REGISTERED SPEED POST

सत्यमेव जयते

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. 195/17/14-RA/88 Date of Issue: 05.01.2021

ORDER NO.668/2020-CX (WZ) /ASRA/MUMBAI DATED 17.12.2020 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 Voith Hydro Pvt Ltd. Vadodara.

Respondent : Commissioner of Central Excise, Customs & Service Tax, Vadodara-I.

Subject : Revision Application filed under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD/EXCUS-001-APP-405/2013-14 dated 04.10.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara.

ORDER

This Revision Application has been filed by M/s Voith Hydro Pvt Ltd. Vadodara (hereinafter referred to as "the applicant") against Order-in-Appeal No. VAD/EXCUS-001-APP-405/2013-14 dated 04.10.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara.

2. Brief facts of the case are that the applicant filed a rebate claim for an amount of Rs.5,07,143/- (Rupees Five Lakh Seven Thousand One Hundred and Forty Three only) on 07.12.2012 being the duty paid on goods exported.

3. As per the provisions of Section 11B of Central Excise Act, 1944, any person claiming any refund / rebate, could file an application for refund of such duty before expiry of one year from the relevant date. As it appeared that in the above case, the rebate claim had not been filed within stipulated period of one year from the relevant date (i.e. date of Shipment/ export), a Show Cause Notice was issued to the applicant by the original authority proposing to reject the said rebate claim for contravention of Section 11(B) of Central Excise Act, 1944. The Original authority, viz. Deputy Commissioner, Central Excise & Customs, Div.I, Vadodara-I, after following due process of law rejected the rebate claims on the ground of limitation under the provisions of Section 11B of the Central Excise Act, 1944, vide Order in Original No. Rebate/1316/Voith/Dn-I/12-13 Dated 05.03.2013.

4. Being aggrieved by the said Order in Original, the applicant filed appeal before Commissioner (Appeals), Vadodara, who vide Order in Appeal No. VAD/EXCUS-001-APP-405/2013-14 dated 04.10.2013 (impugned Order) upheld the Order in Original and rejected the appeal of the applicant.

5. Being aggrieved with the impugned Order, the applicant filed the Revision Application mainly on the following grounds :

5.1 They bring the following factual errors that have been noticed in the impugned order-in-original passed by the Deputy Commissioner of Central Excise & Customs. Division — I. Vadodara — I.

a. In para — 2 of the Order-in-Original it is mentioned that "The claims were received in this office on 12.06.12". Whereas the correct date that the claim was filed on 07.12.2012.

b. In para — 3 of the Order-in-Original the date of show cause notice is mentioned as 22.03.2012. Whereas the correct date of show cause notice is 09.01.2013.

c. In para — 3 of the Order-in-Original it is mentioned that the claimant has failed to follow the condition laid down under Notfn. No. 19/2004 CE(NT) dated 06.09.2004 issued under Section-11B of Central Excise Act, 1944. In fact the said notification No. 19/2004-CE (NT) dated 06.09.2004 is issued under Rule-18 of the Central Excise Rules, 2002.

d. There is no reference of date of proof of export in the Order-in-Original, which should be the base for counting One Year time limit for purpose of Section-11B of the Central Excise Act. 1944. However, for kind reference the correct date of Airway Bill No. HAWBEKF02192 is 16.11.2011 and not 10.11.11 as mentioned in the Order-in-Original and correct date of export as per the said airway bill and the relevant ARE-1 is 20.11.2011.

5.2 They had filed the Rebate Claim dated 07.12.2012 for an amount of Rs.5,07,143/- being the duty paid on the exported goods. They had exported the goods under ARE-1 No. 02/16.11.2011 on payment of duty. The rebate claim was filed on 07.12.2012 which was delayed by 17 days considering the date of shipment as per Airway Bill which was 20.11.2011. In view of provisions of Section 11 B of the Central Excise Act. 1944, the rebate claim was required to be filed within One Year when the goods were physically left the country i.e. date of exports as mentioned on the airway bill.

5.3 They had filed the detail reply of Show Cause Notice dated 09.01.2013 vide their letter dated date 18.1.2013, wherein they had submitted that the rebate claim was not time barred. It was only procedural lapse on their side. The Adjudicating Officer has rejected the rebate claim without giving due consideration to their defense reply and without giving any reasoning for such rejection of claim. Hon'ble Commissioner (Appeals), also rejected the appeal without giving due consideration to their grounds of appeal. Therefore, the impugned Order is not reasoned and justified. The impugned order is ex-facie bad in law and contrary to the provisions of law and is not a speaking order and Adjudicating Officer has not given any contrary reason or reasons for disagreements with the defense in reply to the show cause notice submitted by them.

