

SPEED POST



F.No.198/223/2016-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 20/9/22

Order No. 40/2022-CX dated 20-09-2022 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/95/2016 dated 19.08.2016, passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai.
- Applicant : The Commissioner of CGST & Central Excise, Madurai.
- Respondent : M/s. SDR Polymers Pvt. Ltd., Tuticorin.

ORDER

A revision application No. 198/223/2016-R.A. dated 22.11.2016, 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/095/2016 dated 19.08.2016, 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. 36/2015 (Rebate) dated 20.10.2015, passed by the Assistant Commissioner of Central Excise, Tuticorin Division and allowed the appeal filed by M/s. SDR Polymers Pvt. Ltd., Tuticorin (hereinafter referred to as the Respondents).

2. Brief facts of the case are that the Respondents herein had exported poly propylene flexible intermediate bulk container bags, on payment of Central Excise duty and claimed rebate under Rule 18 the Central Excise Rules, 2002. The Respondents had filed 13 claims for rebate, totally amounting to Rs. 28,40,887/-, on 27.09.2013 but the claims were returned to the Respondents on 22.10.2013, pointing out certain discrepancies therein. Out of the 13 claims so returned, 08 claims for an amount of Rs. 19,07,859/- were resubmitted on 18.09.2014. However, these 08 claims were again returned to the Respondents on 10.12.2014 pointing out further deficiencies. After rectification, Respondents combined these 08 claims into a single claim dated 17.12.2014 and submitted the same on 24.12.2014. The said claim was once again returned to the Respondents, vide letter dated 23.02.2015, pointing out deficiencies once again. The claim was resubmitted on 17.03.2015, 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, 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. The respondents filed a detailed reply, vide letter dated 11.07.2017.

4. The personal hearing, in virtual mode, was held on 19.09.2022. Sh. Richard, AC appeared for the department and reiterated the contents of the RA. Sh. Shunmuga Sundaram, Advocate appeared for the Respondent and submitted that the claims were originally filed in time but were returned by the department. In his submission, the department should have put them to notice if the claims were

deficient rather than returning the claims for which there is no authority in law. He also undertook to email the written submissions, said to have been filed in 2017 (which are not on record), by 20.09.2022. A copy of written submissions dated 11.07.2017 has thereafter been filed by email on 19.09.2022.

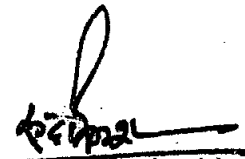
5.1 The Government has carefully examined the matter. It is observed that the subject rebate claims were initially filed on 27.09.2013 whereas the goods were shipped from 17.12.2012 to 28.01.2013. Therefore, it is apparent that the claims were initially filed within a period of one year from the relevant date. However, the rebate claims were, thereafter, repeatedly returned to the Respondents pointing out various deficiencies and these were subsequently resubmitted on various dates by the Respondents. The final date of resubmission, i.e., 17.03.2015 has been taken as the date of submission and, therefore, the original authority found the claim to be barred by limitation.

5.2 In their written reply, the Respondents have correctly pointed out 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., 27.09.2013, and, accordingly, the claim has to be held to have been filed within the limitation period provided under Section 11B.]

5.3 Before parting with the matter, it would be relevant to notice that though the issue brought out in preceding para 5.2 was also raised before the Commissioner (Appeals), she has not dealt with the same but proceeded to grant relief to the Respondents herein 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 and the time limit prescribed under Section 11B had not been made applicable to the rebate of duty paid on exported goods. The Commissioner (Appeals) has also relied upon the judgment of the Hon'ble Madras High Court in the case of the Deputy Commissioner of Central Excise vs. M/s. Dorcas Market Makers Pvt. Ltd. {2015 (4) TMI-118}, in this regard. The Government records its disagreement with this finding of the Commissioner (Appeals) in as much as on a plain reading of Section 11B, it is apparent that Section 11B not only provides that the rebate of duty of excise is a type of refund of duty but also specifically provides for the relevant date for determining limitation in the cases of rebate. As such, there should be no scope for doubt that the limitation provided under Section 11B is applicable to the cases of rebate as well. In the case of Union of India vs. Uttam Steel Ltd. {2015 (319) E.L.T. 598 (SC)}, the Hon'ble Supreme Court has held that it is not open to sub-ordinate legislation to dispense with the requirement of Section 11B. Subsequently, several Hon'ble High Courts have followed the judgment in Uttam Steel (supra) to hold that limitation provided under Section 11B is applicable to rebate claims filed under Rule 18, even in absence of any specific provision being made in the said Rule and the notification issued thereunder [Ref. Sansera Engineering Pvt. Ltd. {2020 (371) ELT 29 (Kar.)}, Panyam Cements & Minerals Industries Ltd. {2016 (331) ELT 206 (AP)}, Orient Micro Abrasive Ltd. {2020 (371) ELT (Del.)} & Suretex Prophylactics India Pvt. Ltd. {2020 (373) ELT 481 (Kar.)}. Further, the Hon'ble Madras High Court has, subsequently, in the case of Hyundai Motors India Pvt. Ltd. {2017 (355) ELT 342 (Mad.)} followed the judgment in Uttam Steel (supra) and held that such claims for rebate can be made only under Section 11B within the period of limitation as prescribed under the Act. 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.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s SDR Polymers Pvt. Ltd. 7/55/1, Kamraj
Nagar West, Servaikranmadam
Sawyerpuram, Tuticorin- 628251 (Tamil Nadu)

G.O.I. Order No. 40/22-CX dated 20-9-2022

Copy to: -

1. The Commissioner CGST & Central Excise, Central Revenue Building, Bibikulam, Madurai – 625002.
2. The Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, Lal Bahadur Shastri Marg, C.R. Building, Madurai.
3. Sh. Shunmuga Sundaram, Advocate, AB Consultancy -G-4, Divya Sundari Apartment, Opp. to New Bus Stand, Perumalpuram, Tirunelveli- 627007
4. PS to AS (RA).
5. Guard File.
6. Spare Copy

ATTESTED



20.09.22

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi