

SPEED POST



F. Nos. 198/01-03/2021-RA
198/05-08/2021-RA
198/10/2021-RA
198/11/2021-RA
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 4/2/22

Order No. 03-11/22-Cx dated 03-2-2022 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 36-38/HWH/CE/2020-21 all dated 27.11.2020, 55/HWH/CE/2020-21 dated 23.12.2020, 57/HWH/CE/2020-21 dated 23.12.2020, 73/HWH/CE/2020-21 dated 15.02.2021, 75/HWH/CE/2020-21 dated 15.02.2021, 82/HWH/CE/2020-21 dated 03.03.2021 & 83/HWH/CE/2020-21 dated 03.03.2021 passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata.

Applicant : The Commissioner of CGST & Central Excise, Howrah.

Respondent : M/s Shanti International, Howrah.

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ORDER

This order disposes off nine revision applications filed by the Commissioner, CGST & Central Excise, Howrah (hereinafter referred to as the Applicant) against the Orders-in-Appeal passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata in the matters relating to M/s Shanti International, Howrah (hereinafter referred to as the Respondents). The Commissioner (Appeals) has allowed relief to the Respondents herein against certain Orders-in-Original passed by the Assistant Commissioner of CGST & Central Excise, Bally-I Division, Howrah, in respect of rebate claims filed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The details are as under:

Sr. No.	Revision Application No.	Order-in-Appeal No./ Order-in-Original No.	Order-in-Original No.	Total Rebate Amount Claim	O-I-O	O-I-A
1.	198/01-03/2021-R.A. dated 25.02.2021	(i) 36/HWH/CE/2020-21 dated 27.11.2020	04/R/Rebate/Bally-I/2019-20 dated 04.07.2019	Rs. 2,50,828.57/-	Sanction rebate claim amount Rs. 1,70,672/- Rejected rebate claim Amount of Rs. 80,156.89/-	Allow additional rebate of Rs. 80,157/-
		(ii) 37/HWH/CE/2020-21 dated 27.11.2020	12/R/Rebate/Bally-I/2019-20 dated 19.11.2019	Rs. 3,04,342/-	Sanction rebate claim amount Rs. 2,60,167/- Reject rebate claim amount of Rs. 44,174.79/- due to the bar of time limitation	Allow additional rebate of Rs. 44,175/-
		(iii) 38/HWH/CE/2020-21 dated 27.11.2020	13/R/Rebate/Bally-I/2019-20 dated 19.11.2019	Rs. 2,08,853.94/-	Sanction rebate claim amount Rs. 45,368/- Reject rebate claim amount of Rs. 1,63,485.94/- due to the bar of time limitation	Allow additional rebate of Rs. 1,63,486/-

2.	198/05/2021- R.A. dated 22.03.2021	55/HWH/CE/2020-21 dated 23.12.2020	03/R/Rebate/Bally- I/2019-20 dated 08.07.2020	Rs. 2,48,945/-	Sanction rebate claim amount Rs. 85,141/- Reject rebate claim amount of Rs. 1,63,803.75/- due to the bar of time limitation	Allow additional rebate of Rs. 1,63,804/-
3.	198/06/2021- R.A. dated 22.03.2021	57/HWH/CE/2020-21 dated 23.12.2020	07/R/Rebate/Bally- I/2019-20 dated 28.07.2020	Rs. 3,82,050.81/-	Sanction rebate claim amount Rs. 1,34,389/- Reject rebate claim amount of Rs. 2,47,661.38/- due to the bar of time limitation and non-certification by Customs authorities in Part B of the ARE-1	Allow additional rebate of duty of Rs. 2,47,661/-
4.	198/07/2021- R.A. dated 18.05.2021	73/HWH/CE/2020-21 dated 15.02.2021	08/R/Rebate/Bally- I/2019-20 dated 28.07.2020	Rs. 2,06,815/-	Sanction rebate claim amount Rs. 1,55,645/- Reject rebate claim amount of Rs. 51,170/- due to the bar of time limitation and mismatch of quantity between ARE-1 and corresponding Shipping Bill	Rejected appeal in respect of rebate claim of Rs. 8,723/-, sanction the rebate claim of Rs. 42,447/- out of 51,170/- which was rejected by the lower authority
5.	198/08/2021- R.A. dated 18.05.2021	75/HWH/CE/2020-21 dated 15.02.2021	05/R/Rebate/Bally- I/2019-20 dated 05.07.2020	Rs. 1,25,382.13/-	Sanction rebate claim amount Rs. 65,500/- Reject rebate claim amount of Rs. 59,881.75/- due to the bar of time limitation, failure of submission of	Allow additional rebate of Rs. 59,886/-

