

SPEED POST

F. No. 195/05/SZ/2018-RA & Others  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 23/12/22

Order No. 112-117/2022-CX dated 23-12-2022 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(s), as mentioned in Column 'B' of the 'Table-I' below, filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No(s) as mentioned in Column 'D' of the 'Table-I' below, passed by the Commissioner (Appeals) as mentioned in Column 'E' of the Table, ibid.

Applicant(s) : As mentioned in Column 'C' of Table-I, below.

Respondent(s) : As mentioned in Column 'G' of Table-I, below.

**Table-I**

S. No.	R. A. No(s)/ Date/ Place of Receipt	Name of the Applicant	OIA No./ Date	Appellate Authority/ Commissioner (Appeals)	Rebate amount under dispute	Name of the Respondent
A	B	C	D	E	F	G
1.	195/05/SZ/2020- RA Dated 31.01.2020	M/s Amman Match Company Pvt. Ltd., Sivakasi,	308/2019 dated 14.10.2019	Commissioner, Central Tax (Appeal-I), Madurai	Rs. 12,40,360/-	The Commissioner of CGST, Madurai
2-5	195/35-38/SZ/ 2018-RA Dated 09.04.2018	M/s Mahindra Industries, Bengaluru	BW/EXCUS/000/APP/53- 56/17/18 dated 14.11.2017	Commissioner of Central Tax (Appeals), Mysore	Rs. 4,65,320/- Rs. 2,02,447/- Rs. 68,75,526/-	The Commissioner of CGST (West), Bengaluru

					<b>Rs. 3,34,136/-</b>	
<b>6.</b>	195/32/SZ/2018- RA Dated 27.04.2018	M/s NCR Corporation India Ltd., Chengalpattu, Tamilnadu	517/2017(CTA-II) Dated 29.10.2017	Commissioner of GST & Central Excise (Appeals-II), Chennai	<b>Rs. 24,31,130/-</b>	The Commissioner of CGST (Outer), Chennai

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**ORDER**

Revision Applications bearing No(s)., as mentioned in Column '**B**' of the '**Table-I**' above, have been filed under Section 35EE of the Central Excise Act, 1944, against the Orders-in-Appeal No(s), as mentioned in Column '**D**' of the '**Table-I**' above, passed by the Commissioner (Appeals), as mentioned in Column '**E**' of the **Table**, ibid. The jurisdictional Commissioners (Appeals) have, vide the respective Orders-in-Appeal, upheld the Orders-in-Original passed by the jurisdictional Deputy Commissioner/ Assistant Commissioner of Central Excise whereby rebate claims of the enlisted Applicants, as per Column '**C**' of the '**Table-I**' above, were rejected on the grounds of limitation prescribed under Section 11B of the Central Excise Act, 1944.

2. Brief facts of the case are that the Applicants herein had exported excisable goods on payment of Central Excise duty and filed their respective rebate claims, under Rule 18 of the Central Excise Rules, 2002, beyond the period of one year prescribed under Section 11B of the Central Excise Act, 1944. The jurisdictional original authorities rejected the rebate claims as barred by limitation prescribed under Section 11B of the Act, ibid. Aggrieved, the Applicants herein filed their respective appeals, which have been rejected.

3. The Revision Applications have been filed, mainly, on the grounds that the period prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to the rebate claims; that exports were made prior to 01.03.2016; that neither Rule 18 of the Central Excise Rules, 2002 nor Notification No. 19/2004-CE(NT) dated 06.09.2004 specifically provided for the applicability of limitation under Section 11B of the Act, ibid for the period between 2004 to 2016; that notification dated 06.09.2004 had been amended vide notification dated 01.03.2016 and, thus, the period prescribed under Section 11B of the Act, ibid is not applicable in respect of exports made prior to 01.03.2016.

4. As the revision applications involve identical issue, they are being disposed of by this common order.

4.1 Personal hearings were held, separately for each of the Applicants, on 22.12.2022, in virtual mode.

4.2.1 In the case of M/s Amman Match Company Pvt Ltd., Sivakasi, Sh. M. Karthikeyan, Advocate appeared and reiterated the contents of the RA. No one appeared for the Applicant department nor any request for adjournment has been received.

4.2.2 In the case of M/s Mahindra Industries, Bengaluru, Sh. Pradyumana GH, Advocate appeared for the Applicant and reiterated the contents of the RAs. Ms. Arundhati Ram, Superintendent supported the Orders of the Commissioner (Appeals).

4.2.3 In the case of M/s NCR Corporation India Ltd., Chengalpattu, Tamilnadu, Sh. M.N. Bharathi, Advocate appeared for the Applicant and submitted that in view of the Hon'ble Supreme Court's judgment dated 29.11.2022 in the case of Sansera Engineering Pvt. Ltd., the case is covered against them on merits. However, as the export has taken place, the duty paid may be refunded to them by way of re-credit in the CENVAT credit account. Sh. Radhakrishnan, AC supported the orders of the authorities below.

5.1 The RA No. 195/05/SZ/2020-RA dated 31.03.2020 has been filed by M/s Amman Match Company Pvt. Ltd. with a delay, which is attributed to medical exigency related to the Counsel for the Applicant. Delay is condoned.

5.2 The RA Nos. 195/35-38/SZ/18-RA dated 09.04.2018 have been filed by M/s Mahendra Industries with a delay, which is attributed to exigencies at the end of the Counsel of the Applicant. Delay is condoned.

6.1 The Government has carefully examined the matter. The common question involved in the subject revision applications is whether the limitation provided under Section 11B of the Central Excise Act, 1944 is applicable to the claims for rebate of duty, under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-CE(NT) dated 06.09.2004.

