

**SPEED POST**



F. No.198/17/2017-R.A.  
F.No.198/18/2017-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...7/11/22.....

Order No. 77-78/2022-CX dated 7.11.2022 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 Orders-in-Appeal No. TTD-EXCUS-000-APP-027-16-17 & TTD-EXCUS-000-APP-028-16-17, both dated 20.10.2016, passed by the Commissioner of Custom, Central Excise & Service Tax (Vizag Appeal-II), Guntur.

Applicant : Commissioner of CGST & Central Excise, Tirupati.

Respondent : Ms. Kobelco Construction Equipment India Pvt. Ltd., Chittoor

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**ORDER**

Two Revision Applications, bearing Nos. bearing 198/17/2017-R.A. & 198/17/2017-R.A. both dated 30.01.2017, have been filed by the Commissioner of Central Excise & Service Tax, Tirupati, presently, Commissioner of CGST & Central Excise, Tirupati (hereinafter referred to as the Applicant), against the Orders-in-Appeal No. TTD-EXCUS-000-APP-027-16-17&TTD-EXCUS-000-APP-028-16-17, both dated 20.10.2016, passed by the Commissioner of Custom, Central Excise & Service Tax (Vizag Appeal-II), Guntur. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, set aside the Orders-in-Original (REFUNDS) No. 139/2015-16 dated 22.12.2015 and 190/2015-16 dated 18.02.2016, respectively, both passed by the Assistant Commissioner of Customs, Central Excise & Service Tax, Tirupati-I Division, in two appeals filed by M/s. Kobelco Construction Equipment India Pvt. Ltd., Chittoor (hereinafter referred to as the Respondent). As both the revision applications involve the same Applicant and identical issue, they are taken up jointly for consideration.

2.1 Brief facts of the case are that the Respondents herein, in the first case (RA No. 198/17/2017-RA) filed 67 rebate claims for a total amount of Rs. 3,28,61,201/-, under Rule 18 of the Central Excise Rules, 2002, in respect of Central Excise duty paid on the goods exported. Upon verification, it was found that out of the 67 rebate claims, 27 rebate claims were filed within the specified period of one year and balance 40 rebate claims were found to have been filed after the expiry of one year from the relevant date and were, accordingly, found to be time barred. A show cause notice dated 16.11.2015 was issued to the Respondents herein to show cause as to why the part refund/rebate claim for an amount of Rs. 1,74,27,969/-, out of total claim of Rs. 3,28,61,201/- should not be rejected on the ground that the same was filed beyond the limitation period of one year in terms of section 11B of Central Excise Act, 1944. The original authority, vide aforesaid Order-in-Original dated 22.12.2015, rejected the part claim of Rs. 1,74,27,969/-, as time barred, and sanctioned the remaining rebate claim of Rs. 1,54,33,232/-. Out of total amount sanctioned, an amount of Rs. 1,46,84,631/- was sanctioned in cash and balance

amount of Rs. 7,48,601/- was permitted to be taken as credit in the Cenvat Credit account. On an appeal filed by the Respondents herein, the Commissioner (Appeals), vide the impugned Order-in-Appeal No. TTD-EXCUS-000-APP-027-16-17 dated 20.10.2016, modified the Order-in-Original and allowed the 40 rebate claims, rejected as time barred, by the original authority.

2.2 In the second case (RA No. 198/18/2017-RA), the Respondents filed 52 rebate claims for a total amount of Rs. 2,87,24,956/-, under Rule 18 *ibid*. Upon verification, it was found that out of the 52 rebate claims, 19 rebate claims were filed within the specified period of one year and balance 33 rebate claims were found to have been filed after the expiry of one year from the relevant date and were, accordingly, found to be time barred. A show cause notice dated 13.01.2016 was issued to the Respondent to show cause as to why the part refund/rebate claim for an amount of Rs. 1,74,57,325/- out of a total claim of Rs. 2,87,24,956/- should not be rejected on the ground of limitation in terms of section 11B *ibid*. The original authority, vide aforesaid Order-in-Original dated 18.02.2016, rejected the part claim of Rs. 1,74,57,325/-, as time barred, and sanctioned the remaining rebate claim of Rs. 1,12,67,632/-. Out of the total amount sanctioned, an amount of Rs. 1,06,85,061/- was sanctioned in cash and balance amount of Rs. 5,82,570/- was permitted to be taken as credit in the Cenvat Credit account of the Respondents herein. On an appeal filed by the Respondents herein, the Commissioner (Appeals), vide the impugned Order-in-Appeal No. TTD-EXCUS-000-APP-028-16-17 dated 20.10.2016, modified the Order-in-Original and allowed the 33 rebate claims, rejected as time barred, by the original authority.

3. The Revision Applications have been filed, mainly, on the grounds that the Section 11B categorically comprehends rebate of excise duty paid on exported goods; that as per Explanation (A) to Section 11B, 'refund' includes 'rebate'; limitation period of one year provided in Section 11B is squarely applicable to rebate claims; that Central Excise Rules, 2002 are subject to the limitation of Section 37 of Central Excise Act, 1944; and that, therefore, Orders of Commissioner (Appeals) cannot be sustained; that 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. Written reply dated 17.03.2017 has been filed by the Respondents.

