

SPEED POST



F.No. 195/03/2022-R.A.
F.No. 195/04/2022-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 28/07/22

Order No. 29-30/ 2022-CX dated 28-07-2022 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 Applications filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 36/Kol-I/2018 and 37/Kol-I/2018 dated 22.03.2018 passed by the Commissioner, CGST (Kol-I), Kolkata.

Applicants : 1. M/s Universal Machines Ltd., Howrah
2. M/s Alom Extrusions Ltd., Kolkata

Respondent : The Commissioner of CGST, Kolkata North, Kolkata.

ORDER

Revision Application no. 195/03/2022-R.A. dated 29.04.2022 and Revision Application no. 195/04/2022-R.A. dated 02.05.2022 have been filed by M/s Universal Machines Ltd., Kolkata (hereinafter referred to as the Applicant-1) against the Order-in-Appeal no. 36/Kol-I/2018 dated 22.03.2018 and M/s Alom Extrusions Ltd., Kolkata (hereinafter referred to as the Applicant-2) against Order-in-Appeal no. 37/Kol-I/2018 dated 22.03.2018, passed by the Commissioner (Appeals-I) CGST, Kolkata, respectively. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, upheld the Order-in-Original No. 6004 dated 16.12.2016 and Order-in-Original No. 5909-5910 dated 13.12.2016, passed by the Assistant Commissioner of Central Excise, Export Refund Branch of the then Kol-I Central Excise Commissionerate.

2.1 Briefly stated, Applicant-1 had exported Aluminium Hinge Brackets under the cover of ARE-1 No. 02/2015-16 dated 29.05.2015. The export was actually effected on 01.06.2015 and claim for rebate of Central Excise Duty amounting to Rs. 1,23,585/- was filed, under Rule 18 of the Central Excise Rules, 1944, on 24.06.2016.

2.2 The Applicant-2 had exported Aluminium Extruded Shape & Sections under cover of 2 ARE-1s bearing nos. 05/15-16 and 06/15-16 both dated 03.06.2015. The export was actually effected on 08.06.2015 and the claim for rebate of Central Excise Duty amounting to Rs. 5,55,295/-, under Rule 18 ibid, was filed on 24.06.2016.

2.3 In both the cases, the original authority rejected the claims as these were filed beyond the period of one year from the relevant date and, hence, were time barred in terms of Section 11B of Central Excise Act, 1944. The appeals filed by the Applicants have been rejected by the Commissioner (Appeals).

3. The revision applications have been filed, mainly, on the grounds that at the relevant time, there was no provision in Rule 18 and the procedures laid down in notification no. 19/2004-CE (NT) dated 06.09.2004 prescribing any time limit for lodging of rebate claims; that the Central Government, subsequently, vide notification no. 18/2016-CE (NT) dated 01.03.2016, introduced the rule of limitation in the scheme of rebate of excise duty by way of amending the notification no. 19/2004-CE (NT); that the rebate is governed by the special law under Rule 18 read with the notification no. 19/2004-CE (NT) dated 06.09.2004

and hence, the provisions thereof cannot be ignored. Since the revision applications involve a common issue and identical submissions have been made by the Applicants, these are being taken up for disposal by this common order.

4. Personal hearing in, virtual mode, was held on 27.07.2022. Shri Debashish Gupta, Consultant appeared for the Applicants and reiterated the contents of the revision applications. No one appeared for the department nor any request for adjournment has been received. However, the Assistant Commissioner of CGST & Central Excise, Bally Division, Kolkata has, vide separate letters dated 26.07.2022, stated that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter.

5.2 The revision applications have been filed on 29.04.2022 and 02.05.2022 against the Orders-in-Appeal dated 22.03.2018. Applications for condonation of delay have been filed by the Applicants, wherein it is stated that they had mistakenly filed appeals before the CESTAT against the subject Orders-in-Appeal. However, subsequently, they filed applications for withdrawal before the CESTAT, which were taken up on 06.04.2022 and 08.04.2022. The CESTAT dismissed the appeals as withdrawn. It is further stated that, after removing the time taken in pursuing the appeals before CESTAT, subject revision applications have been filed with a delay of 15 days and 17 days. No reason for this delay of 15 and 17 days is forthcoming. Further, the orders of CESTAT rejecting the appeals as withdrawn have also not been placed on record. Since sufficient cause has not been shown, the delay is not liable to be condoned and the revision applications are liable to be dismissed on this ground alone.

6.1 On merits, the issue that arises for consideration 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 the notification no. 19/2004-CE (NT) dated 06.09.2004, even though the said rule and the notification do not specifically provide for such a limitation.

6.2 It is observed that as per clause (A) of the Explanation to Section 11 B, "refund" includes rebate of duty of excise on excisable goods exported out of India or an 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 is applicable to the cases of rebate as well.

6.3 The Applicants have, however, disputed this plain and unambiguous reading of Section 11B on the grounds that the notification no. 19/204-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 a single bench of Hon'ble Allahabad High Court in the case of *Camphor and Allied Products Ltd. Vs. Union of India {2019 (368) ELT 865(AII)}* and judgment of Hon'ble Punjab & Haryana High Court in the case of *M/s JSL Lifestyles Ltd. Vs. Union of India {2015(10) TMI1066}* have been relied upon.

6.4 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".

6.5 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 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 (supra)* is a detailed judgment based on the judgment of a nine-judge bench in *Mafatlal Industries (supra)*. The Government observes that the judgments relied upon by the Applicants have 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}.

6.6 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.

7. In view of the above, the Government does not find any infirmity in the impugned Orders-in-Appeal. The revision applications are rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India


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G.O.I. Order No. 29-30/22-CX dated 28-7-2022

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ATTESTED


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