



F. No. 198/34-35/SZ/2017-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... 9/1/23

Order No. 26-27/2023-CX dated 09/01 —2023 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. CAL-EXCUS-000-APP-170 & 171-2017 dated 21.08.2017, passed by the Commissioner of Central Taxes & Central Excise (Appeals), Cochin.

Applicant : Commissioner of Central Goods & Service Tax, Kozhikode.

Respondent : M/s Shell MRPL Aviation Fuels & Services Pvt. Ltd., Calicut.

ORDER

Two Revision Applications, bearing Nos. 198-34-35/SZ/2017-R.A. both dated 07.11.2017, have been filed by the Commissioner CGST & Central Excise, Kozhikode (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CAL-EXCUS-000-APP-170 & 171-2017 dated 21.08.2017, passed by the Commissioner (Appeals), CGST & Central Excise, Cochin. The Commissioner (Appeals) has vide impugned Order-in-Appeal, on appeals filed by M/s Shell MRPL Aviation Fuels & Services Pvt. Ltd., Calicut (hereinafter referred to as the Respondent), set aside the Orders-in-Original Nos. 02/15-16-CE (R) & 03/15-16 (CE) R both dated 01.10.2015, passed by the Assistant Commissioner of Central Excise, Calicut.

2. Briefly stated, the Respondents had filed rebate claims for duty paid on Aviation Turbine Fuel (ATF) supplied to the foreign going aircraft at Calicut Airport for an amount of Rs. 99,21,883/- and Rs. 53,78,819/- for the supplies made during May, 2014, and during 01.06.2014 to 19.06.2014, respectively. The rebate claims were filed on 19.06.2015 and were found to be time barred by the original authority. The Commissioner (Appeals) decided the appeals filed by the Respondents herein by a common Order-in-Appeal dated 21.08.2017, and allowed the same holding that the limitation period of one year prescribed under Section 11B of the Central Excise Act, 1944 does not apply to the claims of rebate. The Commissioner (Appeals) has in this regard relied upon the judgment of Hon'ble Madras High Court in the case of Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)}.

3. The Revision Applications have been filed, mainly, on the grounds that the limitation provided under Section 11B applies to the cases of rebate also in view of the provisions made in Clause (A) & Clause (B) (a) (i) of the Explanation under Section 11B; that the reliance placed by the Commissioner (Appeals) on the judgment of the Hon'ble Madras High Court in the case of Dorcas Market Makers Pvt. Ltd. (supra) was misplaced and the Hon'ble Bombay High Court had, in the case of Everest Flavours Ltd. {2012 (282) ELT 481 (Bom.)}, held that since statutory provisions for refund under Section 11B bring

within its purview rebate of excise duty, Rule 18 of the Central Excise Rules, 2002 cannot be read independent of the requirements of limitation prescribed under Section 11B. A written reply dated 12.02.2018 has been filed by the Respondents herein.

4. Personal hearing in the matter was fixed on 23.11.2022, which was adjourned at the request of the Applicant department to 22.12.2022. Sh. Srijith M, DC appeared on 22.12.2022 but no one appeared for the Respondent. Hence, last and final opportunity was granted on 09.01.2023. However, no one appeared for either side on 09.01.2023 nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for decision based on records.

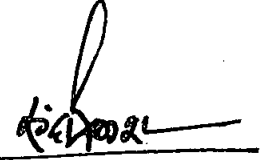
5.1 The Government has carefully examined the matter. It is observed from records that the Respondent exporter had approached the Assistant Commissioner of Central Excise, Mangalore-I Division, seeking permission to submit rebate claims in respect of exports made from various airports, including Calicut, on a centralized basis. The Assistant Commissioner, Mangalore had, vide Letter C. No. IV/30/31/2013 Tech. /1686 dated 27.06.2014, accorded approval to the Respondent for submitting rebate claims on a centralized basis. Pursuant thereto, the Respondents had submitted rebate claims for the period May and June, 2014 before the Assistant Commissioner of Central Excise, Mangalore-I Division on 11.09.2014. It is further brought out that the claims were processed in the Office of Assistant Commissioner of Central Excise, Mangalore and, vide letter dated 24.09.2014, certain deficiencies were pointed out and clarifications were sought, which were submitted by the Respondents on 05.12.2014. However, on 17.03.2015, the Assistant Commissioner, Mangalore, pointed out that since Assistant Commissioner of Central Excise, Calicut had been mentioned as rebate claiming authority in the relevant ARE-1, the claims can be submitted only before the Assistant Commissioner of Central Excise, Calicut. The Respondent exporter, thereafter, vide letter dated 17.03.2015 submitted an application for withdrawal of the claims for re-submission before the Assistant Commissioner of Central Excise, Calicut and the claims were returned to them, vide letter dated 28.05.2015 by the Superintendent of Central Excise, Mangalore-I Division. The claims were thereafter re-arranged and submitted before the Assistant

