

REGISTERED

SPEED POST



F.No. 195/221/2018-RA
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... 13/4/21.....

Order No. 88/21-C dated 13-4-2021 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 1106(CRM) CE/JDR/2018 dated 08.10.2018 passed by the Commissioner (Appeals) Central Excise & CGST, Jodhpur.

Applicant : M/s Shree Rajasthan Syntex Ltd. Dungarpur.

Respondent : Commissioner of CGST, Udaipur.

ORDER

A Revision Application No. 195/221/2018-RA dated 26.12.2018 has been filed by the M/s Shree Rajasthan Syntex Ltd., Dungarpur (hereinafter referred to as the applicant) against the Order-In-Appeal No. 1106(CRM)CE/JDR/2018 dated 08.10.2018, passed by the Commissioner(Appeals), Central Excise & CGST, Jodhpur, wherein the Order-in-Original No. 07/2017/R-CE (Ref) dated 06.09.2017, passed by the Assistant Commissioner, CGST Division-C, Udaipur, has been upheld.

2. The brief facts of the case are that the applicant had filed a rebate claim amounting to Rs. 2,63,501/- on 27.06.2017 under Rule 18 of Central Excise Rules, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004 in respect of the duty paid on export goods which were exported on 11.03.2016. The goods were exported vide ARE-I No. 46/SRSL/2015-16 dated 29.02.2016. The original authority rejected the rebate claims mainly on the ground that the same were filed beyond the period of one year of limitation period as prescribed under Section 11 B of the Central Excise Act, 1944. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal rejected the same.

3. The instant revision application has been filed mainly on the grounds that late filing of rebate claims is a mere technical and

- procedural infraction and rebate cannot be denied for this reason, being a substantive benefit.

4. Personal hearing, in virtual mode, was held on 13.04.2021. Sh. Anubhav Ladia, Director, attended the hearing on behalf of the applicant and reiterated the contents of the revision application. He stated that the rebate claim was filed admittedly beyond the statutorily provided period of one year. However, the duty had been paid on export goods. The procedural delay cannot be allowed to deprive them of their substantive right of rebate. Further, they are a small unit operating in a far flung area of Dungarpur, even during the COVID pandemic. In order to encourage them, the re-credit of duty paid be allowed if rebate cannot be sanctioned. Sh. Sanjay Lav, Assistant Commissioner, Division C, Udaipur attended the hearing for the respondent and reiterated the findings of the lower authorities.

5.1. The Government has examined the matter. As per Section 11B of the Central Excise Act, 1944, any person claiming any refund of duty of excise may make an application for refund of such duty before expiry of one year from the relevant date. Further, as per Clause (A) of the Explanation to Section 11B, the “ ‘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”. As per Clause (B) of the Explanation, the “*relevant date*” if the goods are exported by sea or air is the date on

which ship or aircraft in which such goods are loaded, leaves India. Thus, a rebate claim has to be filed within one year of export. In the present case, the export took place on 11.03.2016 whereas the claim was filed on 27.06.2017. Thus, undoubtedly, the claim was filed beyond the limitation period.

5.2. The Government observes that the Hon'ble Bombay High Court has, in the case of M/s Everest Flavours Ltd. vs. Union of India [2012 (282) ELT 481 (Bom)], 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.”

It is further observed that the Hon'ble Delhi High Court has, in the case of M/s Orient Micro Abrasives Ltd. vs. Union of India [2020 (371) ELT 380 (Del.)], agreed with the decision in Everest Flavours (supra) and has held that :

“20. Section 11B (1) of the Act read with Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of goods, where against rebate is claimed. There is no provision which permits relaxation of this stipulated one year time-limit.”

5.3. In the instant case, therefore, the rebate claim has been correctly rejected on the grounds of limitation.

6. As regards the submission of the applicant to grant re-credit of the amount in case rebate is not sanctioned, the Government observes that this will amount to indirectly sanctioning the rebate. The rebate which cannot be sanctioned directly can also not be sanctioned indirectly.

7. In view of the above, the Government finds no infirmity in the orders of the lower authorities. The revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Shree Rajasthan Syntex Ltd.,
"SRSL House", N.H. – 8, Pulla Bhuwana Road,
Udaipur (Rajasthan) -313 004.

Order No. 28/21-Cx dated 13-4-2021

Copy to:

1. Commissioner of Central Goods & Service Tax, Udaipur, 142-B, Sector-11, Hiran Magri, Udaipur (Rajasthan) – 313 002.
2. Commissioner (Appeals) Central Excise & CGST, Jodhpur.
3. Assistant Commissioner, CGST, Division-C, Udaipur, Rajasthan.
4. M/s. Anil Prahalad Rathi & Co., 1-C-4, R.C. Vyas Colony Bhilwara (Rajasthan)– 311 001
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

Attested


(Ashish Tiwari)

Assistant Commissioner (Revision Application)