SPEED POST

F.No. 195/02/2020-R.A.
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 21.01.22

Order No. 02/2022-CE dated 20-01-2022 of the Government of India, passed by **Sh. Sandeep Prakash,** 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. 23/CE/RKL-GST/2018 dated 20.02.2018 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneshwar.

Applicants : M/s IDL Explosives Ltd., Rourkela.

Respondent : Commissioner of CGST & Central Excise, Rourkela.

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ORDER

A revision application no. 195/02/2020-R.A. dated 07.01.2020 has been filed by M/s IDL Explosives Ltd., Rourkela (hereinafter referred to as the Applicants) against the Order-in-Appeal No. 23/CE/RKL-GST/2018 dated 20.02.2018 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneshwar. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original No. R-05/REFUND/RKL-II/2016 dated 29.11.2016, passed by the Assistant Commissioner, Rourkela-II Division, Rourkela, vide which the rebate claims filed by the Applicants herein were rejected.

2. Briefly stated, the Applicants herein exported taxable goods, vide ARE-1 No. 01 dated 21.01.2012 and ARE-1 No. 02 dated 23.01.2012 on payment of Central Excise duty and filed a rebate claim of Rs. 8,41,339/-, on 27.06.2016, in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The original authority rejected the rebate claim, as time barred, observing that the goods had been exported by sea, on 25.04.2012, under Bill of Export No. 2414 dated 20.04.2012 whereas rebate claim was filed only on 27.06.2016 i.e., beyond the period of one year provided under Section 11B of the Central Excise Act, 1944. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that the Applicants had filed the relevant documents such as original ARE-1s etc., under Annexure-19, with the jurisdictional Range Superintendent, on 26.06.2012; that thereafter the Applicants were asked by the Division office, to furnish duty payment particulars in respect of the export goods, which was complied by the Applicants, vide letter dated 08.03.2016; that without any reference to the documents already filed under Annexure-19 and treating the compliance letter dated 08.03.2016 as claim for rebate, the Division office returned the same on the ground that the rebate claim had not been filed in proper form i.e. Form-R,

vide letter dated 23.03.2016; that pursuant thereto they filed the Form-R along with the relevant documents vide letter dated 24.06.2016; that since the rebate claim had been originally filed on 26.06.2012, there was sufficient compliance for claim of rebate under Rule 18 ibid and the correspondences were exchanged between the Applicant and the department regarding procedural aspects and the matter was regularized by filing of Form-R on 24.06.2016; that, therefore, it is not correct for the department to say that the claim is barred by limitation; that the time limit stipulated under Section 11B of the Central Excise Act, 1944 has no application to rebate claims filed under Rule 18 read with the Notification No. 19/2004-CE (NT). In this regard, the judgment of Hon'ble Allahabad High Court in the case of *Camphor and Allied Products Ltd. vs. Union of India {2019 (368) ELT 865 (All.)}* has been relied upon. An application for condonation of delay has also been filed on the grounds that the Applicants herein had earlier approached CESTAT, Kolkata in appeal against the impugned Order-in-Appeal, which has been found to be non-maintainable by the Tribunal vide Final Order No. 76478/2019 dated 17.10.2019.

4. Personal hearing, in virtual mode, was held on 05.01.2022. Sh. Gyanesh Mohanty, Advocate made submissions for the Applicants and requested that Written Submissions filed by email, on 05.01.2022, may be taken on record. After arguing the matter for sometime, he requested for adjournment to seek instructions from his client. Matter was thereafter again heard, in virtual mode, on 17.01.2022. Sh. Gyanesh Mohanty, Advocate appeared for the Applicant and requested that the Additional Submissions emailed on 17.01.2022 may be taken on record. He reiterated the contents thereof. No one appeared for the Respondent department nor any request for adjournment has been received. Hence the matter is taken up for final disposal.

5. In the written submissions filed on 05.01.2022, it has been, inter-alia, submitted that the relevant documents for rebate claim were filed under Annexure-19, on 26.06.2012; that, thereafter, the Applicants herein furnished duty payment particulars as requested by the Division office, vide letter dated