5.4 There is no dispute regarding the export made vide ARE-1 out of India. There is also no dispute regarding the appropriate duty paid on the goods exported. So, they had fulfilled the entire basic requirement which was necessary for claiming the rebate claim. The only delay of 17 days in filing the rebate claim was the reason for rejecting the claim does not appear to be justified and proper. The delay of 17 days in filing the rebate claim from its actual due date is to be considered as procedural lapse. This nominal delay of nearly 17 days was beyond their control, as they could not procure the relevant papers from the CHA for filing the rebate claim in time.

5.8 Once it is established that goods have been actually exported then even if some or all of the requirements set out as per the law, the exporter will be entitled to rebate claim. So, it is their bonafide belief that if the rebate claim is otherwise in order, the procedural lapse of filing within One Year cannot be considered rigidly. When the goods on which appropriate amount of duty is paid in accordance with law are exported, the statute provides for rebate of duty as an incentive to export goods. The rebate of duty is given with intent to boost the exports. Therefore, it is

very clear that delay in filing the claim is a procedural lapse and which will not make the rebate claim inadmissible or liable for rejection on the grounds that the same was not filed within the prescribed time limit.

5.9 In support of their contention they had relied upon the following judgments while filing their reply to the show cause notice. However, the Adjudicating Authority has not recorded anything in his findings in contrary to how he disagreed with the following decisions.

> i) M/s Uttam Steel Ltd Vs. Union Of India which clearly shows the intention of the Hon'ble Bombay High court that " **The right is not obliterated if the application for rebate of duty is not filed within the period of limitation prescribed under Section 11 B. In fact. Rule 12 of the Excise rules empowers the excise authorities to grant rebate of duty even if some of the procedural requirements are not fulfilled** " .
>
> Further, in the concluding para-45, Hon'ble High Court has laid down an absolute rule as under: " **Alternatively, once it is held that the limitation under Section 11 B is procedural**, then any amendment to ..... **thus the petitions would be entitled to rebate of duty**. In the light ..... Raised by the petitioners."
>
> It is very clearly ruled that limitation under Section 11B is procedural and substantive benefit cannot be denied on the grounds of technicalities which is settled principle as held by the various judicial forums and also followed by the quasi judicial authorities too. There are no grounds to differ from this established principle in the present case.
>
> (ii) M/s. Madhav Steel Vs. Union Of India states that " **Technicalities attendant upon a statutory procedure should not be cut down especially where such technicalities are not essential for the fulfillment of the legislative purpose. And benefit should not be denied on technical grounds,**"
>
> iii) CCE, Ahmadabad Vs. M/s. Dishman Pharmaceuticals & Chemicals Ltd
>
> **"Denial of the refund on the technical grounds is not justified."**

5.10 In addition to above case laws, they further submit the following decisions of the Hon'ble CESTAT and the High Courts with a request to kindly give due consideration to these decisions.

> 1. Para 5 and para 6 of CESTAT order No. A/1446/2010-WZB/AND dated 17.09.2010 in case of Manubhai & Co Vs. CST, Ahmedabad,
>
> 2. Para 23 of Hon'ble Bombay High Court's s decision dated 10 08.2010 in case of M/s Madhav Steel Vs. Union of India,
>
> 3. CESTAT, Ahmedabad Order dated 22.10.2010 in case of CCE. Ahmedabad-II Vs M/s Dishman Pharmaceuticals & Chemicals Ltd. Ahmedabad:-
>
> Para 7 of Board vide its Circular No. 112/6/2009, dated 12-3-2009 discussed at para 3 of the order.
>
> Para 5 :-Denial of refund on the technical grounds is not justified :

5.11 The principles laid down by various judiciaries are that the rebate claims cannot be rejected (1) on the grounds that the same were not filed within the prescribed time limit, if otherwise admissible or in Order and (2) filing of rebate within the prescribed time limit is procedural lapse in filing of rebate claim will not affect the substantive right to claim rebate of duty and will not make the rebate inadmissible or liable for rejection on this ground alone.

6. A Personal hearing in this case was held on 14.12.2020 via video conferencing which was attended online by Shri Prakash Mirchandani, Advocate and Shri Pritish Patel, AGM, on behalf of the applicant. They requested to allow the substantial benefit and further submitted that procedural lapse should not result in denial of the benefit.

7. Government has carefully gone through the relevant case records available in case files, and perused the impugned Order-in-Original and Order-in-Appeal. Government observes that the applicant had also filed written synopsis during the previous hearing held on 03.03.2020.

