

REGISTERED
SPEED POST



F.No. 195/141/15-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...13/11/18.

Order No. 692/2018-Cx dated 10-12-18 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.35/CE/ALLD/2015 dated 12.02.2015, passed by the Commissioner of Central Excise (Appeals), Allahabad.

Applicant : M/s Orient Micro Abrasives Ltd., Sonebhadra.

Respondent : The Commissioner of Central Excise, Allahabad.

ORDER

A Revision Application No.195/141/15-RA dated 14.05.2015 is filed by M/s Orient Micro Abrasives Ltd., Vill-Labhari, Vikas Nagar, P.O.Baipan, Distt-Sonebhadra, U.P. (hereinafter referred to as the applicant) against the Order-In-Appeal No. No.35 /CE/ ALLD /2015 dated 12.02.2015, passed by the Commissioner of Central Excise (Appeals), Allahabad, whereby the appeal of the applicant filed against original authority's Order dated 29.01.2014 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.3,89,118/- on 30.10.2013 against duty paid on export of Chlorinated Parafin Plasticiser to USA. However, the jurisdictional Assistant Commissioner vide his order dt. 29.01.2014 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 dismissed by the Commissioner (Appeals) vide aforesaid Order dated 12.02.2015.

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 not getting the EP

copy of Shipping Bills from the Custom department on account of IT system failure in the Customs House.

4. Personal hearing was held in this case on 19.09.2018 and it was availed by Shri Prashant Srivastava, Advocate, on behalf of the applicant. During the hearing Shri Srivastava reiterated the grounds of revision as also 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 13.10.2013 after expiry of more than a year from the export of goods on 18.06.2012. 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, 2012 TIOL-108-SC-MAD-CX and Supreme Court's decision in the case of Collector of Central Excise Vs Raghuvar (India) Ltd. (2000) 118 ELT 311 (SC). Bombay High Court's decision in the case of M/s EVEREST FLAVOURS Ltd. Vs. Union of India,

2012(282)ELT 481(Bom) and M/s Shasun Pharmaceuticals Ltd. Vs. Joint Secretary, MoF, (DR) 2013(291)E.L.T.189(Mad). This claim had been made in their appeal before the Commissioner (Appeals) also. But it was dismissed 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 primary conditions already 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. 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

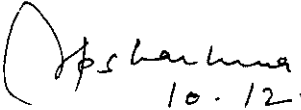
Supreme Court's decision in the case of Raghuvardan Vs. Collector of Central Excise, Jaipur, 2000(118)ELT 311(SC) has been delivered in totally different context of the issue whether the time limitation stipulated in Section 11A of the Central Excise Act could be applied to the recovery of MODVAT Credit 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 Raghuvardan 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 Raghuvardan, 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 Pvt. Ltd. Vs CCE, Chennai,

2012 TIOL-108-SC-MAD-CX. Thus the two decisions relied upon by the applicant are not found relevant for the present case. The applicant reliance on decision of Hon'ble High Court of Madras in the case of M/s Shasun Pharmaceuticals Ltd Vs. Joint Secretary, MF(DR), New Delhi (reported in 2013(291)E.L.T.189(Mad.)) is also completely misplaced as in this decision the rebate claim had not been filed beyond 1 year of export and rather the claim had been initially filed within 1 year which was subsequently returned to the claimant as it was not found complete by the Division Office. The claimant subsequently filed the rebate claim by which the period of one year was over. But the Hon'ble Madras High Court held that the rebate claim had actually been filed on the earlier date and the rebate claim cannot be termed as time barred by considering the later date of filing of the rebate claim. Whereas in the present proceedings there is no such issue that the appellant filed rebate claim earlier within one year. Moreover, the above averment of the applicant clearly amounts to saying that a rebate claim can be filed any time without any time limit which is not only against Section 11B of the Central Excise Act but is also antithetic to the public interest which demands that such matters should be settled in definite time.

6. The applicant's other reason for filing the Revision Application that they could not file rebate claim in time due to non-supply of EP copy of Shipping Bill by the Kolkata Customs is also not found to be relevant as in the event of non-receipt of EP copy from the Customs due to any reasons they could file the rebate claim without EP copy also by explaining the reason for non-submission of EP copy to the jurisdictional Assistant

Commissioner in the same manner as is done in the revision application and thereby the time limit could be honoured. But by exceeding the time limit of one year, their rebate claim has been entirely vitiated as the time limitation is a fundamental condition and the delay in filing the rebate claim for whatsoever reason cannot be condoned by any authority as there is no provision for doing the same under Section 11B or any other Section.

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


10.12.18

(R.P.Sharma)
Additional Secretary (Revision Application)

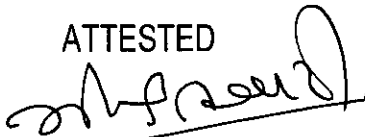
M/s Orient Micro Abrasives Ltd.,
Vill-Labhari, Vikas Nagar,
P.O.Baipan, Distt-Sonebhadra, U.P

G.O.I. Order No. 692418-Cx dated 10/12/2018

Copy to:-

1. The Commissioner of Central Excise, 38, M.G. Marg, Civil Lines, Allahabad-211001.
2. The Commissioner of Central Excise(Appeals), 38, M.G. Marg, Civil Lines, Allahabad-211001.
3. The Assistant Commissioner, Central Excise & Service Tax, Mirzapur.
4. PA to AS(Revision Application)
5. Guard File

ATTESTED



(ASHISH TIWARI)
ASSISTANT COMMISSIONER(RA)