REGISTERED SPEED POST

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. F.No.195/523/16-RA/4465 Date of Issue: 04.10.2022

ORDER NO. 923 /2022-CX (WZ) /ASRA/Mumbai DATED 30 -09-2022 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 Lanxess India Pvt. Ltd., Thane.

Respondent : Commissioner of CGST, Thane.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. CD/529/Raigad/2016 dated 29-07-2016 passed by the Commissioner (Appeals) of Central Excise, Mumbai-II.

ORDER

This Revision Application has been filed by M/s Lanxess India Pvt. Ltd., situated at LANXESS House, Plot No. A, 162-164, Road No.27, MIDC. Wagle Estate, Opp ITI College, Thane (West)-400604 (hereinafter referred to as "the applicant") against Order-in-Appeal No. CD/529/Raigad/2016 dated 29.07.2016passed by the Commissioner (Appeals) of Central Excise, Mumbai-II.

2. The brief facts of the case is that the applicant had filed six Rebate claim for an amount totaling to Rs.35,47,661/- under Rule 18 of the said Rules read with Notification No. 19/2004 CE (NT) dated 06.09.2004 for the duty paid on goods exported. The Rebate sanctioning authority vide Order in Original No.3388/AC (Rebate)/Raigad/15-16 dated 08-02-2016 rejected the said rebate claim on the following points: i) the rebate claims are time barred by limitation as provided in Section 11B of the Central Excise Act, 1944; ii) Non-submission of triplicate copy of ARE-1 in respect of 5 claims & iii) Duty payment is not proved for treating their duty payment as deposit.

3. Being aggrieved by the above mentioned Order-in-Original the applicant filed an Appeal before the Commissioner (Appeals) of Central Excise, Mumbai-II who vide Order-in-Appeal No. CD/529/Raigad/2016 dated 29.07.2016 upheld the Order in original dated 08-02-2016 and rejected the appeal filed by the applicant.

4. Being aggrieved by the afore mentioned Order in Appeal the applicant has filed the instant revision application mainly on the following grounds:

a) In impugned OIA Ld. Commissioner has alleged that rebate claim filed by Applicant are time barred as per Section 11AB of Central Excise Act, 1944. In this regard Applicant states and submits that Section 11AB is not applicable in the present case on the grounds that the basic fact that Limitation period prescribed under Section 11B of the Central Excise Act, 1994 is not applicable for the rebate claim filed under Rule 18 of the Central Excise Rules, 2002. This is because the Notification No. 19/2004-CE (NT) dated September 6, 2004 has superseded the previous Notification No. 41/94-CE (NT) dated September 12,1994, which prescribed the time limit for filing rebate claim under the then Rule 12 of Central Excise Rules, 1944. But, the Notification 19/2004 issued under Rule 18 of Central Excise Rules, 2002 does not contain the stipulated

condition of limitation for filing rebate claim. This was a conscious decision taken by the Central Government and hence, the limitation period prescribed under Section 11B is not applicable in the case of Rebate under Rule 18 of the Central Excise Rules, 2002.

b) The applicant relied on decision of the Honorable High Court in the case of Deputy Commissioner of Central Excise, Chennai Vs. Dorcas Market Makers Pvt. Ltd and Commissioner of Central Excise (Appeals), Chennai [2015-TIOL-820-HC MAD-CX] wherein the Supreme Court on condoned the delay and dismissed the SLP filed by Revenue and allowed the Rebate Claim without considering the limitation prescribed under Section 11B.

c) The Applicant also relied upon various decisions of higher authorities in support of their contentions, like

2014-TIOL-2373-CESTAT-MUM COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II VS M/s HINCON TECHNOCONSULT LTD ST Rule 4 of Export of Services Rules, 2005 provides for export of service without payment of tax as export of service is not exigible to tax- amount of tax deposited, therefore, has to be considered as deposit no time limit for refund of deposit as s.11B applies to refund of tax/duty only Revenue appeal dismissed: CESTAT [para 6]

2015-TIOL-98-CESTAT-MUM - M/s C K P MANDAL VS COMMISSIONER OF SERVICE TAX, MUMBAI-II-ST-Donations received from caterers not liable to Service Tax - Time bar u/s 118 of CEA, 1944 will apply only if demand has been made/paid as duty under the law since no such demand was made and the tax was not payable in law but Applicants were persuaded to pay the amount, refund not time barred - appellant entitled to refund along with interest: CESTAT [para 6, 6.1].