08.03.2016; that without reference to the documents already filed and treating the compliance letter dated 08.03.2016, as the claim for rebate, the Division office returned the said claim to be filed in proper form i.e. Form-R; that as per Chapter-8 of the CBEC's Manual of Supplementary Instructions, 2005, there is no specified Form for the purpose of filing rebate claim and the same can be done by the exporter on their letter head and filed with requisite documents; that all substantive requirements of Rule 18 read with Notification No. 19/2004 have been complied with; that the requirement of filing of rebate claim within one year has been introduced in the Notification No. 19/2004-CE (NT) only with effect from 01.03.2016 and consequently, the limitation cannot be read into the fact situation of the present case. In the Additional Submissions filed on 17.01.2022, it has been stated that as per Part-7 of the CBEC's Excise Manual of Supplementary Instructions, 2005, Annexure-19 can be used for Rule 15, 18 or 19; that, therefore, in absence of any specified form and as provided under Part-7, the claim for rebate under Rule 18 can be filed under Annexure-19; that the Hon'ble Gujarat High Court, in the case of *Apar Industries vs. Union of India {2016 (333) ELT 246 (Guj.)}*, has treated the claim filed in Annexure-19 as the claim of rebate; that without prejudice to the aforesaid submissions, in the present case, the very same refund claim was resubmitted on 24.06.2016 with Form-R and supporting documents as directed by the Division office, vide letter dated 23.03.2016; that even assuming whilst denying that the limitation as provided under Section 11B is applications, yet for the purpose of limitation the same has to be reckoned from the original date of filing of rebate application.

6. The revision application has been filed with a delay as the Applicants herein had approached the wrong forum i.e. CESTAT in respect of the Order-in-Appeal impugned herein. Delay is condoned.

7. The Government has carefully examined the matter. Following issues are required to be decided for disposal of the instant revision application:

(i) Whether the Annexure-19 filed on 26.06.2012 can be treated as a claim of rebate under Rule 18 read with Notification No. 19/2004-CE (NT)?

(ii) Whether the limitation provided under Section 11B of the Central Excise Act, 1944 is applicable to the rebate claims filed under Rule 18 of the Central Excise Rules, 2002 read with the notification no. 19/2004-CE (NT) dated 06.09.2004?

8.1 In respect of issue (i), it is the contention of the Applicants herein that they had filed the details along with supporting documents in respect of the exports made under claim of rebate under Annexure-19, which was filed with the department on 26.06.2012 and, thereafter, based on the correspondence with the department the claim was filed in Form-R dated 24.06.2016. On perusal of a copy of aforesaid Annexure-19, placed on record by the Applicants, it is observed that it contains details of five ARE-1s, i.e., ARE-1 Nos. 01 dated 21.01.2012, 02 dated 23.01.2012, 03 dated 25.01.2012, 04 dated 25.01.2012 and 10 dated 30.03.2012. The ARE-1 No. 01 dated 21.01.2012 and ARE-1 No. 02 dated 23.01.2012 are the ARE-1s relevant to the present dispute. It is further observed that Annexure-19 has been prescribed as *"STATEMENT REGARDING EXPORT OF EXCISABLE GOODS WITHOUT PAYMENT OF DUTY"* under Rule 19 of the Rules ibid. Thus, it is apparent that Form-19 pertains to be exports made, without payment of duty under bond, under Rule 19 ibid. However, with reference to Part-7 of the CBEC's Excise Manual of Supplementary Instructions, it has been contended that this Annexure can be used for Rule 15, 18 or 19. At the same time, it has also been brought out that the same Supplementary Instructions in Chapter-8 prescribe that for the purpose of filing of rebate claim, there is no specified form and the same can be done by the exporter on their letter head and filed alongwith all requisite documents. There is no averment that the rebate claim was filed as required as per Chapter-8. However, it is submitted that as per Part-7, Annexure 19 can be used for Rule 18 as well and, therefore, the details filed in Annexure-19 have to be treated as a rebate claim filed under Rule 18. The judgment of Hon'ble Gujarat High Court in the case of Apar Industries (supra) has been heavily relied upon.

8.2 The Government observes that, as already brought out hereinabove, the subject Annexure 19 is in respect of five ARE-1s and not merely in respect of two ARE-1s relating to the rebate claim in dispute. There is no annotation on the Annexure-19 indicating that exports, under these two ARE-1s, are under claim of rebate. It is contended that *"During the course of follow-up with the authorities, the applicant was asked to submit the requisite documents once again, which were already filed on 26.06.2012. The applicant vide its letter dated 08.03.2016, addressed to the Assistant Commissioner, Rourkela-II Division, stated that the applicant has already filed all the requisite documents in support of proof of export and requested the authority to refund the amount which is pending for long time. Thereafter the Asst. Commissioner vide their letter C.No. V(18)3/Refund/RKL-II/2016/879 dated 23.03.2016 informed the applicant that "On scrutiny of refund application, it is noticed that the application is not in proper form i.e. Form-R under Sec.11B of the Central Excise Act, 1944.""* Thus, the contention of the Applicants is that they had filed the rebate claim under Annexure-19 on 26.06.2012 and during the course of follow-up with the authorities, correspondence was exchanged which led to finally filing claim in Form-R dated 24.06.2016. The Government observes that on this factual issue the original authority has recorded his findings as under:

"I find that neither duty payment particulars were asked from the claimant nor any correspondences were exchanged between the noticee and the department regarding the claim at any point of time. The claimant only filed their rebate/refund application on 08.03.2016 which was not in proper form i.e. Form-R under Section 11B of the Central Excise Act, 1944. Hence, the refund application was returned to the claimant vide this office letter dated 23.03.2016 and was re-submitted by the claimant in proper form-R on 24.06.2016 received in this division office on 27.07.2017. However, on being asked the claimant to submit the documents evidencing correspondences between the claimant and the department, they failed to prove their statement and submitted at the time of personal hearing that they don't possess any documentary evidences."

It is observed that these findings of the original authority have not been factually contradicted in the revision application though it is once again stated, at this stage, that *"4. After submission of the documents under Annexure-19, the applicant was asked by the Divisional office, to furnish duty payment particulars*

in respect of the export goods, which was complied by the applicant, vide its letter dated 08.03.2016." The Government has perused the said letter dated 08.03.2016 and observes that there is no reference whatsoever therein to any correspondence initiated by the department asking for duty payment particulars pursuant to the Annexure-19 filed on 26.06.2012. This further substantiates the findings of the original authority.

8.3 From the above discussions, following is apparent:

(i) In the Annexure-19 filed on 26.06.2012, there is no indication that rebate of duty is claimed in respect of any of the five ARE-1s mentioned therein.

(ii) The contention that the letter dated 08.03.2016 furnishing the duty payment particulars was at the instance of the department or in pursuance of correspondence exchanged with the department is incorrect.

(iii) The contention that Annexure-19 was a claim for rebate, is an afterthought which for the first time found mention in the letter dated 08.03.2016 written suo-moto by the Applicants herein.

In view of the above, the Annexure-19 filed by the Applicants herein cannot be treated as a claim of rebate.

8.4 The Applicants have heavily relied upon the judgment of the Hon'ble Gujarat High Court in the case of Apar Industries (supra) in support of their case. It is observed that in the Apar Industries, the Hon'ble High Court has observed that *"format of Annexure-19 which is prescribed under Rule 19 of the said Rules. Along with it, the petitioner had also supplied documents of proof of export and for that rebate would be made. We notice that Rule 18 of the said Rules pertains to rebate of duty and provides for rebate claims by following the procedure prescribed by the Government of India under a notification. Rule 19 of the Rules pertains to export without payment of duty. Thus, both these Rules operate in vastly different fields. It is in terms of Rule 18 that the Government of India under Notification No. 19/2004 laid down detailed procedure in making of*

rebate claims. On the other hand, Annexure-19 is prescribed for declaration necessary for export without duty in terms of Rule 19 of the said Rules." Thus, in Apar Industries, the Hon'ble High Court has clearly held that Rule 18 and Rule 19 operate in different fields; and that Annexure-19 pertains to Rule 19 but still extended benefit to the petitioners as they had not only supplied documents of proof of export with Annexure-19 but had also clearly indicated that rebate was claimed whereas in the present case, as already brought out, the subject Annexure-19 covers five ARE-1s and there is no indication therein that exports under any of these five ARE-1s are under claim of rebate. Further, since there was no indication in the Annexure-19 about any claim of rebate, there could have been no occasion for the department to verify the same for the purposes of Rule 18 read with Notification No. 19/2004-CE (NT) and thereafter proceed further in the matter. Therefore, the ratio of the judgment in Apar Industries (supra) is not applicable in the facts of the present case.

9.1 As regard the issue (ii), it is observed that as per clause (A) of the Explanation to Section 11B, "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. Further, as per clause (B) of the said Explanation "relevant date" means-

"(a) In the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) If the goods were exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) If the goods are exported by land, the date on which such goods pass the frontier, or

(iii) If the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;"

Thus, Section 11B not only provides that the rebate of duty of excise is a type of refund of duty, the relevant date for determining limitation in the cases of rebate

is also specifically provided. As such, on a plain reading of Section 11B, there should be no scope for doubt that the limitation provided under Section 11B shall be applicable to the cases of rebate.