6.2 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 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, a plain reading of Section 11B, leaves no scope for doubt that the limitation provided under Section 11B is applicable to the cases of rebate as well.

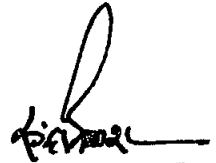
6.3 The Government further observes the issue is no longer res-integra. The Hon'ble Supreme Court has, in the case of Sansera Engineering Ltd. vs. Deputy Commissioner, Large Tax Payer Unit, Bengaluru (Civil Appeal No. 8717 of 2022), noted the statutory position, as above, and, vide its judgment dated 29.11.2022, held that "*15----- While making claim for rebate of duty under rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable.*" While deciding this matter the Hon'ble Supreme Court has also overruled the contrary judgments of the Hon'ble High Courts in the cases of M/s. Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)}, Camphor and Allied Products Ltd. {2019 (360) ELT 865 (All.)}, JSL Lifestyle Ltd. {2015 (326) ELT 265 (P & H)} and Gravita India Ltd. {2016 (334) ELT 321 (Raj.)}.

6.4 Thus, there is no doubt that limitation provided under Section 11B of the Central Excise Act, 1944 shall be applicable in respect of claims for rebate, under Rule 18 ibid read with Notification No. 19/2004-CE(NT) dated 06.09.2004 irrespective of whether the provisions regarding limitation were specifically adopted in the notification dated 06.09.2004 or otherwise.

7. In the case of NCR Corporation Ltd., it is the contention of the Applicant that, though, the matter is covered against them or merits, in view of the, Apex Court's judgment dated 29.11.2022 in the case of Sansera Engineering, the rebate should be allowed to them by way of re-credit in the CENVAT credit account. However, the Government is not persuaded to accept this plea for the following reasons:

- (i) The re-credit of the amount claimed by way of rebate in the CENVAT credit account would amount to rejecting the rebate claim in cash, on one hand, but allowing the very same claim by way of re-credit, on the other hand. It is trite that what cannot be done directly can also not be done indirectly.
- (ii) After the introduction of the GST (w.e.f. 01.07.2017), there is no CENVAT credit account available with the Applicant where the re-credit could be considered.
- (iii) Any refund claim arises as the duty was not payable or duty paid should otherwise be not retained (as in the case of export goods). If this contention of the Applicant is accepted, it would mean that no refund claim, which is otherwise admissible on merits, can be rejected on the grounds of limitation. Such interpretation would render the provisions regarding limitation made under Section 11B redundant, a position which cannot be contemplated in law.

8. In view of the above, the subject revision applications are rejected.



(Sandeep Prakash)  
Additional Secretary to the Government of India

*ofc* 23.12.2022

**Applicant(s):**

1.	M/s. Amman Match Company Pvt. Ltd., 17-A Virudhunagar Road, Sivakasi-626123, Tamilnadu
2.	M/s. Mahindra Industries, Shed No. 2 Survey No. 43, Kenchenahalli Grama, R.V. Niketan Kangeri Hobili, Bengaluru-560059
3.	M/s. NCR Corporation India Ltd., Chengalpattu, 14/1A, Mahindra World City, Industrial Park, Veerapauram Village, Chennai, -603022 Tamilnadu

**G.O.I. Order No. 112 - 117 /22-CX dated 23-12-2022**

**Copy to:****1. The Respondents:**

1.	The Commissioner of <b>CGST, Madurai</b> , C. R. Building, B. B. Kulam, Madurai-625002
2.	The Commissioner of CGST ( <b>Outer</b> ), <b>Chennai</b> , No. 2054-III Avenue, 12 <sup>th</sup> Main Road, Newry Towers, Anna Nagar, Chennai-600034
3.	The Principal Commissioner of <b>CGST (West)</b> , 1 <sup>st</sup> Floor, BMTC Bus Stand Building, Banshankari, <b>Bengaluru-560070</b>

**2. The Commissioner (Appeals):**

1.	The Commissioner, CGST ( <b>Appeals-II</b> ), <b>Chennai</b> , Plot No. 2054, Block-I, Newry Towers (2 <sup>nd</sup> Floor), 12 <sup>th</sup> Main Road, 2 <sup>nd</sup> Avenue, Anna Nagar, Chennai-600040
2.	The Commissioner, CGST ( <b>Appeals</b> ), <b>Coimbatore</b> , 6/7 A.T.D. Street, Race Course Road, Coimbatore-641018
3.	The Commissioner of CGST ( <b>Appeals</b> ), <b>Mysuru</b> , S-1 & S-2, Vinaya Marg, Sidartha Nagar, Mysuru-570011

**3. Advocate(s)/ Authorised Representative(s) of the Applicants:**

1.	Sh. M. Karthikeyan, Advocate, C/o Swamy Associates, 18, Rams Flats, Ashoka Avenue, Directors Colony, Kodambakkam Chennai-600024.
2.	Sh. Pradyumna G.H., Advooates & Consultants, BVC & Co., No. 371, 1 <sup>st</sup> Floor, 8 <sup>th</sup> Main Road, Sadashivanagar, Bengaluru-560080.
3.	Sh. M.N. Bharathi, Advocate, C/o VMJ Associates "Skandalaya", New No. 7, Ground Floor, Justice Sundram Road, Mylapore, Chennai-600004.


4. PA to AS(RA).

5. Guard file.

6. Spare Copy.

7. Notice Board.

ATTESTED

  
 नरेंद्र कुमार सिंह / Narender Kumar Singh  
 अधीक्षक / Superintendent (R.A. Unit)  
 वित्त मंत्रालय / Ministry of Finance  
 राज्य विभाग / Department of Revenue  
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