2014-TIOL-2897-CESTAT-MUM - M/s CLEARPOINT LEARNING SYSTEMS (INDIA) PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE, PUNE-III ST Refund limitation services exported outside India- limitation will not apply for claim of refund of CENVAT Credit in case of export of service in terms of Section 118 of CEA read with Rule 5 of

the CCR,2004 adjudicating authority is directed to grant refund other than on rejected amount for non production of input invoices - appeals allowed: CESTAT [Para 7].

c) Commissioner (Appeals) has referred to Para 8.4 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions 2005 and contended that since the basic document of Triplicate copy of ARE-1 was not submitted the rebate claims stand rejected. In this regard, the Applicant submitted that as per Para 8 of Chapter 8 of CBEC Excise Manual of Supplementary Instructions, following documents have been prescribed to be submitted at the time of filing of rebate claim:

i. A request on the letterhead of the exporter containing claim of rebate, A.R.E 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,

ii. Original copy of A.R.E.1

iii. Invoice issued under Rule 11

iv. Self-attested copy of shipping bill and

v. Self-attested copy of Bill of Lading

vi. Disclaimer Certificate (in case where claimant is other than exporter)

The Applicant submits that they have already submitted all the above prescribed documents at the time of filing rebate claim and hence rebate claim cannot be rejected on the ground that triplicate copy of A.R.E.1 is not submitted. The Applicant further submitted that they have followed the prescribed procedures and even if triplicate copy of A.R.E.1 is not submitted, then also there are various other documents like shipping bill, Mate Receipts & Bills of Lading etc. which were submitted along with the Rebate Claim Application. The details of shipping bill, rotation number, sailing date can be verified by the adjudicating authority from the concerned customs range office and their correctness can be verified.

d) Further, 3rd copy of ARE-1s bearing no. 2262, 2263, 2271, 2279 and 2286 and Mate receipt in respect of ARE-1 no 2262 have been lost and Applicant have filed FIR regarding the same. The copy of FIR along with original Central Excise Invoice Bearing No 2262, 2263, 2271, 2279, & 2286 were submitted during the personal hearing. Also, Original & Duplicate copies of these ARE-1s as well as other export documents such as Shipping Bills, Mate Receipts & Bills of Lading etc. were also submitted along with the Rebate Claim Applications.

e) Applicant submits that the rebate claim cannot be rejected merely due to non-submission of triplicate copy of ARE-1 as rebate / drawback etc. are export oriented schemes and merely technical interpretations of procedure etc. is to be avoided if the substantive fact of export having been made is not in doubt. Applicant relied upon various decisions in support of their contentions viz i) 2015 (315) ELT 520 (Bom) Zandu Chemicals Ltd. vs. Union of India; ii) 2013 (293) ELT 641 (Bom) UM Cables Limited vs/, Union of India; iii) Neptunus Power Plant Services Pvt. Ltd., 2015 (321)ET 160(GOI); iv) Formica India Division Vs Collector of Central Excise 1995 (77) ELT 511 (SC); v) Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner 1991 (55) ELT 437 SC; vi) Union of India Vs. Suksha International & Nutan Gems & Anr. - 1989 (39) ELT 503 (SC) & vii) Union of India Vs. A.V. Narasimhalu 1983 (13) ELT 1534 (SC)

f) Applicant submitted that Rule 19 of Central Excise Rules, 2002 provides for export of goods without payment of duty and hence the export of goods is not exigible to tax/duty. The amount of tax/duty deposited, therefore, has to be considered as deposit paid for claiming Rebate under Rule 18 of Central Excise Rules, 2002 and therefore, there is no time limit for refund of deposits as Section 11B of Central Excise Act, 1944 is applicable to refund of tax/duty only. Applicant relied upon the following decisions of higher authorities:

