

SPEED POST



F.No. 195/167/2018-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.. 9/4/21.....

Order No. 76/2021-CX dated 8-4-2021 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. 337(SRM)CE/JDR/2018 dated 22.03.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur.

Applicants : M/s Borana Pumps, Jodhpur

Respondent : Commissioner of CGST, Jodhpur.

ORDER

A revision application no. 195/167/2018-RA dated 10.07.2018 has been filed by M/s Borana Pumps, Jodhpur (hereinafter referred to as the applicant) against the Order-in-Appeal no. 337(SRM)CE/JDR/2018 dated 22.03.2018, passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur, wherein the appeal filed by the applicant against Order-in-Original No. 286/2016-R dated 09.12.2016, passed by the Assistant Commissioner, Central Excise, Jodhpur, has been rejected.

2. Brief facts of the case are that the applicant is engaged in the manufacture of submersible pumps and spare parts falling under CETH 84137010 and 72042190 of the Central Excise Tariff Act, 1985. The applicant filed the rebate claim of Rs. 3,36,832/-, on 14.09.2016, under Rule 18 of the Central Excise Rules, 2002 against the exports made vide ARE-1 No. 004/14-15 dated 22.08.2014. The said rebate claim was rejected by the Assistant Commissioner on the grounds of limitation. Aggrieved, the applicant filed an appeal before Commissioner (Appeals) which was rejected. The instant revision application has been filed on the grounds that the limitation provided under Section 11B of the Central Excise Act, 1944 is not applicable in the case of rebate filed under Rule 18 of the Central Excise Rules, 2002, as the relevant notification. 19/2004-CE (NT) dated 06.09.2004, did not specify any limitation, as on the date when subject exports took place. The decisions of Hon'ble Punjab and Haryana High Court in the case of *JSL Lifestyle Ltd. vs Union of India* [2015 (326) ELT 265 (P&H)] and 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) ELT 45 (Mad.)] have been relied upon in this regard.

3. Personal hearing was held on 05.04.2021, in virtual mode. Sh. O.P. Agarwal, CA, appeared for the applicant and reiterated the contents

of the R.A. The written submissions/paper book filed by e-mail on 03.04.2021 and 05.04.2021 were also taken on record.

4.1 The Government has examined the matter. It is an admitted fact that the subject rebate claim was 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.

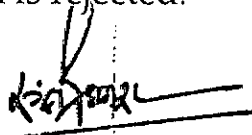
4.3 The applicant has disputed this plain and unambiguous reading of Section 11B on the grounds that the notification no. 19/2004-CE (NT) did not specify any limitation at the time exports took place in the present case. Since, subsequently, vide amendment dated 01.03.2016, such limitation was adopted in the notification no. 19/2004-CE (NT), therefore, limitation would apply only for the exports made on or after 01.03.2016. In this regard the judgment of the Hon'ble Madras High Court in the case of *Dorcas Market Makers Pvt. Ltd. (supra)* and that of Hon'ble Punjab and Haryana High Court in the case of *JSL Lifestyle Pvt. Ltd. (supra)* have been heavily relied upon.

4.4 The Government observes that these cases were also cited before the Commissioner (Appeals) who, however, relying upon the judgment of Hon'ble Supreme Court in the case of *Union of India vs. Uttam Steel Ltd. [2015 (319) ELT 598 (SC)]* did not accept the applicant's arguments. The judgment of the Apex Court in *Uttam Steel Ltd.* 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) ELT 247 (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”.

4.5 Thus, it is clear that the issue whether the limitation provided under Section 11B of the Central Excise, 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 11(B) 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 countenanced.

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


 (Sandeep Prakash)

Additional Secretary to the Government of India

M/s Borana Pumps,
 16, Behind Police Station, Basni Phase-II,
 Jodhpur(Rajasthan)- 342 005.

G.O.I. Order No. 76/21-CX dated 8-4-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Jodhpur, 117/5, PWD Colony, Ratanada, Jodhpur - 302005.
2. Commissioner (Appeals), Central Excise & CGST, Jodhpur.
3. Sh. O.P. Agarwal, CA, 56, Section 7, NPH Road, Jodhpur-342 003
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. ✓ Spare Copy.

ATTESTED

 (Ashish Tiwari)

ASSISTANT COMMISSIONER (R.A.)