

F.No. 195/78/2017-RA
F.No. 195/78-A/2017-RA
F.No. 195/78-B/2017-RA
F.No. 195/78-C/2017-RA

SPEED POST



F. No. 195/78/2017-RA
F. No. 195/78-A/2017-RA
F. No. 195/78-B/2017-RA
F. No. 195/78-C/2017-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... 28/11/22

Order No. 84-87/2022-CX dated 28-11-2022 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-002-17-18, TTD-EXCUS-000-APP-005-17-18, TTD-EXCUS-000-APP-006-17-18 & TTD-EXCUS-000-APP-007-17-18, all dated 30.05.2017, passed by the Commissioner of Customs, Central Excise & Service Tax (VIZAG Appeals-II), Guntur.

Applicant : M/s VRV Asia Pacific Pvt. Ltd., Chitoor.

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

ORDER

Four Revision Applications, bearing Nos. 195/78/2017-RA, 195/78A/2017-RA, 195/78B/2017-RA & 195/78C/2017-RA, all dated 22.09.2017, have been filed by M/s VRV Asia Pacific Pvt. Ltd., Chittoor (hereinafter referred to as the Applicants) against the Orders-in-Appeal Nos. TTD-EXCUS-000-APP-002-17-18, TTD-EXCUS-000-APP-005-17-18, TTD-EXCUS-000-APP-006-17-18 & TTD-EXCUS-000-APP-007-17-18, all dated 30.05.2017, passed by the Commissioner of Customs, Central Excise & Service Tax (VIZAG Appeals-II), Guntur. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, upheld the Orders-in-Original No. 138/2015-16, 137/2015-16, 136/2015-16 & 135/2015-16, all dated 18.12.2015, passed by the Assistant Commissioner of Customs, Central Excise & Service Tax, Tirupati-I Division, Tirupati. As all the revision applications involve the same Applicant and identical issue, they are taken up jointly for consideration.

2 Briefly stated, the Applicants herein were engaged in the manufacture and clearance of "Cryogenic Storage tanks". The Applicants had filed 4 rebate claims, in respect of duty paid on goods exported by them, under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE (NT) dated 06.09.2004. The details of the claims are as under:

S.N	RA No.	OIO No & date	OIA No & date	ARE-1 No & date	Date of export	Date of filing claim on ACES	Date of filing hard copy	Amount of claim (Rs.)
o								

F.No. 195/78/2017-RA

F.No. 195/78-A/2017-RA

F.No. 195/78-B/2017-RA

F.No. 195/78-C/2017-RA

1.	195/78/20 17	138/2015- 16 dt.18.12.20 15	TTD- EXCUS- 000-APP- 002-17- 18 dated 30.05.201 7	43/2012-13 dt.29.10.20 12 49/2012-13 dt.31.10.20 12	12.11.201 2 04.11.201 2	28.10.201 3 28.10.201 3	20.11.201 3 20.11.201 3	396166
2.	195/78- A/2017	137/2015- 16 dt.18.12.20 15	TTD- EXCUS- 000-APP- 005-17- 18 dated 30.05.201 7	53/2012-13 dt.16.11.20 12 54/2012-13 dt.16.11.20 12	20.11.201 2 20.11.201 2	03.12.201 3 03.12.201 3	05.12.201 3 05.12.201 3	705694
3.	195/78- B/2017	136/2015- 16 dt.18.12.20 15	TTD- EXCUS- 000-APP- 006-17- 18 dated 30.05.201 7	50/2012-13 dt.31.10.20 12 51/2012-13 dt.07.11.20 12 52/2012-13 dt.09.11.20 12	01.11.201 2 11.11.201 2 17.11.201 2	28.10.201 3 28.10.201 3 28.10.201 3	20.11.201 3 20.11.201 3 20.11.201 3	126321 9
4.	195/78- C/2017	135/2015- 16	TTD- EXCUS-	37/2012-13 dt.08.10.20	13.10.201 2	28.10.201 3	20.11.201 3	561072

		dt.18.12.20	000-APP-	12				
		15	007-17-	39/2012-13	27.10.201	28.10.201	20.11.201	
			18 dated	dt.22.10.20	2	3	3	
			30.05.201	12				
			7					

The original authority considered the date of filing of hard copies of the rebate claims, as the date for counting the period of limitation as per Section 11B of the Central Excise Act, 1944 and rejected the claims as time barred. The appeals filed by the Applicants herein have been rejected by the Commissioner (Appeals).

3.1 The Revision Applications had been filed, mainly, on the grounds that Notification No. 19/2004-CE(NT) as well as Rule 18 of the Excise Rules , do not stipulate any limitation of time for filing of the refund claim; that if at all the limitation under section 11B is to apply to instant case, the date of submission of the refund claim electronically through ACES is to be considered for computing the period of limitation; that the Applicant cannot be denied the rebate on the excise duty paid by the application of Notification No.18/2016-CE(NT) retrospectively; and that substantive benefit cannot be denied for procedural infractions.

3.2 The Respondent department, vide written reply dated 22.11.2022, contested the revision applications, inter-alia, submitting that in light of the judgment of Hon'ble Apex

Court in the case of *UOI vs Uttam Steel Ltd. {2015(319)ELT598(SC)}*, rejection of the rebate claims under the provisions of Section 11B of Central Excise Act, 1944 is proper and legal.

