal Industries Ltd. vs. Union of India [1997(89) ELT247(SC)] held that "13. .... It is clear from Section 11B (2) proviso (a) that a rebate of duty of excise on excisable goods exported out of India would be covered by the said provision. A reading of Mafatlal Industries (Supra) would also show that such claims for rebate can only be made under Section 11B within the period of limitation stated therefor. This being the case, the argument based on Rule 12 would have to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B".*

4.7 Thus, it is clear that the issue whether the limitation provided under Section 11B of the Central Excise Act, 1944 is applicable to the cases of rebate under Rule 18 of the Central Excise Rules and whether the effect of the provision of Section 11B can be dispensed with by subordinate legislation stands settled by the judgment of the Hon'ble Supreme Court in the case of Uttam Steel Ltd. (supra). As such, the argument, that absence of provision regarding limitation in the notification no. 19/2004-CE(NT) during the relevant period and its subsequent insertion w.e.f. 01.03.2016 would negate the effect of specific provisions made under Section 11B, cannot be sustained.

5. In view of the above, the Government finds no infirmity in the impugned Order-in-Appeal and the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

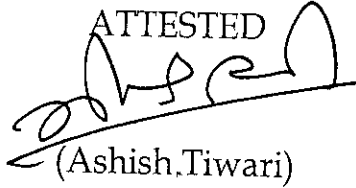
M/s Vardhman Polytext Ltd.,  
Nangal Nihla/Uperla,  
Swarghat Road, Nalagarh, Distt. Solan (HP).

G.O.I. Order No. 64/21-CX dated 24-3-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Shimla, Ground & 1<sup>st</sup> Floor, Commercial Parking Complex, Chotta Shimla-171002.
2. Commissioner (Appeals), CR Building, Plot No. 19-A, Sector 17-C, Chandigarh-160017
3. Sh. Rupender Singh, Advocate, M/s BSM Legal, Advocates & Solicitors, Q-6, Hauz Khas Enclave, New Delhi-16.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. *Spare Copy.*

ATTESTED



(Ashish.Tiwari)

ASSISTANT COMMISSIONER (R.A.)