F NO. 195/1002/13-RA

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GOVERNMENT OF INDIA
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Mumbai- 400 005

F NO. 195/1002/13-RA/1248 Date of Issue: 23.02.2021

ORDER NO. 73/2021-CX (SZ) /ASRA/MUMBAI 04.02.2021 DATED 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 Gainup Industries Pvt Ltd.

Respondent : Commissioner of Central Excise, Madurai-2

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.110/2013 dated 30.08.2013 passed by the Commissioner of Central Excise(Appeals), Madurai.

ORDER

This Revision Application is filed by M/s Gainup Industries Pvt Ltd., 13/341, Dinigul-Batlagundu Highway, Ottupatti Post, Dindigul Dist. 624 708 against the Order-in-Appeal No.110/2013 dated 30.08.2013 passed by the Commissioner of Central Excise(Appeals), Madurai.

2. The brief facts of the case are that the Applicant is a manufacturer of Cotton Yarn. The Applicant had filed rebate claim dated 13.08.2012 for Rs. 2,23,403/- (Rupees Two Lakhs Twenty Three Thousand Four Hundred and Three Only) under Notification No. 19/2004-CE(NT) dated 06.09.2004 amended under Rule 18 of Central Excise Rules, 2002 for the goods exported under ARE-1 No. 043/2010-11 dated 09.08.2010 and 048/2010-11 dated 26.08.2010. On scrutiny it was observed that as required under the provisions of Section 11B of the Central Excise Act, 1944, the said claims were not filed within one year from the date of export i.e. Let export of the goods were 10.08.2010 and 27.08.2010 respectively. Hence the Applicant was issued a Show Cause Notice dated 06.09.2012. The Assistant Commissioner, Central Excise, Dindigul-II Division, Dindigul vide Order-in-Original No. MAD-CEX-000-ASC-172-12 dated 27.09.2012 rejected the rebate claim. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise(Appeals), Madurai who Order-in-Appeal No. 110/2013 dated 30.08.2013 rejected their appeal and upheld the Order-in-Original dated 27.09.2012.

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

(i) The Applicant had in their appeal before the Commissioner(Appeals) relied on the judgment of the Hon'ble Madras High Court in the ease of Dorcas Market Makers Pvt. Ltd. Vs. Commissioner of Central Excise.

[2012 (281) ELT 227 (Mad)], wherein para 8 has observed that the judgment of Hon'ble Supreme Court in the case of Collector of Central Excise, Jaipur vs. Raghuvar (India) Ltd [2000 (118) ELT 311 (SC)] would make it clear that Rule will act independently and any action taken under the rule to be considered independently; therefore Rule 18-B is not subject to Section 11 A of the Act; in that case, the claim is with regard to the rebate of the excise duty already paid by the manufacturer under Rule 18; if the said judgment is taken into consideration, the notification issued under Rule 18 of the Central Excise Rules which prescribes no time limit alone is applicable and Section 11B of Central Excise Act which prescribes 6 months time for claiming rebate would not be applicable to deny the rebate claim of the petitioner.

(ii) The Commissioner (Appeals) in the impugned order has observed that the above judgment has not reached finality and hence it cannot be followed. The Commissioner (Appeals) has not recorded any findings as to whether the revenue has filed an appeal with Higher Appellate Court against this judgment or any Higher Appellate Court has granted stay of the operation of the judgment. Hence, the findings given by the Commissioner (Appeals) are not legally sustainable. The Tribunal in the case of Nutrine Confectionary Co. (P) Ltd vs. CCE (Appeals), Hyderabad reported in 2006 (205) ELT 553 has held that judicial discipline — precedent — Subordinate Court/Tribunal/High Court bound by the judgment rendered by Higher Court. Hence, the above judgment of Hon'ble High Court in the case of Dorcas Market Makers Pvt Ltd vs. Commissioner of Central Excise was binding on the lower authority and it should have been followed.

(iii) The Applicant had sought for re-credit of the duty paid on the export goods in their Cenvat credit account, in the event, rebate was not allowed by the lower authorities. In the impugned order the claim of re-credit was

denied on the ground that since the rebate claim was time barred, it cannot be said that the duty was paid under without authority of law and the principles of restitution cannot be applied. For this, the applicant submit that the Revisionary Authority GOI Order IN RE: Balakrishna Industries Ltd [2011 (271)ELT 148 (GOI)] has held that the Government cannot retain the amount collected without any authority of the law and the same has to be returned to applicant in the manner it was paid - Applicant is entitled to take credit in their Cenvat account in respect of the amount paid as duty on freight and insurance charges - Applicant was not even required to make a request with the department for allowing re-credit in their cenvat account - Adjudicating officer/Commissioner (Appeals) could have themselves allowed this instead of rejecting the same as time barred. Applying the ratio of above decision relied on by the Applicant, the Commissioner (Appeals) should have allowed re-credit of the duty paid as sought for by the Applicant.