8. In the said synopsis filed on 03.03.2020, the applicant reiterated the statements of facts and grounds of appeal of the Revision Application and additionally relied upon following case laws :-

- Visaka Industries Ltd. Versus Commissioner of Central excise, Guntur, [2014(301)E.L.T. 564 (Tri.bang)]
- Minerals & Metals Trading Corpn. of india versus Collector of Customs [1993(66)E.L.T.89 (Tribunal)]
- Monnet International Ltd versus Commissioner of C. Ex., New Delhi [2017(003)G.S.T.L.380(Tri.-Del)]
- Joint Secretary (Revision) in their Order No. 387/2006 dated 24.05 2008 in case of BPCL, Mumbai has already taken a view that minor lapses cannot deny the substantive benefits of rebate.

In view of their submissions, the applicant pleaded that the claimed rebate amount is a big amount which they had rightly paid on the goods exported out of India and therefore, the same may kindly be sanctioned as the same is otherwise in order and admissible.

9. Government observes that the rebate claim filed by the applicant was rejected by the Original Authority as the same had not been filed within stipulated period of one year from the relevant date (i.e. date of Shipment/ export) specified under Section 11B of Central Excise Act, 1944. Whereas the applicant has contended that there was delay of only 17 days in filing the rebate claim from its actual due date and the same is to be considered as procedural lapse and that this nominal delay

of nearly 17 days was beyond their control, as they could not procure the relevant papers from the CHA for filing the rebate claim in time.

10. Government observes that applications for rebate of Central excise duty paid on excisable goods, consequent on their export, are required to be filed within one year of the date of their export, under Section 11B of Central Excise Act, 1944. Sub-Section (1) of the Section 11B, and the relevant clauses of the explanation to Section 11B, for ready reference, are reproduced below: –

> ***"11B. Claim for refund of duty and interest, if any, paid on such duty.*** *— (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such 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 (1) 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 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 duty and interest, if any, paid on such duty had not been passed on by him to any other person :*
>
> ***Provided*** *that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act:]*
>
> ***Provided*** *further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.*
>
> ***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*
>
> *(ii) if the goods are exported by land, the date on which such goods pass the frontier, or (iii) if the goals are*

exported by post, the date of despatch of goods by the Post Office concerned to a place outside India.

(Emphasis supplied)

11. From the above, it would be seen, (i) refund claims are required to be made within one year of the "relevant date" (ii) the expression "refund" includes rebate of excise duty paid on goods exported outside India , the condition of filing the rebate claim within 1 year is squarely applicable to the rebate of duty when dealt with under Rule 18 of the Central Excise Rules 2002 which is not independent from Section 11B, ibid. Further, there is no provision under Section 11B of Central Excise Act, 1944, to condone any delay.

12. Government observes that the applicant has relied upon Hon'ble Bombay High Court's Judgment in the matter of Uttam Steel Ltd. v. UOI [(2003 (158) E.L.T. 274 (Bom.)] wherein Hon'ble Court had held that law of limitation is only procedural and not substantive law, for claims made beyond time, no provision made that accrued right to claim rebate would lapse, therefore only remedy is barred and not the right to claim rebate. Government observes that the aforesaid decision of the Hon'ble Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a case where the refund claim was filed beyond the period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Hon'ble Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof.

13. Moreover, the Union of India had filed Civil appeal No. 7449 of 2004 against the aforesaid Hon'ble Bombay High Court Order in Uttam Steel Ltd. and Hon'ble Supreme Court vide its Order dated 05.05.2015 [2015(319)E.L.T. 598 (S.C.)] has reversed and set aside Hon'ble Bombay High Court Order dated 12.08.2003., by observing as under :-

13. *Shri Bagaria's argument based on the proviso to rule 12(1) would obviously not have any force if Section 11B were to apply of its own force. 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. Equally, the argument that on a bond being provided under Rule 13, the goods would have been exported without any problem of limitation would not hold as the exporter in the present case chose the route under Rule 12 which, as has been stated above, is something that can only be done if the application for rebate had been made within six months. We, therefore, allow the appeal and set aside the Bombay High Court judgment dated 12-8-2003.

In view of the above, reference made by the applicant to case law, viz. Uttam Steel Ltd. v. UOI [(2003 (158) E.L.T. 274 (Bom.)] is in fact, against their contention as it holds contrary to what applicant wants.

14.1 The facts of another case law relied upon by the applicant viz. Madhav Steel V Union of India [2010 TIOL 575 HC-MUM-CX = 2016 (337) E.L.T. 518 (Bom)] are also different in as much as in that case the petitioner's rebate claims were rejected on the ground that the procedure required under the Board's Circular, had not been followed by the exporter and the goods originally procured by the petitioners from M/s. Shah Alloys Limited, had not been exported. In this context that the Court relied upon the observations of the Supreme Court in the case of Mangalore Chemicals and Fertilizers Limited v. Deputy Commissioner reported in 1991 (55) E.L.T. 437 which held that the technicalities attendant upon a statutory procedure should be cut down where they are not necessary for fulfilment of legislative purpose.