2014-TIOL-2373-CESTAT-MUM-COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II Vs M/s HINCON TECHNOCONSULT LTD - ST-Rule 4 of Export of Services Rules, 2005 provides for export of service without payment of tax as export of service is not exigible to tax amount of tax deposited, therefore, has to be considered as deposit - no time limit for refund of deposit as s.11B applies to refund of tax/duty only Revenue appeal dismissed: CESTAT [para 6]

2015-TIOL-98-CESTAT-MUM - M/s C K P MANDAL VS COMMISSIONER OF SERVICE TAX, MUMBAI-II-ST-Donations received from caterers not liable to Service Tax - Time bar u/s 118 of CEA, 1944 will apply only if demand has been made/paid as duty under the law since no such demand was made and the tax was not payable in law but Applicants were persuaded to pay the amount, refund not time barred - Applicant entitled to refund along with interest: CESTAT [para 6, 6.1].

2014-TIOL-2897-CESTAT-MUM-M/S CLEARPOINT LEARNING SYSTEMS (INDIA) PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE, PUNE-III ST- Refund - limitation - services exported outside India- limitation will not apply for claim of refund of CENVAT Credit in case of export of service in terms of Section 11B of CEA read with Rule 5 of the CCR,2004 adjudicating authority is directed to grant refund other than on rejected amount for non production of input invoices - appeals allowed: CESTAT (Para 7].

g) In Para 10 of impugned OIA Ld. Commissioner(Appeals) has stated that since the Applicant has not submitted Triplicate copies of ARE-1 itself proves that actual payment of duty has not been made. In this regard Applicant submitted that submission of Triplicate copies of ARE-1 has nothing to do with the fact that whether Applicant has paid the duty or not. Applicant has already reflected the duty payment in their ER-1 return and paid the duty vide CENVAT Register Entry Nos. RG23A-11487dated 01/11/2014, RG23A-11486 dated 01/11014, RG23A-11507 dated 01/11/2014, RG23A-11499 dated 01/11/2014, RG23A-11512 dated 01/11/2014 and RG23A-11124 dated 01/10/2014.

h) In view of the above submissions, the Applicant requested for sanction of the Export Rebate Claims filed by the Applicant.

5. Personal hearing dates were given in this case on 15-06-2022, 29-06-2022 and 13-07-2022. Shri Arun Sawant, Advocate attended the hearing online on behalf of the applicant. He submitted that this case is not time barred as Section 11B time limit is not applicable to rebate claims. He further submitted that sufficient documents have been submitted, therefore absence of one ARE-1 should not affect their claim. He further submitted that duty paid evidence has been produced.

6. Government observes that the applicant's rebate claims were rejected primarily on the ground that the rebate claims were filed after the limitation period. The issue for the Government to decide is whether the Applicant is entitled for the rebate claim which was rejected on the grounds of limitation.

7. 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 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.