(iv) The denial of credit negates the mandate under Article 265 of Constitution of India which stipulates that the duty shall be levied and collected by authority of law. Retention of duty paid on goods exported clearly violates the above constitutional provision.

(v) The Applicant prayed that impugned Order-in-Appeal dated 30.08.2013 be set aside with consequential relief.

4. A Personal hearing in this case was fixed on 21.8.2019, 01.10.2019, 07.01.2021, 14.01.2021 and 21.01.2021. The Applicant vide their letter dated 06.01.2021 submitted that due to some pre-occupied work, they could not attend the personal hearing on the scheduled date through video conference. Hence the appeal may please be decided based on the written submission without hearing them.

5. The Applicant in their written submission submitted the following:

(i) The impugned Show Cause Notice/Order was issued based on Section 11B(1) Explanation (A) and (B)(a)(i) of Section 11B(5) of Central Excise Act, 1944 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended last by Notification No. 18/2016-CE (NT) dated 01.03.2016 issued under Rule 18 of Central Excise Rules, 2002.

(ii) The export covered under their said ARE-1 was exported on 16.03.2014 prior to the issue of Notification No. 18/2016-CE (NT) dated 01.03.2016 which came into effect from 01.03.2016. Hence their rebate claim was not hit by time bar

(iii) In the instant case, on perusal of the certification of the Customs Officers at the back side of the No. 39/2010-11 dated 02.08.2010 and 41/2010-11 dated 09.08.2010, it was found that the goods covered under the said ARE-1s were exported on 06.08.2010 and 13.08.2010 and the subject claim of rebate was filed on 02.09.2011 after expiry of one year from the relevant date.

(iv) The Applicant relied on the following decisions in support of their claim which have held that Rule 18 is independent and there is no prescription of time limit in the said Rule and the Notification issued there under: -

(a) Dy. Commr of C.Ex. Vs Dorcas Market Makers Pvt Ltd. [2015 (321) ELT 457 (Mad)],

(b) JSL Lifestyle Ltd Vs UOI [2015 (326) ELT 265 (P&H)],

(c) Gravita India Ltd Vs UOI [2016 (334) ELT 321 (RAJ)],

(d) Dy. Commr of C.Ex. Vs Dorcas Market Makers Pvt Ltd. [2015(325) ELT A104 (S.C.)]

(v) The above decisions are applicable only for the case where rebate claim was filed before the issue of the Notification No. 18/2016-CE (NT) dated

01.03.2016 and in the instant case, the claim was filed before issue of the said notification and as such, the impugned rebate claim is liable to be granted.

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 observes that the issue involved in the instant Revision Application is whether time limit of Section 11B is applicable for claiming rebate and whether Applicant is entitled for the rebate claim which was rejected on the grounds of limitation or not.

8. On perusal of the records, Government observes that the Applicant had filed rebate claim dated 13.08.2012 for Rs. 2,23,403/- for the goods exported under ARE-1 No. 043/2010-11 dated 09.08.2010 and 048/2010-11 dated 26.08.2010. On verification of the ARE-1s and respective Shipping Bills, it was found that the ships which carried export goods left India on 10.08.2010 and 27.08. 2010 respectively. Hence the Applicant was issued a Show Cause Notice dated 06.09.2012 and the adjudicating authority Assistant Commissioner, Central Excise, Dindigul-II Division, Dindigul vide Order-in-Original No. MAD-CEX-000-ASC-172-12 dated 27.09.2012 rejected the rebate claim as it was hit by limitation. Further it was held that once the rebate claim was rightly rejected as time barred, the allowing of re-credit in their Cenvat account of duty paid on exported goods, was legally incorrect as it would amount to allowing rebate as decided by the Government of India in the case of IN RE: B.B. Chemicals [2012 (280) ELT 581 (GOI)].

9. The Government observes that the Applicant in the Revision Application 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. [2015 (321) E.L.T. 45 (Mad.)]. The Government however finds that the same

Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd. [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 [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. Further, once the claim is rejected as time barred the allowing of re-credit in their Cenvat account of duty paid on exported goods is legally incorrect as it would amount to allowing rebate.

12. In view of the above position, Government finds no infirmity in the Order-in-Appeal No.110/2013 dated 30.08.2013 passed by the Commissioner of Central Excise(Appeals), Madurai and therefore, upholds the same.

13. The Revision Application filed by the Applicant is dismissed being devoid of merits.

Shrawan 4/2/21

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

ORDER No.73/2021-CX (WZ) /ASRA/Mumbai Dated 04.02.2021

To,
M/s Gainup Industries Pvt Ltd.,
13/341, Dinigul-Batlagundu Highway,
Ottupatti Post,
Dindigul Dist. - 624 708

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

Copy to:

1. The Commissioner of CGST, Central Revenue Building, Bibikulam, Madurai - 002.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.


Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt of India
Mumbai
मुंबई