					necessary documents	
6.	198/10/2021-R.A dated 05.07.2021	82/HWH/CE/2020-21 dated 03.03.2021	11/R/Rebate/Bally-I/2019-20 dated 21.10.2020	Rs. 4,62,988/-	Sanction rebate claim amount Rs. 2,39,932/- Reject rebate claim amount of Rs. 2,23,055.51/- due to the bar of time limitation	Allow additional rebate claim of Rs. 2,23,055.51/-
7.	198/11/2021-R.A. dated 05.07.2021	83/HWH/CE/2020-21 dated 03.03.2021	10/R/Rebate/Bally-I/2019-20 dated 21.10.2020	Rs. 3,12,163.75/-	Sanction rebate claim amount Rs. 2,14,928/- Reject rebate claim amount of Rs. 97,235.46/- due to the bar of time limitation	Allow additional rebate claim of Rs. 97,235/-

2. Briefly stated, the Respondents herein exported excisable goods on payment of Central Excise duty and preferred rebate claims, as above, under Rule 18 of the Central Excise Rules, 2002. The original authority rejected part of these claims on the grounds of limitation as these were filed beyond the period of one year provided under Section 11B of the Central Excise Act, 1944. The Commissioner (Appeals), in the appeals preferred by the Respondents herein, allowed rebate of the amounts rejected on the grounds of limitation holding that the limitation provided under Section 11B is not applicable to the rebate claims filed under Rule 18. In respect of Order-in-Appeal No. 73/HWH/CE/2020-21 dated 15.02.2021 impugned in the RA No. 198/07/2021-RA, an amount of Rs. 8,723/-, which was rejected on the grounds of mismatch of quantity between ARE-1 and corresponding Shipping Bill, has not been allowed in appeal. The Respondents herein have not challenged this part of the said Order-in-Appeal.

3. The revision applications have been filed, mainly, on the grounds that as per Explanation to Section 11B, refund includes rebate and therefore, the limitation provided under Section 11B is applicable to the claims of rebate; that the Commissioner (Appeals) has failed to consider the judgment of Hon'ble Supreme Court in the case of *Union of India vs. Uttam Steel Ltd. {2015 (319) ELT 598 (SC)}*; that the Commissioner (Appeals) has while relying upon the judgment of the Hon'ble Madras High Court in the case of *Dorcas Market Makers Pvt. Ltd. vs. Commissioner of Central Excise {2015 (321) ELT 45 (Mad.)}*, has failed to consider the observations of the Division Bench of the same High Court in the case of *Hyundai Motors India Ltd. {2017 (355) ELT 342 (Mad.)}*; that, similarly, the Commissioner (Appeals) has failed to consider the judgments passed by other Hon'ble High Courts which are contrary to the position taken by him; and, therefore, the Orders-in-Appeal should be set aside. Written Replies have been filed on behalf of the Respondents.

4. Personal hearings in the matter were fixed on 20.12.2021, 05.01.2022 & 31.01.2022. The Applicant department, vide letter dated 16.12.2021, stated that it has nothing further to add in the matter. In the hearing held, in virtual mode, on 31.01.2022, Sh. N.K. Chowdhury, Advocate appeared for the Respondent and reiterated the contents of the Written Reply dated 22.03.2021 as well as submissions filed on 19.01.2022. At the request of Sh. Chowdhury, the Respondent was granted time till 02.02.2022 to file further submissions, if any. Sh. Chowdhury clarified that no PH is required after the further submissions, if any, are filed.

5. In the Additional Submissions dated 19.01.2022 and 01.02.2022, the Respondents have supported the impugned Orders-in-Appeal. It has been submitted that the Hon'ble Allahabad High Court has, in the case of *Camphor and Allied Products Ltd. {2019 (368) ELT 865 (All.)}* relied upon the decision in *Dorcas Market Makers Pvt. Ltd. (supra)* and held that the limitation provided under Section 11B is not applicable to the rebate claims; that the facts in the *Uttam Steel Ltd. (supra)* are different; that the judgment in the case of *Mafatlal Industries Ltd. {1997 (89) ELT*

247 (SC)} is a case of 1997 and the impact of notification issued under Rule 18 read with Section 11B was not an issue before the Hon'ble Supreme Court; that the exports have undisputedly been made and, therefore, rebate should be allowed. It is also stated that in the revision application no. 198/10/2021-RA, the original authority has taken the date of let export order, in certain cases, as the relevant date since the date on which the ship left India was not mentioned in Part B of ARE-1 whereas the relevant date for computation of time limit of one year is the time when the goods are actually exported, i.e., the date on which ship left India.

