

**SPEED POST**



F.No. 195/193/2017-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. 3/11/22.

Order No. 74/2022-CX dated 03-11-2022 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 Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 53/2017 dated 14.02.2017 passed by the Commissioner of Central Excise (Appeals-I), Bengaluru.

Applicants : M/s Shibaam Polymers, Bengaluru

Respondent : The Commissioner of CGST & Central Excise, Bengaluru North

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**ORDER**

Revision Application no. 195/193/2017-R.A. dated 15.05.2017 has been filed by M/s Shibaam Polymers, Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 53/2017 dated 14.02.2017, passed by the Commissioner of Central Excise (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 20/2014-AC dated 26.03.2014, passed by the Assistant Commissioner of Central Excise, Kengeri Division, Uma Complex, Lalbagh Road, Bengaluru of the then Central Excise Commissionerate, Bengaluru-III.

2. Briefly stated, Applicant had exported Polypropylene Rods under the cover of ARE-1 Nos. 23/2012-13 dated 03.11.2012, 24/2012-13 dated 06.11.2012, 25/2012-13 dated 20.11.2012 and 26/2012-13 dated 29.11.2012. The claim for rebate of Central Excise Duty amounting to Rs. 2,72,956/- was filed, under Rule 18 of the Central Excise Rules, 1944, on 14.11.2013. However, the original authority partially rejected the claim as the claim in respect of two ARE-1s i.e ARE-1 No. 23/2012-13 dated 03.11.2012 & 24/2012-13 dated 06.11.2012 was filed beyond the period of one year from the relevant date and, hence, was time barred in terms of Section 11B of Central Excise Act, 1944. 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 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.

4. Personal hearing in, virtual mode, was held on 02.11.2022. Shri Subramanya BL, CA made the submissions on behalf of the Applicant and requested that the additional submissions dated 02.11.2022 may be taken on record. He reiterated the submissions made in the RA and the additional submissions dated 02.11.2022. 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.

5.1 The Government has carefully examined the matter. 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 did not specifically provide for such a limitation, at the relevant time.

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

5.3 The Applicant 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 Hon'ble Madras High Court in the case of *Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)}* and judgment of Hon'ble Punjab & Haryana High Court in the case of *M/s JSL Lifestyles Ltd. Vs. Union of India {2015(326) ELT 265 (P&H)}* have been relied upon.

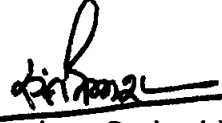
5.4 The Commissioner (Appeals) has, inter-alia, relied upon the judgment of the Hon'ble Supreme Court, in the case of *Union of India vs. Uttam Steel Ltd. {2015(319) ELT 598 (SC)}* to repel the above contentions of the Applicants herein. The Government observes that the judgment of the Apex Court in 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'.*

5.5 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. {2021 (378) ELT 747 (Kar.)}*, *Panyam Cements & Minerals Industries Ltd. {2016 (331) ELT 206 (AP)}* & *Orient Micro Abrasives Ltd. {2020 (371) ELT (Del.)}*]. 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 either without noticing or before the judgment of Hon'ble Apex Court in Uttam Steels case. Further, 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}*. In any case, the matter is squarely covered by the judgment of jurisdictional High Court i.e Hon'ble Karnataka High Court in the case of Sansera Engineering (supra).

5.6 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 Order-in-Appeal. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

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G.O.I. Order No. 74 /22-CX dated 3-11-2022

Copy to: -

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2. The Commissioner of Central Excise (Appeals-I), Traffic Transit Management Centre, BMTc Building, 4<sup>th</sup> Floor, Domlur, Old Airport Road, Bengaluru-560071.
3. M/s. Shekhar & Yathish, Chartered Accountants, No. 13/14, 1<sup>st</sup> Floor, 28<sup>th</sup> Cross, 2<sup>nd</sup> Main, 7<sup>th</sup> Block, Jayanagar, Bengaluru-560070.
4. PS to AS (RA).
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ATTESTED



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