

SPEED POST



F. No. 195/30/2017-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 03/11/22

Order No. 72/2022-CX dated 02-11-2022 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 Order-in-Appeal No. MYS/EXCUS/OOO/APP/050/17-18 dated 24.05.2017, passed by the Commissioner of Central Excise (Appeals), Mysuru.

Applicant : M/s Skanray Technologies Ltd., Mysuru.

Respondent : The Commissioner of CGST & Central Excise, Mysuru.

ORDER

A Revision Application No. 195/30/2017-R.A. dated 13.11.2017 has been filed by M/s Skanray Technologies Ltd., Mysuru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MYS/EXCUS/OOO/APP/050/17-18 dated 24.05.2017, passed by the Commissioner of Central Excise (Appeals), Mysuru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein, against the Order-in-Original No. MYS/EXCUS/000/DIV1/ASC/JS/28A (R)/2016-17 dated 15.09.2016, passed by the Assistant Commissioner of Central Excise, Mysuru-I Division.

2. Briefly stated, the Applicants herein exported certain goods, vide Shipping Bills dated 10.02.2015, 13.03.2015 and 09.04.2015, on payment of excise duty and filed a rebate claim, on 25.08.2016, under Rule 18 of the Central Excise Rules, 2002. The original authority rejected the rebate claim as time barred for being filed after the stipulated period of one year, as per Section 11B of the Central Excise Act, 1944. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals).

3. Revision Application has been filed, mainly, on the grounds that the time limit prescribed under Section 11B is not applicable to rebate claims filed under Rule 18; that the time limit of one year was included in the Notification No. 19/2004-CE(NT) dated 06.09.2004, issued under Rule 18 ibid, only by virtue of an amendment, vide Notification 18/20106-CE(NT) dated 01.03.2016; and that the rebate claim has been filed in accordance with law and it should not be denied on procedural grounds.


4. Personal hearing in, hybrid mode, was held on 02.11.2022. Sh. Shantanu Kumar, Advocate appeared, in person, for the Applicant and filed a compilation, which was taken on record. He reiterated the contents of the RA with the help of case laws cited in the compilation. Sh. Manoj Kumar V, AC appeared, in virtual mode, for the department and supported the order of Commissioner (Appeals). He also submitted that the issue involved herein is covered in favour of the department by the decision of Hon'ble Karnataka High Court, i.e., jurisdictional High Court, in the case of Sansera Engineering {2020 (371) ELT 29 (Kar.)}.

5. The revision application has been filed with a delay of 59 days. Delay, which is attributed to the Applicants' pre-occupation with the transition to GST regime, is condoned.

6. The Government has carefully examined the matter. The short point which arises for consideration, in the instant revision application, is whether the limitation provided under Section 11B *ibid* is applicable to the claims of rebate of duty paid on exported goods, filed under Rule 18 *ibid*. The Government observes that Commissioner (Appeals) has correctly pointed out that as per Explanation (A) of Section 11B, 'refund' includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. Further, the clause (a) of Explanation (B) provides that in case of goods exported out of India where a rebate of excise duty paid is available in respect of goods themselves, or as the case may be, the excisable materials used in the manufacture of such goods, if the goods are exported by sea or air, the 'relevant date' for counting the limitation period shall be the date on which the ship or aircraft, in which the such goods are loaded, leaves India. Thus, the legislature itself having brought a claim for rebate within the scope of Section 11B, it cannot be postulated that Rule 18 would operate independent of the provisions of the parent statute i.e., Section 11B. The Applicants herein have attempted to challenge this plain and unambiguous reading of Section 11B with the help of certain decisions i.e., Dy. Commissioner of Central Excise, Chennai v. Dorcas Market Makers Pvt. Ltd., {2015 (321) ELT 45 (Mad.)}, Camphor and Allied Products Ltd. v. UOI, {2019 (368) ELT 865 (All.)}, JSL Lifestyle Ltd. v. UOI, {(2015) (326) ELT 265 (P & H)} and Gravita India Pvt. Ltd. v. UOI, {2016 (334) ELT 321 (Raj.)}. The Government observes that, in the case of Union of India vs. Uttam Steels Ltd. {2015 (3) 19 ELT 598 (SC)}, the Hon'ble Supreme Court has held that it is not open to the subordinate legislation to dispense with the requirements of Section 11B. Therefore, in the present case, the omission of the limitation period in the Notification 19/2004-CE(NT), during the relevant period, cannot be used to negate the specific provisions of Section 11B of Central Excise Act, 1944. It is also to be observed that, 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. {2021(378) ELT 747 (Kar.)}, Panyam Cements & Minerals Industries Ltd. {2016 (331) ELT 206 (AP)} & Orient Micro Abrasive Ltd. {2020 (371) ELT (Del.)}. Further, the Hon'ble Madras High Court has itself departed from the earlier judgment in Dorcas Market Makers Pvt. Ltd. (*supra*), in the case of Hyundai Motors Pvt. Ltd. {2017 (355) ELT 342 (Mad.)} and has held that such claims for rebate can be made only under Section 11B within the period of limitation as prescribed under the Act. Judgments in the cases of Camphor and Allied Products (*supra*), JSL Lifestyle Ltd. (*supra*), and Gravita India Ltd. (*supra*), have been passed by the Hon'ble High Courts without either noticing/or before the judgment of the Hon'ble Supreme Court in the case of Uttam Steels (*supra*). In fact, the case of Camphor and Allied Products has been decided by following the judgment in the

Dorcas Market Makers Pvt. Ltd. (supra), without noticing the subsequent judgment of Hon'ble Madras High Court itself in the case of Hyundai Motors India Pvt. Ltd. (supra). In any case, as correctly pointed out by the department, the subject issue is squarely covered by the judgment of the jurisdictional High Court, i.e., the Hon'ble Karnataka High Court in the case of Sansera Engineering (supra), in favour of the department. Though it has been submitted in the further submissions filed after the hearing that the judgment in the case of Sansera Engineering (supra) has been challenged in the Hon'ble Supreme Court, no stay is operating in the matter. Therefore, the Government does not find any infirmity in the impugned Order-in-Appeal.

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



(Sandeep Prakash)

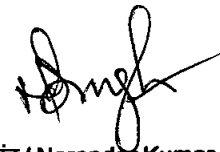
Additional Secretary to the Government of India

M/s Skanray Technologies Pvt. Ltd.,
15-17, Hebbal Industrial Area,
Mysuru-570016.

Order No. 72 /22-CX dated 02-11-2022

Copy to:

1. The Commissioner of CGST & Central Excise, S1 & S2, Vinaya Marg, Siddhartha Nagar, Mysuru-570011.
2. The Commissioner of Central Excise (Appeals), S1 & S2, Vinaya Marg, Siddhartha Nagar, Mysuru-570011.
3. Sh. Lakshmi Kumaran & Sridharan, Adovcate, No. 5, Jangpura Extension Link Road, New Delhi-110014.
4. PS to AS(RA)
5. ✓ Guard File.
6. Spare Copy



ATTESTED नरेंद्र कुमार सिंह / Narendra Kumar Singh
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 606, 6th Floor, B-Wing
4, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110068