6. The Government has carefully examined the matter. The basic issue that is required to be decided for the disposal of the subject revision applications is 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 Notification No. 19/2004-CE (NT) dated 06.09.2004.

7.1 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 is no scope for doubt that the limitation provided under Section 11B shall be applicable to the cases of rebate under Rule 18.

7.2 The Respondents, however, dispute 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. Thus, the limitation provided under Section 11B is not applicable to the rebate claims. In this regard, the judgments of Hon'ble Madras High Court in the case of Dorcas Market Makers Pvt. Ltd. (supra) and that of a single bench of Hon'ble Allahabad High Court in the case of Camphor and Allied Products Ltd. (supra) have been heavily relied upon.

7.3 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”.

7.4 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.)}]. 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 Commissioner (Appeals) and in the case of Camphor and Allied Industries (supra). However, as correctly pointed out by the Applicant department, 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. (supra). Further, though the judgment in Dorcas case has been affirmed by the Apex Court {2015 (325) ELT A104 (SC)}, by dismissing the SLP, the judgment in Uttam Steels Ltd. is a detailed judgment based on a judgment of a nine judge bench in Mafatlal Industries (supra).

7.5 The Respondents have sought to distinguish Uttam Steel Ltd. (supra) on the grounds that facts are different. However, the Government observes that in Uttam Steels Ltd., the Hon'ble Supreme Court has declared the law in following terms: *"11.....all claims for rebate/refund have to be made only under Section 11B."* It has been further held that *"13.....claims for rebate can only be made under*

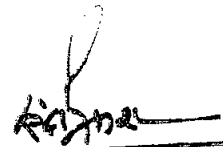
Section 11B within the period of limitation stated therefor." This being an unambiguous declaration of law, based on the provisions of Section 11B (which have not undergone a change in relevant aspects at the time of subject rebate claims), the present contention of the Respondents is misconceived. Similarly, the distinction sought to be made in respect of Mafatlal Industries (supra) is also unacceptable. Further, it is to be observed that in Uttam Steels Ltd., the Hon'ble Apex Court has also held that *"it is not open to subordinate legislation to dispense with the requirements of Section 11B."* As such absence of a provision prescribing limitation in Rule 18 of the notification issued thereunder cannot be used to negate the specific provisions made under Section 11B.

7.6 In view of the above, 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.

7.7 It is also contended that the original authority has, in the case under RA No. 198/10/2021-RA, taken the date of Let Export Order to compute the limitation which is erroneous since the relevant date for such computation is the date when the goods are actually exported. As already brought out hereinabove, as per Clause (B) of the Explanation to Section 11B, the relevant date for computation of the limitation period of one year in case of goods exported by sea is the date on which the ship in which the export goods were loaded, left India. Factually, it is correct that in the relevant Order-in-Original, the original authority has, in respect of certain ARE-1s, taken the date of Let Export Order as the date to compute limitation. However, while assailing this stance of the original authority, the Respondents have, even at this stage, not disclosed the date on which the ship left India nor have they contended, with reference to the date on which the ship left India, that the relevant rebate claims were filed within the limitation period of one year. Being the exporters, it cannot also be the case of the Respondents that they are not aware of the date on which the ship left India. Therefore, it would appear that it is more of a proforma

submission to obtain a remand and delay the eventual outcome rather than a substantive contention seeking constructive relief. As such, the Government is not inclined to accept this contention as well.

8. In view of the above, the revision applications are allowed.



(Sandeep Prakash)

Additional Secretary to the Government of India

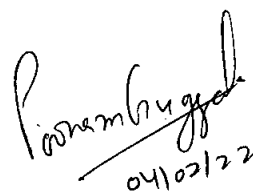
The Commissioner, CGST & CX,
Bally-I Division, Haldia Commissionerate,
5th Floor, 5, Clive Row, Kolkata (West Bengal) – 700001.

Order No. 03 - 11/22-Cx dated 03-2-2022

Copy to:

1. M/s Shanti International, 5/1, Height Road, Liluah, Howrah, Kolkata (West Bengal) – 711204.
2. The Commissioner (Appeals-II), CGST & Central Excise, Kolkata, Bamboo Villa, 3rd & 4th Floor, 169, A.J.C. Bose Road, Kolkata – 700 014.
3. Sh. Nirmal Kumar Chowdhury, Advocate, Hastings Chambers, Room No. B/G, (Basement), 7C, Kiran Sankar Roy Road, Kolkata – 700001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



04/02/22

(Poonam Guggal)
Supdt. RA