9.2 The Applicants have disputed this plain and unambiguous reading of Section 11B on the grounds that the notification no. 19/2004-CE (NT) dated 06.09.2004 did not, at relevant time, specify any time limit within which the rebate claim is to be filed by the taxpayer nor has any reference been made to Section 11B of the Central Excise Act, 1944, in this notification. In this regard, the judgment of single bench of Hon'ble Allahabad High Court in the case of Camphor and Allied Products Ltd. (supra) has been relied upon.

9.3 The Government observes that this issue came up for the consideration of the Hon'ble Supreme Court, in the case of *Union of India vs. Uttam Steel Ltd. [2015 (319) ELT 598 (SC)].* The judgment of the Apex Court in Uttam Steel Ltd. arose out of an appeal filed against the judgment of the Hon'ble Bombay High Court wherein the High Court had observed that the *"right to rebate of duty accrues under Rule 12 on export of goods. That right is not obliterated if application for rebate of duty is not filed within the period of limitation prescribed under Section 11B. In fact, Rule 12 of the Excise Rules empowers the excise authorities to grant rebate of duty even if some procedural requirements are not fulfilled."* In appeal, the Hon'ble Supreme Court, following the ratio of the judgment by the nine-judge bench in *Mafatlal Industries Ltd. vs. Union of India [1997 (89) ELT 247 (SC)]* held that *"13. ..... It is clear from Section 11B (2) proviso (a) that a rebate of duty of excise on excisable goods exported out of India would be covered by the said provision. A reading of Mafatlal Industries (Supra) would also show that such claims for rebate can only be made under Section 11B within the period of limitation stated therefor. This being the case, the argument based on Rule 12 would have to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B".*

9.4 Thus, it is clear that the issue whether the limitation provided under Section 11B of the Central Excise, 1944 is applicable to the cases of rebate under Rule 18 of the Central Excise Rules and whether the effect of the provisions of Section 11B can be dispensed with by subordinate legislation stands settled by the judgment of the Hon'ble Supreme Court in the case of Uttam Steel Ltd. (supra). It is to be noted that, subsequently, several Hon'ble High Courts have followed the judgment in Uttam Steel to hold that limitation provided under Section 11B is applicable to rebate claims filed under Rule 18 [Ref. Sansera Engineering Pvt. Ltd. {2020 (371) ELT 29 (Kar.)}, Panyam Cements & Minerals Industries Ltd. {2016 (331) ELT 206 (AP)}, Orient Micro Abrasives Ltd. {2020 (371) ELT (Del.)} & Suretex Prophylactics India Pvt. Ltd. {2020 (373) ELT 481 (Kar.)}]. Further, the judgment in Uttam Steel Ltd. (supra) is a detailed judgment based on the judgment of a nine-judge bench in Mafatlal Industries (supra). The Government observes that the judgment in the case of Camphor And Allied Industries (supra) has been rendered without noticing the judgment of Hon'ble Apex Court in Uttam Steels case. Further, the judgment of Hon'ble Madras High Court, in the case of *Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45}* has been relied upon by the Hon'ble Allahabad High court in the Camphor And Allied Industries case, whereas, the Hon'ble Madras High Court has itself departed from Dorcas case, subsequent to the Uttam Steels Ltd. (supra), in the case of *Hyundai Motors India Ltd. {2017 (355) ELT 342}.*

9.5 As such, the argument that absence of provision regarding limitation in the Notification No. 19/2004-CE (NT) would negate the effect of the specific provisions made in Section 11B cannot be countenanced. In other words, there is no doubt that the limitation provided under Section 11B of the Central Excise Act, 1944 is applicable to the claims of rebate under Rule 18 even when the said Notification No. 19/2004-CE (NT) had not specifically adopted the same.

10. In view of the above, the Government does not find any infirmity in the impugned Order-in-Appeal and the revision application is rejected.

(Sandeep Prakash)
Additional Secretary to the Government of India

M/s IDL Explosives Ltd.,
Sonaparbat, Rourkela,
Odisha – 769016.

G.O.I. Order No. 02 /22-CE dated 20-4-2022

Copy to: -

1. The Commissioner of CGST & Central Excise, Rourkela Commissionerate, KK42, Civil Township, Rourkela – 769012.
2. The Commissioner (Appeals), CGST, Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneshwar, Odisha – 751007.
3. Sh. Gyanesh Mohanty, Advocate, 926/927, Nigamananda Nagar, Lane-2, Bomikhal Canal Road, PO-Rasulgarh, Bhubaneswar, Odisha – 751010.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
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