8. On going through the records it is observed that five of the rebate claims were filed online/physically on 4.11.2015/9-11-2015 when the goods were sailed on 15-10-2014, 22-10-2014, 27-10-2014, 22-10-2014, 29-10-2014 and the sixth rebate claim was filed on 2.10.2015/19-10-2015 when the goods were sailed on 24-09-2014. The details of the same are as below:

Sr. No.	ARE1 No. & Date	Date of Shipping	Rebate claim filed date	Amount in Rs.
1	2198/16-09-2014	24-09-2014	19-10-2015	730447
2	2262/09-10-2014	15-10-2014	09-11-2015	710022
3	2263/09-10-2014	22-10-2014	09-11-2015	31772
4	2271/14-10-2014	27-10-2014	09-11-2015	621512
5	2279/16-10-2014	22-10-2014	09-11-2015	710678
6	2286/17-10-2014	29-10-2014	09-11-2015	743230
			Total	3547661

There is no dispute that these rebate claims were filed after one year from the relevant dates. The applicant have stated that limitation period prescribed under Section 11B of the Central Excise Act, 1994 is not applicable for the rebate claim filed under Rule 18 of the Central Excise Rules, 2002.

8. Government notes that the applicant has, in their submissions, emphasized that there is no time limit prescribed for filing of rebate claims and has sought to place reliance on the decision of the Apex Court in the case of Deputy Commissioner vs Dorcas Market Makers Pvt. Ltd [2015 (325) ELT A104 (SC)] in support of their argument. Government notes that this decision was passed by the Hon'ble High Court of Madras and the Supreme Court had, while rejecting the appeal against the same, not gone into the merits of the case. Government finds that this issue is no longer *res integra* and has been laid to rest by a number of decisions of the Higher Courts. Government observes that the Hon'ble High Court of Madras in a subsequent decision, while dismissing a Writ Petition filed by Hyundai Motors India Limited [2017 (355) E.L.T. 342 (Mad.)] had upheld the rejection of rebate claims which were filed after one year from the date of export and held that the limitations provided by a Section will prevail over the Rules. Further, Government also notes that the Hon'ble High Court of Karnataka while deciding the case of Sansera Engineering Pvt. Ltd. Vs Dy. Commissioner, Bengaluru [2020 (371) ELT 29 (Kar.)], an identical case, had distinguished the decision of the Apex Court referred to by the applicant and had held as under:-

> *" It is well settled principle that the claim for rebate can be made only under section 11-B and it is not open to the subordinate legislation to dispense with the requirements of Section 11-B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11-B is only clarificatory.*
>
> ***14.*** *It is not in dispute that the claims for rebate in the present cases were made beyond the period of one year prescribed under Section 11-B of the Act. Any Notification issued under Rule 18 has to be in conformity with Section 11-B of the Act.*
>
> ***15.*** *The decision of Original Authority rejecting the claim of rebate made by the petitioners as time-barred applying Section 11-B of the Act to the Notification No. 19 of 2004 cannot be faulted with."*

A Writ petition filed against the above decision was decided by a Larger Bench of the Hon'ble High Court of Karnataka in Sansera Engineering Limited vs Deputy Commissioner, LTU, Bengaluru [2021 (372) ELT 747 (Kar.)] wherein the Hon'ble High Court upheld the decision by the Single Judge in the above cited case with the following remarks :-

" A reading of Section 11B of the Act makes it explicitly clear that claim for refund of duty of excise shall be made before the expiry of one year from the relevant date. The time prescribed under Section 11B of the Act was earlier six months which was later on amended on 12-5-2000 by Section 101 of the Finance Act, 2000. Rule 18 of the Central Excise Rules and the Notification dated 6-9-2004 did not prescribe any time for making any claim for refund as Section 11B of the Act already mandated that such application shall be filed within one year. Section 11B of the Act being the substantive provision, the same cannot yield to Rule 18 of the Rules or the Notification dated 6-9-2004. As rightly held by the Learned Single Judge, the Notification dated 1-3-2016 was mere reiteration of what was contained in Section 11B of the Act, and therefore, the Law as declared by the Hon'ble Supreme Court in Uttam Steel (supra) is applicable to the facts of this case. In that view of the matter, the judgment of the Madras High Court in the case of Dorcas Market Makers Pvt. Ltd., (supra) is not applicable to the facts of this case. As a matter of fact, the Madras High Court in the case of Hyundai Motors India Ltd. v. Department of Revenue, Ministry of Finance reported in 2017 (355) E.L.T. 342 (Mad.) did not subscribe to the law declared in Dorcas Market Makers Pvt. Ltd., (supra) and held that the time prescribed under Section 11B of the Act is applicable.

