

SPEED POST



F. No. 195/156/2017-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 24/11/22

Order No. 83/22-Cx dated 23-11-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.296/2016 (CXA-I) dated 30.12.2016, passed by the Commissioner of Central Excise (Appeals-I), Chennai.

Applicant : M/s WEG Industries (India) Pvt. Ltd., Hosur.

Respondents : The Commissioner of CGST & Central Excise, Salem.

**ORDER**

A Revision Application No. 195/156/2017-R.A. dated 03.04.2017 has been filed by M/s WEG Industries (India) Pvt. Ltd., Hosur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. No.296/2016 (CXA-I) dated 30.12.2016, passed by the Commissioner of Central Excise (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein, against the Order-in-Original No. 10/2016 dated 04.03.2016, passed by the Deputy Commissioner of Central Excise, Hosur-II Division.

2. Briefly stated, the Applicants herein are manufacturers of Electric Motors and Spare Parts falling under Chapter 85 of Central Excise Tariff Act, 1985. They exported their finished goods on payment of duty by debiting in their Cenvat Account and claimed rebate of duty paid as such. A rebate claim for an amount of Rs. 21,57,628/- was filed, on 19.11.2015, under Rule 18 of the Central Excise Rules, 2002 for the exports made under ARE-1 No. 2014200030/2014-15. During the processing of the claim, it was found that the date of export (shipped on board) was 27.10.2014. Therefore, 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 delay in filing the rebate was due to them not receiving the Customs endorsed ARE-1 copy in time, as such, the delay was beyond their control; that during the relevant period, there was no period of limitation prescribed under Rule 18 of the Central Excise Rules, 2002 nor the Notification No. 19/2004-CE(NT) dated 06.09.2004 which governs the rebate claims; and that the matter is squarely covered in their favour by the judgment of Hon'ble Madras High Court in the case of *Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)}*, which has been upheld by the Hon'ble Supreme Court *{2015 (325) ELT A104 (SC)}*.

4. Personal hearing in, virtual mode, was held on 23.11.2022. Ms. Jaishree SK, Consultant and Mr. Jaime Goncalves, Manager attended the hearing on behalf of the Applicants. Ms. Jaishree reiterated the contents of RA. She highlighted that the issue involved is squarely covered by the judgment of Hon'ble Madras High Court in the case of Dorcas Market Makers Pvt.Ltd. Hence, the rebate claim is not barred by limitation. In the alternate, re-credit may be allowed in the CENVAT credit account. 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, in the instant revision application, 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, a plain reading of Section 11B leaves no scope for doubt that the limitation provided under Section 11B is applicable to the cases of rebate as well.

5.3 The Applicants 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.* (supra) has been heavily relied upon.

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.)}*]. Further, the judgment in *Uttam Steels (supra)* is a detailed judgment based on the judgment of a nine-judge bench in *Mafatlal Industries (supra)* whereas the appeal in case of *Dorcas Market Makers Pvt. Ltd.* has been summarily dismissed by the Hon'ble Supreme Court and as such it cannot be held to be an affirmation of the view of Hon'ble High Court [*Ref. Commissioner of CEx., Ahmedabad vs Ramesh Food Products {2004(174)ELT 310(SC)}*]. 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 Rule 18 and 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.

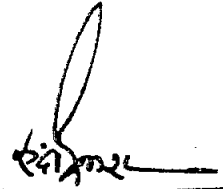
6. The Applicants have also pleaded that delay in filing rebate claim happened due to their not receiving the Customs endorsed ARE-1 copy in time. As such, the delay was beyond their control. To buttress their argument, the Applicants have relied upon the judgment of Hon'ble High Court of Gujarat in the case of *Rollwell Forge Pvt. Ltd. Vs Union of India {2015(327)E.L.T. 10(Guj.)}*. The Government observes that in the *Rollwell Forge (supra)*, non-availability of the requisite

document, i.e., duly marked "shipping bill of export" was attributable to the Department, whereas, in the instant case the Applicants themselves have admitted before the Commissioner (Appeals) that they could not get the original ARE-1 Custom endorsed document in time from their CHA. Therefore, lapse, if any, in the present case is at the end of the Applicants and their CHA. As such, ratio of Rollwell Forge is not applicable in the facts of present case.

7. The Applicants have also pleaded that, if rebate is not allowed, then they may be allowed re-credit of duty paid in the Cenvat Credit account. The Government is not persuaded to accept this plea for the following reasons:

- (i) Re-credit of duty paid in CENVAT Account will amount to indirectly sanctioning the claim, which has been rejected. It is trite law that what cannot be done directly can also not be done indirectly.
- (ii) In any case, after the introduction of GST, no CENVAT Credit Account is available where such re-credit could be contemplated.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

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Hosur-635109.


Order No. 83/22-CX dated 23-11-2022

Copy to:

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2. The Commissioner of Central Excise (Appeals-I), Chennai, No.26/1, Mahatama Gandhi Road, Nungambakkam, Chennai-600034.
3. PS to AS(RA)
4. Notice Board
5. Guard File.
6. Spare Copy

ATTESTED

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