

SPEED POST



F.No.198/23/2017-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
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NEW DELHI-110 066

Date of Issue 30/12/22

Order No. 118/2022-CX dated 30-12-2022 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 filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No. TNL-CEX-000-APP-002-2017 dated 09.01.2017, passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai.

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

Respondent : M/s. Daehan International, Tuticorin.

ORDER

A Revision Application No. 198/23/2017-R.A. dated 06.03.2017 has been filed by the Commissioner of Central Excise, Tirunelveli, presently, Commissioner of CGST & Central Excise, Madurai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TNL-CEX-000-APP-002-2017 dated 09.01.2017, passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 45/2015 (Rebate) dated 27.11.2015, passed by the Assistant Commissioner of Central Excise, Tuticorin Division and allowed the appeal filed by M/s. Daehan International, Tuticorin (hereinafter referred to as the Respondents).

2 Brief facts of the case are that the Respondents herein had submitted a rebate claim for a total amount of Rs. 91,135/- claiming rebate of duty paid on packing materials used for exporting White Crystal Salt under Notification No. 21/2004-CE(NT) dated 06.09.2004. The claim was filed on 09.03.2015 for the exports made during the period between April 2014 to August 2014. On verification of the claim along with the forms ARE-2, original authority noticed that there were no endorsement in Part B of the ARE-2s and the Respondents failed to submit advance stamp receipt also. Hence, the claim was returned to the Respondents on 27.05.2015 for making good the discrepancies observed. The Respondents re-submitted the rebate claim after removing the said discrepancies on 18.06.2015, which was ultimately rejected by the original authority, as barred by limitation in view of the provisions of Section 11B of the Central Excise Act, 1944. The appeal filed by the Respondents herein has been allowed by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3 The revision application has been filed by the Applicant Department, mainly, on the grounds that in terms of Section 11B of the Central Excise Act, 1944 claim for refund/rebate should be filed within a period of one year; and that absence of limitation under Central Excise Rules or the relevant notification cannot nullify the provisions made in the parent statute.

4 Personal hearing, in virtual mode, was fixed on 23.11.2022, 14.12.2022 & 30.12.2022. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the case is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. It is observed that the subject rebate claim was initially filed on 09.03.2015 in respect of the goods which were shipped from 19.04.2014 to 30.08.2014. Therefore, it is apparent that the claim was initially filed within a period of one year from the relevant date. However, the rebate claim was, thereafter, returned to the Respondents on 27.05.2015 pointing out various deficiencies and the same was subsequently resubmitted on 18.06.2015. This date of resubmission i.e. 18.06.2015 has been taken as the date of submission and, the claim has been rejected as barred by limitation.

5.2 The Government observes that the claim covers 8 ARE-2s, where date of shipment is 19.04.2014, 07.06.2014, 05.07.2014, 12.07.2014, 18.07.2014, 13.08.2014, 21.08.2014 & 30.08.2014. Therefore, even if date of resubmission, i.e. 18.06.2015, is taken to count the period of limitation, only the claims amounting to Rs.9863/- (ARE-2 No. 01/14-15, Date of Shipment 19.04.2014) and Rs.9043/- (ARE-2 No.02/14-15, Date of Shipment 07.06.2014) are beyond period of limitation, i.e., 01 year. Therefore, the claims covered by other 06 ARE-2s could not have been rejected on this ground.

5.3 The Government also observes that there is no provision in law to return refund/rebate claims and, therefore, date of original filing has to be considered as the date of filing of the rebate claim. Hon'ble Gujarat High Court, has, in the case of United Phosphorus Ltd vs. Union of India {2005(184) E.L.T. 240 (Guj.)}, held that once any refund application is filed before the concerned authority, it becomes a part of the record of that authority. Such an authority can, therefore, not part with

the refund application by returning the same. The Hon'ble High Court, accordingly, held that returning the claim, without making an order thereon by the Assistant Commissioner, amounts to refusal to perform the statutory duty imposed on him and such return of claim is, therefore, illegal and void. Similarly, in the case of Apar Industries (Polymer Division) vs. Union of India {2016 (333) E.L.T. 246 (Guj.)}, Hon'ble Gujarat High Court has held that in case of resubmission of a rebate claim, the date of original filing should be taken for computing the time limit under Section 11B of the Central Excise Act, 1944 even if the rebate claim was submitted originally in wrong format. Following the ratio of aforesaid judgments of the Hon'ble Gujarat High Court, it has to be held that, in the instant case, the limitation has to be computed with reference to the original date of filing of rebate claims, i.e., 09.03.2015, and, accordingly, the claim has to be held to have been filed within the limitation period provided under Section 11B, in respect of all ARE-2s covered by it.

5.4 Before parting with the matter, it would be relevant to notice that though the issue brought out in the para 5.3 above was raised before the Commissioner (Appeals), she has not dealt with the same but granted the relief on the grounds that at the relevant time the notification no. 19/2004-CE(NT) dated 06.09.2004 did not contain any provision regarding limitation. The Commissioner (Appeals) has cited the judgment in the case of M/s. Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)} in this regard. However, the Government observes that the Hon'ble Supreme Court has, in the case of Sansera Engineering Ltd. vs. Deputy Commissioner, Large Tax Payer Unit, Bengaluru {2022-TIOL-102-SC-CX}, 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.)}. Therefore, the Government finds that the Commissioner

(Appeals) has granted relief to the Respondent herein on erroneous grounds. However, the relief is still admissible for the reasons brought out in the preceding para 5.2 & 5.3.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


The Commissioner of CGST & Central Excise,
Central Revenue Building, B.B.Kulam,
Madurai-625002.

G.O.I. Order No. 118 /22-CX dated 30.12.2022

Copy to: -

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2. The Commissioner of CGST & Central Excise (Appeals), Coimbatore, 6/7, A.T.D. Street, Race Course Road, Coimbatore.
3. PS to AS (RA).
4. Notice Board.
5. Guard File.
6. Spare Copy

ATTESTED



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