14.2 Similarly in the case of CCE, Ahmedabad v. Dishman Pharmaceuticals & Chemicals Ltd. reported in 2010-TIOL-1639-CESTAT-AHM = 2011 (21) S.T.R. 246 (Tribunal) has also held that service provider was registered under different category cannot be made a basis for denial of refund claim. Hence, denial of refund on the technical grounds is not justified.

14.3 In Manubhai & Co. Vs CST Ahmedabad [2011 (21) S.T.R. 65 (Tri. - Ahmd.)], also relied upon by the applicant, the refund of service tax was rejected as necessary declaration required to be filed in terms of Notification 12/2005-S.T. had been filed after exports. Relying on the precedent Tribunal decisions, Hon'ble Member (T) allowed the appeal filed by appellant agreeing with the view taken by the Tribunal that procedural requirement cannot be used to deny a substantive benefit and thus held that the requirement of filing of declaration is of procedural nature under notification and delay, if any, can be condoned.

14.4 In Visaka Industries Ltd. [2014 (301) E.L.T.564 (Tri.-Bang.)] Vs Commissioner of Central Excise, Guntur, Hon'ble Tribunal observed that the

refund claim was filed well within prescribed period of one year under Section 11B of Central Excise Act, 1944.

14.5 In Minerals & Metals Trading Corpn. of India Versus Collector of Customs [1993(66)E.L.T.89 (Tribunal)] relied upon by the applicant, is in fact serves the cause of the department than the applicant wherein Hon'ble Tribunal held that refund cannot be granted beyond the period of limitation contemplated under Section 27 of the Customs Act, 1962. Section 11B of the Central Excise Act, 1944 being *pari materia* with Section 27 of the Customs Act, 1962, the rebate claim in the instant case was required to be filed by the applicant within the time limit specified under Section 11B of Central Excise Act, 1944.

14.6 In Monnet International Ltd. [2017(3)GSTL 380 (Tri-Del) the case was related to return of deposit of service tax and not refund of service tax and hence Hon'ble Tribunal held that limitation prescribed under Section 11B of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 is not applicable.

14.7 As regards reliance placed on Joint Secretary (Revision)'s Order No. 387/2006 dated 24.05 2008, the same has been distinguished by Joint Secretary (Revision) in his subsequent Order No. 77/2015-CX dated 07.09.2015 in Re:- M/s Indian Oil Corporation Ltd., while deciding a similar issue. Hence, this case law is also of no avail to the applicant.

14.8 As the aforesaid decisions have been rendered in the context of different set of facts as discussed above, the reliance on the same by the applicant is also misplaced and cannot be applied to the instant case. Non filing of an application for refund/rebate of duty before expiry of one year from the relevant date in contravention of the provisions of Section 11B of Central Excise Act, 1944, is not a condonable technical ground.

15. Government also observes that Hon'ble High Court Madras dismissed writ petition filed by Hyundai Motors India Ltd. [reported in 2017 (355) E.L.T. 342 (Mad.)] and upheld the rejection of rebate claim filed beyond one year of export in its order dated 18.04.2017. Hon'ble High Court in the said Order dated 18.04.2017 cited its own Order in Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), which had held that Rules cannot prescribe a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph (29) of the order is extracted hereunder :-

"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."

16. Government, applying the ratio of the aforesaid judgment and also in the light of the detailed discussions hereinbefore, holds that rebate claim filed after one year's time limit stipulated under Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 is clearly hit by time limitation clause and cannot be entertained. Therefore, the rebate claim filed by the applicant has correctly been rejected as time barred. Government, therefore, does not find reason to modify Order-in-Appeal No. VAD/EXCUS-001-APP-405/2013-14 dated 04.10. 2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara and therefore upholds the same.

17. The Revision Application is thus rejected being devoid of merit.

Shrawan 17/12/2020

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No668/2020-CX (WZ) /ASRA/Mumbai DATED 17.12.2020

To,
M/s Voith Hydro Pvt. Ltd.,
107,GIDC, Manjusar,
Taluka, Savali, Vadodara- 391 770.

Copy to:

1. Commissioner of CGST, Vadodara-II Commissionerate, GST Bhavan, Old Arkee Garba Ground, Subhanpura,Vadodara-390023
2. The Commissioner of CGST (Appeals), Central Excise Building, 1st Floor Annexe, Race Cource Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissionerof CGST Division-V (Manjusar), GST Bhawan, Subhanpura, Vadodara-390023.
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.