



F. No. 195/458/2016-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 7/10/22

Order No. 53/ 2022-CX dated 07-10-2022 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. 199/2016/(CXA-II) dated 31.05.2016, passed by the Commissioner of Central Excise (Appeals-II), Chennai.

Applicant : M/s Yazaki Wiring Technologies India (P) Ltd., Chennai.

Respondent : The Commissioner of CGST, Chennai Outer, Chennai.

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ORDER

A Revision Application No. 195/458/2016-RA dated 14.09.2016 has been filed by the M/s Yazaki Wiring Technologies India Pvt. Ltd., Kanchipuram District (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 199/2016/CXA-II dated 31.05.2016 passed by the Commissioner of Central Excise (Appeals-II), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 94/2015 dated 28.05.2015, passed by the Assistant Commissioner of Central Excise, Tambaram Division, Chennai whereby a rebate claim of Rs. 2,35,784/-filed by the Applicant herein was rejected.

2. Brief facts of the case are that the Applicant herein exported excisable goods on payment of Central Excise duty against 14 ARE-1s and filed a rebate claim, under Rule 18 of the Central Excise Rules, 2002, on 24.01.2013. However, the claim was returned to the Applicant herein by the Respondent department vide letter dated 25.03.2013 due to certain deficiencies. The rebate claim was again filed on 29.11.2013. However, the original authority rejected the claim as time barred by taking the date of re-submission i.e., 29.11.2013, as the date for counting the period of limitation under Section 11B of the Central Excise Act, 1944. Certain other deficiencies were also pointed out while rejecting the claim. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals).

3. The Revision Application has been filed, mainly, on the grounds that the rebate claim was filed originally vide letter dated 22.01.2013 which was acknowledged on 24.01.2013; that the claim was re-submitted after rectifying the discrepancies noticed by the department (vide their letter dated 25.03.2013) on 29.11.2013; that the original authority has incorrectly treated the date of re-submission of claim, i.e., 29.11.2013 as the date of submission instead of original date of filing of the claims i.e., 24.01.2013; that the non-filing of the triplicate copy of ARE-1 cannot be a reason for rejecting a rebate as it is only a matter of procedure; that as per the Para 13.7, Chapter 7 of CBEC Central Excise

Manual of Supplementary Instructions the authorities below ought to have considered the documentary evidence submitted with the rebate claim to prove export of goods in question or required them to furnish any other documents in support of the said facts.

4. Personal hearing in the matter was fixed on 21.06.2022, 05.07.2022 and 07.10.2022. In the personal hearing held, in virtual mode, on 07.10.2022, Sh. Karthikeyan, Advocate appeared for the Applicant and requested that the compilation emailed on 07.10.2022 may be taken on record. He reiterated the contents of the RA. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is not disputed that the rebate claim was originally submitted on 24.01.2013, i.e., well within the limitation period of one year provided under Section 11B of the Act *ibid*. The rebate claim was, thereafter, returned to the Applicant for rectifying certain deficiencies and was re-submitted on 29.11.2013. The Government 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 (Ploymer 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., 24.01.2013, and, accordingly, the claim has to be held to have been filed within the limitation period provided under Section 11B.

6. Certain other issues have been raised with reference to alleged deficiencies found vis-a-vis the ARE-1s, including non-submission of triplicate copies of the ARE-1s. The Government observes that the requirement of producing ARE-1 is a part of procedure contained in Para 3 of the Notification No. 19/2004-CE (NT) dated 06.09.2004, issued under Rule 18 of the Central Excise Rules, 2002 read with the instructions issued by the Board. The Hon'ble Bombay High Court has, in the case of *UM Cables Ltd. vs. UOI* {2013 (293) ELT 641 (Bom)}, held that the Rule 18 *ibid.* "*10.....makes a clear distinction between matters which govern the conditions or limitations subject to which a rebate can be granted on one hand and the fulfillment of such procedure as may be prescribed on the other hand. The notification dated 6 September, 2004 that has been issued by the Central Government under Rule 18 prescribes the conditions and limitations for the grant of rebate and matters of procedure separately*". Accordingly, the Hon'ble Bombay High Court has held that as the Rule 18 itself makes distinction between conditions and limitations on the one hand and the procedure governing the grant of rebate on the other hand, "*.....conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory*". Further, the Hon'ble Bombay High Court has, in the case of *Zandu Chemicals Ltd. vs. UOI* {2015 (315) ELT 520 (Bom.)}, followed the judgment in the case of *UM Cables* (*supra*) and has held that the procedural requirements are capable of substantial compliance and cannot be held to be mandatory. The Applicants have stated that they are in a position to show substantial compliance with these procedural requirements. Therefore, it would be in the interest of justice that the matter is remanded to the original authority with directions to examine the matter *de novo* after following the principles of natural justice and after giving due opportunity to the Applicant herein to furnish the documents/evidence to show substantial compliance with the procedural requirements.

7. The Revision Application is allowed by way of remand to the original authority with directions as above.


(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Yazaki Wiring Technologies,
India Pvt. Ltd. D-7, Industrial Estate,
Maraimalai Nagar,
Tamilnadu-603209.

G.O.I. Order No. 53/22-CX dated 07.10.2022

Copy to:

1. The Commissioner of CGST, Chennai Outer, No. 2054-I, II Avenue, 12th Main Road, Newry Tower, Anna, Chennai-600040.
2. The Commissioner of Customs Central Excise (Appeals-II), Central Excise Building, 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai-600034.
3. Sh. M. Karthikeyan, Adovcate, C/o M/s Swamy Associates, Rams Flats, New No. 18, Ashoka Avenue, Directors Colony, Kodambakkam, Chennai.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED


07.10.22

(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