

REGISTERED
SPEED POST



F.No. 195/490-495/16-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.....

Order No. 708-713/2018-Cx dated 26-12-18 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.141-146/CE/DLH/2016 dated 15.07.2016, passed by the Commissioner of Central Excise (Appeals), New Delhi.

Applicant : M/s Milestone Gears Pvt. Ltd., Panchkula.

Respondent : The Commissioner of Central Excise, Panchkula.

ORDER

Six Revision Applications No.195/490-495/16-RA dated 10.10.2016 are filed by M/s Milestone Gears Pvt. Ltd., KK-12, HSIDC Industrial Estate, Kalka District, Panchkula (Haryana) (hereinafter referred to as the applicant) against the Order-In-Appeal No. No.141-146/CE/DLH/2016 dated 15.07.2016, passed by the Commissioner of Central Excise (Appeals), New Delhi, whereby the appeal of the applicant filed against Original Adjudicating authority's Orders have been rejected.

2. The brief facts leading to filing of the present revision applications are that the applicant had filed rebate claims against duty paid on export of goods. However, the jurisdictional Assistant Commissioner rejected the rebate claims 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 appeals before the Commissioner (Appeals) are also rejected by the Commissioner (Appeals) vide aforesaid Orders dated 15.07.2016.

3. The Revision Applications are 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.

4. Personal hearing was held in this case on 03.12.2018 and it was availed by Shri Sudeep Singh, Advocate, on behalf of the applicant. During the hearing Shri Singh reiterated their main contention that time limit of 1 year is not applicable to rebate claims

and provided the copy of Punjab & Haryana High Court's decision in the case of JSL Lifestyle Limited, relied upon in their revision applications. 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 claims were filed in this case on 30.06.2014 and 26.11.2015 after expiry of more than a year from the export of goods on 11.02.2013, 26.05.2013, 12.02.2013, 04.03.2013, 23.02.2013, 28.07.2013 and 18.08.2015. Accordingly the Commissioner (Appeals) has upheld the order of the Assistant Commissioner whereby the rebate claim of the applicant rejected as time barred. The applicant has claimed 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.19/04 dated 6.9.04. However, their above contention is not found legally tenable as for refunds and rebate of duty Section 11B of the Central Excise Act is directly dealing statutory provision and it is clearly mandated therein 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. Further in explanation in 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 and permanent provisions like the authority who has to deal with the refund or rebate claim, the application of principle of

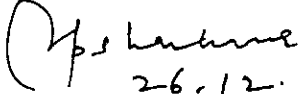
undue enrichment and the method of payment of the rebate of duty etc. are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further 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 need not be repeated in Rule 18 and the areas over and above 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. 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. Thus Section 11B and Rule 18 are interlinked and Rule 18 is not independent from Section 11 B. This issue regarding application of time limitation of one year 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)ELT48, 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.,

2012(281)E.L.T.185, and even distinguished Supreme Court's decision in the case of M/s Raghuvar (India) Ltd. The other decision in the case of JSL lifestyle Ltd. Vs. Union of Indi 2015(326)ELT 265(P & H), relied upon by the applicant, is decided purely by relying upon the Supreme Court's decision in the case of Raghuvar India Vs. Collector of Central Excise, Jaipur, 2000(118)ELT311(SC), which has been decided in totally different context 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 which is a specific provision and there is no reference of Section 11A in Rule 57I. The application of the above referred decision of Supreme Court in Raghuvar India has been considered by the Bombay High Court 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. Punjab & Haryana High Court in the above referred decision in the case of JSL lifestyles Ltd. has not agreed with the judgment of the Bombay High Court in the case of M/s Everest Flavours and the only reason given for disagreement is that the Bombay High Court has not dealt with the observations of the Supreme Court in para 14 and para 15 of the decision in the case of Raghuvar India or with the line of reasoning therein. On examining the aforesaid paras 14 & 15 of the Supreme Court's decision it is, however, noticed that no different reasoning has been given and the Supreme Court

has just emphasized in these paras to strengthen their main view in earlier paras that Section 11A is general in nature and the scheme of MODVAT is not made subject to Section 11A of the Act. But still the Punjab & Haryana High Court has disagreed from the decision of Bombay High Court in the case of M/s Everest Flavours and without considering the structure and text of Section 11A and Rule 18 of Central Excise rules. 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 Raghuvar India, the decision of the Bombay High Court in the case of M/s Everest Flavours is much reasoned, fully in accordance with the statutory provision in Section 11B. Whereas in the decision of M/s JSL Lifestyles Section 11B is not discussed and analysed at all. Therefore, with due respect to the Punjab & Harvana High Court, the decision in the above case of M/s JSL Lifestyles Ltd. cannot be given precedence over the Bombay High Court's decision in the case of M/s Everest Flavours wherein the relevance and application of Section 11B in the context of rebate claim has been considered in detail. Above all, the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. Union of India, (1997(89)E.L.T.247(S.C.) has categorically held that all claims for rebate/refund have to be made only under Section 11B and the limitation period provided therein has to be strictly applied. Relying upon this celebrated decision of the Hon'ble Court, this legal position has been reiterated subsequently by the Hon'ble Supreme Court in the case of Union of India Vs. Uttam Steel Ltd, also, reported as 2015(319)E.L.T. 598(S.C.). Moreover, the above averment of the

applicant based on the above decisions 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 not in the public interest as per which litigations cannot be allowed to linger on for infinite period.

6. In view of the above discussions, the Government does not find any fault in the Commissioner (Appeals)'s Order and the revision application is rejected.


26.12.18

(R.P.Sharma)

Additional Secretary (Revision Application)

M/s Milestone Gears Pvt. Ltd.,
KK-12, HSIDC Industrial Estate,
Kalka District, Panchkula(Haryana)

G.O.I. Order No.708 -713 /18-Cx dated 26-12-2018

Copy to:-

1. The Commissioner of Central Excise, Panchkula.
2. The Commissioner of Central Excise(Appeals), C.R.Building, I.P.Estate, New Delhi.
3. The Assistant Commissioner, Central Excise & Service Tax, Panchkula.
4. PA to AS(Revision Application)
5. Guard File

ATTESTED

(ASHISH TIWARI)
ASSISTANT COMMISSIONER(RA)