4. Personal hearing, in virtual mode, was held on 04.11.2022. Sh. P. Gopakumar, Additional Commissioner appeared for the Applicant department and requested that Written Submissions dated 27.10.2022 may be taken on record. He reiterated the contents of the RA and the Written Submissions dated 27.10.2022. Sh. Rajat Dosi, Advocate appeared for the Respondent and requested that compilation filed by e-mail dated 01.11.2022 may be taken on record. He supported the Orders of Commissioner (Appeals), with reference to case laws cited therein. Sh. Dosi submitted that, in the alternate, they may be allowed re-credit of duty paid in the Cenvat Credit account. In the end, Sh. Dosi pointed out that the exports against ARE-1 Nos. 214 of 05.09.2014 and 215 of 09.09.2014 (Sr.No. 39 & 40 of Table in SCN dated 16.11.2015) actually took place on 19.09.2014, which is within one year of the date of filing of rebate claim, i.e., 11.09.2015. He requested that rebate in respect of these ARE-1s should not be rejected even if limitation of one year would apply.

5.1 The Government has carefully examined the matter. The issue that arises for consideration, in the instant revision applications, 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 Respondents 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 the 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 judgments of Hon'ble Madras High Court in the case of *Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)}*, 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)}* and of Hon'ble Allahabad High Court in the case of *Campher and Allied Products Ltd. vs UOI{2019(368)ELT865(All.)}* have been relied upon. The Commissioner (Appeals) has, in fact, passed the impugned Orders by solely relying upon the judgment in Dorcas case.

5.4 The Government observes that a similar issue came up for the consideration of Hon'ble Supreme Court in the case of *UOI vs Uttam Steel Ltd.*

{2015(319)ELT598(SC)}. This judgment was rendered in 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.)}*, & *Orient Micro Abrasives Ltd. {2020 (371) ELT (Del.)}*]. The Hon'ble jurisdictional High Court has also relied upon the judgment in *Uttam Steels Ltd. (supra)*, in the case of *C.C & CE, Tirupati vs. Panyam Cements & Minerals Industries Ltd. {2016 (331) ELT 206 (AP)}*, to hold that "*a claim under Section 11B of the Act could be made only in the cases where the claim is allowed that is claim made within limitation*". Further, the judgment in *Uttam Steels (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}*.

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 accepted. 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.

6. The Respondent has, at the stage of hearing, submitted, in alternate, that they may be allowed re-credit of duty paid in the Cenvat Credit account, since the duty paid on export goods cannot be retained by the Government. At the outset, it is observed that this alternate plea was not taken before the authorities below. Further, the Government is, on merits also, not persuaded to accept this plea for the following reasons:

- (i) Any refund claim arises as the duty was not payable or duty paid should otherwise be not retained (as in the case of export goods). If this contention of the Respondents is accepted, it would mean that no refund claim, which is otherwise admissible on merits, can be rejected on the grounds of limitation. Such an interpretation would render the provisions regarding limitation made in Section 11B *ibid* redundant, a position which cannot be contemplated in law.
- (ii) After the introduction of GST, no CENVAT Credit Account is available where such re-credit could be contemplated.

- (iii) The case laws cited relate to the cases of such rebate claims where the duty paid was more than that payable and the rebate claims were otherwise admissible.

7. At the stage of hearing, it is also pointed out by the Respondents that the exports against ARE-1 Nos. 214 of 05.09.2014 and 215 of 09.09.2014 (Sr. No. 39 & 40 of Table in SCN dated 16.11.2015) actually took place on 19.09.2014, which is within one year of the date of filing of rebate claim, i.e., 11.09.2015. The Government finds that the issue involved is purely a question of facts. The Commissioner (Appeals) has, in para 5.6 of the OIA dated 20.10.2016, specifically found that "there is no dispute regarding the fact of filing the aforesaid rebate claims after the expiry of one year from the date of export of goods". These findings of Commissioner (Appeals) have not been challenged by the Respondents herein by way of an appropriate proceeding. Hence, the matter has acquired finality.

8. In view of the above, the revision applications are allowed and the impugned Orders-in-Appeal are set aside.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST & Central Excise, Tirupati,  
9/86A, Amravati Nagar, West Church compound,  
Tirupati-517502

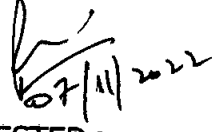
G.O.I. Order No. 77-78/22-CX dated 7.11.2022

Copy to: -

1. M/s Kobelco Construction Equipment India Pvt. Ltd., Survey No.1&26, 4100 Spine DTZ, Sri City (Near Tada), Satyavedu Mandal, Chittoor District, (A.P.)-517588.
2. The Commissioner of CGST (Appeals), Guntur, 3<sup>rd</sup> Floor, Central Revenue building, Kannavarithota, Guntur-522004.
3. M/s. RSA Legal Solutions 937A, JMD Megapolis, Sohna Road, Gurgaon.
4. PS to AS (RA).
5. Notice Board.
- ✓ 6. Guard File.



7. Spare Copy.
8. Notice Board.

  
07/11/2022

**ATTESTED**  
प्रवीण नेगी / Praveen Negi  
अधीक्षक / Superintendent (R.A. Unit)  
वित्त मंत्रालय / Ministry of Finance  
राजस्व विभाग / Department of Revenue  
Room No. 605, 6th Floor, B-Wing  
1, Hudco Vishala Building, Bhikaji Cama Place  
New Delhi-110066