Commissioner of Central Excise, Calicut on 19.06.2015, which were rejected as time barred to the extent of the exports made during May, 2014 and during the period 01.06.2014 to 19.06.2014. In the conspectus of these facts, the Government observes that the rebate claims were submitted on 11.09.2014 before the Assistant Commissioner of Central Excise, Mangalore-I Division well within the period of limitation of one year in pursuance of the specific approval granted to the Respondents herein to file the rebate claims on a centralized basis. The rebate claims so filed were processed and deficiencies were also pointed out, which were complied by the Respondents. However, on 17.03.2015, i.e., more than six months after the rebate claims were filed and when the limitation period was going to expire, the exporter was advised that the competent authority for sanction of rebate was Assistant Commissioner of Central Excise, Calicut. Not only this, when the exporter requested for return of claims on 17.03.2015, the same were actually returned to them only on 28.05.2015, i.e., when the limitation period of one year was over for most of the exports made during May, 2014. Thus, it is apparent that the submission of the claims before the Assistant Commissioner of Central Excise, Calicut was delayed due to the approval for centralized processing granted by the Assistant Commissioner of Central Excise, Mangalore -I Division on 26.07.2014, which was subsequently not honoured by the same Assistant Commissioner, and also due to the delay in return of the claims by the Office of the Assistant Commissioner of Central Excise, Mangalore-I Division. In these peculiar facts and circumstances, it has to be held that the date of original filing (i.e. 11.09.2014) before the Assistant Commissioner, Mangalore -I Division should be treated as the date of filing of the rebate claims. Consequently, the claims have to be held to have been filed within the limitation period prescribed under Section 11B.

5.2 Before parting with the issue, the Government records it's disapproval of the view taken by the Commissioner (Appeals) in the impugned Order-in-Appeal holding that the limitation period prescribed under Section 11B *ibid* does not apply to the claims of rebate filed under Rule 18 *ibid*. Suffice it to say that the matter has been settled by the judgment of the Hon'ble Supreme Court in the case of Sansera Engineering Ltd., {2022-TIOL-102-SC-CX} wherein it has been held that the limitation provided under Section 11B is

applicable to the claims for rebate of duty under Rule 18 ibid. The Hon'ble Supreme Court has also overruled the judgment of the Hon'ble Madras High Court in the case of the Dorcas Market Makers Pvt. Ltd. (supra), which has been relied upon by the Commissioner (Appeals), and has approved the judgment of Hon'ble Bombay High Court in the case of Everest Flavours Ltd. (supra), which has been relied upon by the department. However, for the reasons brought out in the preceding para 5.1, the rebate claims have to be held to have been filed within the limitation period prescribed under Section 11B. Therefore, the revision applications cannot be allowed.

6. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

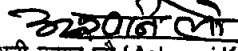
The Commissioner of Central Goods
& Services Tax, Kozhikode
C.R. Building, Mananchira,
Kozhikode- 673001.

G.O.I. Order No. 26-27/23-CX dated 9.1.2023

Copy to:

1. M/s Shell MRPL Aviation Fuels & Services Pvt. Ltd., Airport Road, Calicut Airport, Malappuram- 673647.
2. The Commissioner of Central Goods & Services Tax (Appeals), C.R. Building, I.S. Press Road, Cochin-682018.
3. PA to AS (RA).
4. Guard file.
5. Spare Copy.
6. Notice Board.

ATTESTED


अश्वनी कुमार लौ / Ashwani Kumar Lau
अधीक्षक / Superintendent (R.A. Unit)
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
Room No. 606, 6th Floor, B-Wing
14, Hudco Vishala Building, New Delhi-110068

At New York, New York, this 10th day of
February, 1964, I, the undersigned,
being duly sworn, depose and say that
the within and foregoing is a true and
correct copy of the original as
shown to me by the person who
produced the same to me, and
I believe the contents thereof to be
true and correct.