13. *In view of the aforesaid, the Learned Single Judge had extensively considered the questions of law and the applicability of Section 11B of the Act and has rightly held that the claim of the appellant for refund was time-barred as it was filed beyond the period of one year. We do not find any justification to interfere with the findings of the Learned Single Judge. Hence, W.A. No. 249/2020 lacks merit and is dismissed."*

9. Government finds the above decision is squarely applicable to the issue on hand and finds that it relies on the decision of the Hon'ble Supreme Court in the case of UOI & Others vs. Uttam Steel Limited [2015 (319) E.L.T. 598 (S.C.)] to hold that the

limitation of one year prescribed by Section 11B of the Central Excise Act, 1944 is applicable to claims for rebate. In light of the above, Government finds that the claims for rebate in respect of the rest of six rebate claims above, having been filed after a period of one year from the relevant date, are hit by the limitation prescribed in Section 11B of the Central Excise Act, 1944 and are hence time barred and accordingly holds so.

10. In view of the above, 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.

11. Government observes that the applicant had also made an alternate claim that the export made by them may kindly be treated as export of goods without payment of duties under Rule 19 of CER, 2002 in as much as no duty is payable on such exports, the duty already paid by the applicant may be treated as deposit and therefore there would be no time limit for refund of deposit under Section 11B of Central Excise Act, 1944. Commissioner Appeal had held that there is no proof of payment of duty and hence no question of considering the same as deposit. The applicant has submitted that the duty payment is reflected in their ER1 Return and Cenvat register.

Rule19 of Central Excise Rules stipulates that *export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.*

The detailed conditions and procedures relating to export without payment of duty has been prescribed under Notification No.42/2001-CE (NT) dated 26.06.2001 issued under Rule 19 of Central Excise Rules, 2002. As such export of goods without payment of duty is covered by different sets of Rules and Notifications and compliance of conditions and procedures prescribed therein is substantial in nature. To be eligible for export under Rule 19 of CER, 2002, the applicant had to follow the procedures prescribed under Notfn. No. 42/2001-CE (NT) dated 26.06.2001, such as furnishing of bond, etc which the applicant had failed to comply. Government finds that once claims have been found time barred, requesting to consider the export already made on payment of duty under Rule 18 of CER, 2002 as export made without payment of duty under Rule 19 of CER, 2002, would not suffice as the substantial conditions of

statutory requirements are not complied. Hence the export made by them under Rule 18 of CER, 2002, cannot be considered as export of goods without payment of duty under Rule 19 of CER, 2002.

12. Further with regards to non submission of triplicate copies of the ARE1, Government does not finds it necessary to discuss the same when the rebate claim itself is found to be time barred.

13. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. CD/529/Raigad/2016 dated 29.07.2016 passed by the Commissioner (Appeals) of Central Excise, Mumbai-II and therefore, upholds the same.

10. The Revision Application is disposed of in the above terms.

Shrawan 30/9/22

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

ORDER No. 923 /2022-CX (WZ)/ASRA/Mumbai DATED 30-09-2022

To,

1. M/s Lanxess India Pvt. Ltd,.
   Lanxess House, Plot No. A 162-164,
   Room No. 27, Wagle Estate, MIDC,
   Thane (W)- 400 604.

2. A.B. Nawal & Associates (Accountant)
   S.No.74-75,14-17, Suyash Commercial Mall,
   Above Union Bank, Near Pan Card,
   Club, baner, Pune-411045

Copy to:

1. The Commissioner of GST & CX, Thane Commissionerate, 3rd & 5th floor, ACCEL House, Road No. 22, Wagle Industrial Estate, Thane (W), 400604.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.