4 Personal hearing in all 04 cases was fixed together on 25.11.2022 as per the request of the Applicant, vide letter dated 31.10.2022. In the personal hearing held, in virtual mode, on 25.11.2022, Sh. Shantanu Kumar, Advocate appeared on behalf of the Applicants and Sh. P. Gopakumar, Additional Commissioner for the Respondent department. Sh. Shantanu Kumar drew attention to the request for adjournment dated 25.11.2022 filed in respect of RA Nos. 195/78-A/2017 & 195/78-C/2017 on the grounds that the Hon'ble Supreme Court has reserved its orders in the SLP No.1784/2022 filed against the orders of Hon'ble Karnataka High Court in the case of M/s Sansera Engineering Ltd. However, it was pointed out that the decision in Sansera Engineering was not the only precedent in the case. Therefore, the request for adjournment could not be accepted. Sh. Shantanu Kumar, Advocate thereafter made detailed submissions and supported the RAs with the help of compilation filed on 25.11.2022. Sh. P.Gopakumar defended the orders of Commissioner (A) on the basis of written reply filed on 22.11.2022. Upon being asked, Sh. Gopakumar stated that, as per records, there was no deficiency in material particulars between the claims filed on ACES and the hard copies filed subsequently, except that the supporting documents have been filed only with the hard copies. Upon

being further asked Sh. Gopakumar clarified that sometimes there could be space constraints on ACES in on-line filing of the supporting documents.

5 The Government has carefully examined the matter. The issues that arise for consideration, in the instant revision applications are:

(i) 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?

(ii) For computation of time limit provided under Section 11B of the Central Excise Act, 1944, whether the date on which claim has been filed electronically on ACES is to be treated as the date of filing or the date on which hard copy of the claim along with the supporting document is filed is to be treated as the date of filing?

6.1 In respect of issue (i), 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.

6.2 The Applicants have, however, disputed this plain 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 was to be filed nor any reference had 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.)} has been heavily relied upon.

6.3 The Government observes that, as correctly pointed out by the Respondent department, a similar issue came up for the consideration of Hon'ble Supreme Court in the case of *UOI vs Uttam Steel Ltd.* (supra). 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'.

6.4 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). 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 subsequently departed from Dorcas case in the case of *Hyundai Motors India Ltd. {2017 (355) ELT 342}* by relying upon Uttam Steels (supra). It would also be relevant to notice here that besides Hyundai Motors (supra), in several other cases as well, the Hon'ble High Courts have relied upon the Apex Court's judgment in Uttam Steel (supra) to hold that the limitation of one year provided in Section 11B is applicable to the rebate claims filed under Rule 18 [Ref. *Orient Micro Abrasives Ltd. {2020 371 ELT (Del.)}* and *Sansera Engineering Pvt. Ltd. {2021 (378) ELT 747 (Kar.)}*].

6.5 As such, it is held 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 respect of the issue (ii), the Government observes that, on 23.12.2009, the Board rolled-out a new centralised, web based and workflow-based software application called Automation of Central Excise and service Tax (ACES) in all 104 Commissionerates of

Central Excise, Service Tax and Large Tax Payer units. One of the modules in this project was Electronic filing of Refund claims and their processing. Further, vide Circular No. 919/9/2010-CX dated 23.03.2010 (F. No. 201/20/2009-CX6), the Board circulated the procedure for E-payment of taxes/duties and e-filing of returns. The Government observes that any assessee, therefore, could have filed their refund/rebate claim on ACES and it was incumbent on the department to acknowledge the same for further processing. It is also observed that admittedly sometimes due to space constraints, an assessee may not be able to on-line file the supporting documents alongwith the claim. In the instant case, the department has admitted that, as per records, there was no deficiency in material particulars between the claims filed on ACES and the hard copies filed subsequently, except that the supporting documents were filed only with the hard copies. Therefore, the Government is inclined to accept the contention of the Applicants to consider the date of filing of the claims on ACES for the purpose of computation of time limit under Section 11B of the Central Excise Act, 1944.

8. The Government finds that rebate claims in respect of revision application nos. 195/78/2017 & 195/78-B/2017 were filed on ACES within the time period provided under Section 11B, whereas, rebate claims in respect of revision application nos. 195/78-A/2017 & 195/78-C/2017 were filed on ACES beyond the time period provided under Section 11B. As such, following is ordered:

F.No. 195/78/2017-RA
F.No. 195/78-A/2017-RA
F.No. 195/78-B/2017-RA
F.No. 195/78-C/2017-RA

(i) Revision Application Nos. 195/78/2017 & 195/78-B/2017: The rebate claims were filed within limitation and, hence, the impugned Orders-in Appeal cannot be sustained. Both the revision applications are allowed with consequential relief.

(ii) Revision Application Nos. 195/78-A/2017 & 195/78-C/2017: The rebate claims were filed beyond the period of limitation of one year. Hence, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s VRV Asia pacific Pvt. Ltd.,
Sri City DTA Area, Varadaiahpalem,
Chittoor District, Andhra Pradesh-517541

G.O.I. Order No. 84-87/22-CX dated 22-11-2022

Copy to:

1. The Commissioner of CGST & Central Excise, Tirupati, 9/86A, Amaravathi Nagar, West Church Compound, Tirupati-517502.
2. The Commissioner of CGST (Appeals), Guntur, 3rd Floor, Central Revenue, Kannavarithota, Guntur-522004.
3. M/s Lakshmikumaran & Sreedharan, Advocate, No.5, Jungpura Extension, Link Road, New Delhi-110014.
4. PA to AS(RA).
5. Notice Board
6. Guard file.
7. Spare Copy.

ATTESTED



अश्वनी कुमार लॉ / Ashwani Kumar Lau
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