

REGISTERED
SPEED POST



F.No. 195/17/16-RA (CX)
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... 7/11/18.

Order No. 632/2018 —Cx dated 5-12-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No.NOI-EXCUS-002-APP-0172-15-16 dated 27.11.2015, passed by the Commissioner of Central Excise (Appeals-II), NOIDA.

Applicant : M/s Ceradecor India Ltd., NOIDA.

Respondent : The Commissioner of Central Excise, NOIDA.

ORDER

A Revision Application No.195/17/16-RA dated 23.02.2016 is filed by M/s Ceradecor India Ltd., C-27 & 28, UPSIDC Indl. Area, Greater Noida-201306 U.P. (hereinafter referred to as the applicant) against the Order-In-Appeal No. NOI-EXCUS-002-APP-0172-15-16 dated 27.11.2015, passed by the Commissioner of Central Excise (Appeals-II), NOIDA, whereby the appeal of the applicant filed against original authority's Order dated 27.02.2015 has been rejected.

2. The brief facts leading to filing of the present revision application are that the applicant filed a rebate claim of Rs.5,72,065/- on 17.06.2014 against duty paid on export of Machinery parts as Transport Belt & Kit, Spii Controller, Print Head etc. to Italy. However, the jurisdictional Assistant Commissioner vide his order dt. 27.02.2015 rejected the rebate claim as time barred in terms of Section 11B of the Central Excise Act, 1944 for the reason that it had been filed after more than one year from the date of export of the goods. The applicant's appeal before the Commissioner (Appeals) was also rejected by the Commissioner (Appeals) vide aforesaid Order dated 27.11.2015.

3. The Revision Application is filed mainly on the grounds that the time limitation of one year is not applicable to the rebate claim as there is no such condition in Rule 18 of Central Excise Act or Notification No. 19/2004-CE(N.T.) dated 6.9.2004 and they could not file rebate claim within one year from the export of the goods due to sickness of the dealing assistant.

4. Personal hearing was held in this case on 10.10.2018 and it was availed by Shri B.L.Yadav, consultant, on behalf of the applicant. During the hearing Shri Yadav reiterated the grounds of revision as referred to above. However, no one availed the hearing on behalf of the respondent and no request for any other date of hearing was also received.

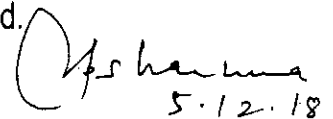
5. The Government has examined the matter and it is observed that there is no dispute regarding the fact that the rebate claim was filed in this case on 17.06.2014 after expiry of

more than a year from the export of goods on 14.06.2013. Hence, the claim is clearly hit by time limitation of one year as is envisaged in Section 11B of Central Excise Act and accordingly the Commissioner (Appeals) has upheld the order of the Assistant Commissioner whereby the rebate claim of the applicant was rejected as time barred. The applicant has vehemently contended that limitation period prescribed under Section 11B of the Central Excise Act is not applicable to the rebate of duty as no time limit has been prescribed in the Notification No. 19/2004-CE(N.T.) dated 6.9.2004 and reliance has been placed on Madras High Court's decision in the case of Dorcas Market Makers Pvt. Ltd. Vs CCE, Chennai, 2015(321)E.L.T.45(Mad.). This claim had been made in their appeal before the Commissioner (Appeals) also. But it was rejected by the Commissioner (Appeals) by observing that the refund claim can be filed within the prescribed period of 1 year only as per Section 11B of the Act and the Rules and Notification cannot prevail over the statutory provision contained in Section 11B of the Act wherein 1 year's limitation period for filing the rebate claim has been specified. The Government also fully agrees with the Commissioner (Appeal)'s view and does not accept the applicant's above argument in the face of Section 11B of the Central Excise Act which is a dealing statutory provision wherein it is clearly mandated that the application for refund of duty is to be filed with the Assistant/Deputy Commissioner of Central Excise before expiry of one year from the relevant date which is date of export of goods in case of rebate of duty. Further in Explanation to this Section, it is clarified that 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. In addition to time limitation, other substantive provisions like the authority who has to deal with the refund or rebate claim, the application of principle of undue enrichment and the method of payment of the rebate of duty etc. are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations

and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation of rebate duty are not repeated in Rule 18 and the areas not covered in Section 11B have been left to the Central Government for regulation from time to time. But by combined reading of both Section 11B and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that rule 18 is independent from Section 11B of the Act. In fact if Section 11 B is not applied to rebate matters, Rule 18 and Notification No. 19/2004-CE(N.T.) dated 6.9.2004 will not be able to handle rebate of duty as these provisions do not even specify the rebate sanctioning authority and do not contain several other essential provisions as discussed above. Moreover, if the applicant's view is accepted that Section 11B is not applicable to rebate claims, the statutory Explanation in Section 11B which stipulate that Refund includes rebate of duty shall be rendered as redundant even when it was not intended to be so by the Parliament. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of filing rebate claim within 1 year is squarely applicable to the rebate of duty when dealt by Assistant/Deputy Commissioner of a Division under Rule 18. This issue regarding application of time limitation of one year to the rebate matter is dealt by Hon'ble High Court of Bombay in detail in the case of M/s. Everest Flavour Vs. Union of India, 2012(282) ELT 48 wherein it is held that since the statutory provision for refund in section 11B specifically covers within its purview a rebate of excise duty on goods exported, Rule 18 cannot be independent of requirement of limitation prescribed in Section 11B. In the said decision the Hon'ble High court has differed from the Madras High Court's decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. and even distinguished Supreme Court's decision in the case of M/s. Raghuvar (India) Ltd. The Supreme Court's decision in the case of Raghuvar India Vs. Collector of Central Excise, Jaipur, 2000(118)ELT 311(SC) has been delivered in totally different context of the issue whether the time limitation stipulated in Section 11A of the Central Excise Act could be applied to the recovery of MODVAT Credit under the

erstwhile Central Excise Rule 57I which did not have any reference to Section 11A. The Apex Court held that the time limit of Section 11A cannot be applied under Rule 57I as MODVAT scheme is a different scheme, Section 11A is a general provision and Rule 57I is a specific provision and there is no reference of Section 11A in Rule 57I. The decision of Supreme Court in Raghavar India has been considered by the Bombay High Court in the decision of M/s. Everest Flavours and it has been held to be not applicable in the context of rebate of duty for the reason that Section 11B of the Central Excise Act expressly include rebate of duty in the definition of refund claim and this Section is exclusively dealing with the areas of refund as well as rebate of duty for which Rule 18 also provides conditions & procedures for granting rebate of duty. Since Section 11B of Central Excise Act specifically deals with the rebate of duty also and contains a provision for limitation period of 1 year for filing an application for rebate claim, unlike Section 11A having no reference to recovery of MODVAT credit as dealt by the Hon'ble Supreme Court in the case of Raghavar India, the decision of the Bombay High Court in the case of M/s. Everest Flavours is manifestly much reasoned, fully in accordance with the statutory provision in Section 11B and has been decided after Madras High Court's decision in the case of Dorcas Market Makers Market Makers Pvt. Ltd. Vs CCE, Chennai, 2012 TIOL-108-SC-MAD-CX.

6. In view of the above discussions, the revision application is rejected.


5.12.18

(R.P.Sharma)

Additional Secretary (Revision Application)

M/s Ceradecor India Ltd.,
C-27 & 28, UPSIDC Indl. Area,
Greater Noida-201306 U.P.

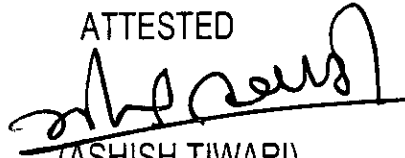
G.O.I. Order No. 632/18-Cx dated 5/2-2018

Copy to:-

1. The Commissioner of Goods and Service Tax, NOIDA-II.
2. The Commissioner of Central Excise(Appeals_II), C-56/42, Renu Tower, Sector-62, NOIDA.
3. PA to AS(Revision Application)
4. ~~PA to AS~~ Guard File ✓

5. SPARE COPY

ATTESTED



(ASHISH TIWARI)
ASSISTANT COMMISSIONER(RA)