

SPEED POST



F.No.198/75/SZ/2018-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...08/01/24

Order No. 01/2024-CX dated 08-01-2024 of the Government of India, passed by Ms. Shubhagata Kumar, 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. MLR-EXCUS-000-APP-068-2017-18 dated 02.02.2018, passed by the Commissioner Central Tax (Appeals), Belagavi.

Applicant : The Commissioner of Central Excise and Central Tax, Mangalore.

Respondent : M/s. West Coast Paper Mills Ltd., Dandeli.

ORDER

A revision application No. 198/75/SZ/2018-R.A. dated 11.05.2018, has been filed by the Commissioner of Central Excise and Central Tax, Mangalore (hereinafter referred to as the Applicant), against the Order-in-Appeal No. MLR-EXCUS-000-APP-068-2017-18 dated 02.02.2018, passed by the Commissioner Central Tax (Appeals), Belagavi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. MLR-EXCUS-000-DUDP-ASC-GJU-026-16-17 dated 30.06.2016, passed by the Assistant Commissioner of Central Excise & Service Tax, Udupi Division, wherein, rebate claim of Rs. 16,81,821/- filed by M/s. West Coast Paper Mills Ltd., Dandeli (hereinafter referred to as the Respondents) was rejected.

2. Brief facts of the case are that the Respondents in the instant RA had initially filed a rebate claim amounting to Rs.13,42,576/- in respect of goods exported to SEZ unit vide 26 ARE-1s during the period 16.02.2015 to 28.02.2015 under Rule 18 the Central Excise Rules, 2002. Rebate claim was filed by the Respondents on 02.03.2016. As the claim was found to have been filed beyond the period of one year from the date of export of goods, the claim was rejected vide the above mentioned OIO. Aggrieved, the respondent filed an appeal with the Commissioner (Appeals), who in-turn, vide the impugned OIA allowed the appeal with consequential relief to the Respondent.

3. The revision application has been filed, mainly, on the grounds that in terms of Section 11B of the Central Excise Act, 1944 claim for refund/rebate should be filed within a period of one year; and that there is a provision in Section 11B(5)(B)(a)(ii) of Central Excise Act, 1944 regarding relevant date for export of goods by land which is squarely applicable to SEZ supplies by road; that supplies to the SEZ are termed as 'exports' for all purposes in terms of Circular No.1001/8/2015-CX dated 28.04.2015 issued from F.No. 267/18/2015-CX; that the appellate authority has erred by treating the relevant date as date of payment of duty under clause (f) of Section 11(5)(B) instead of date of actual export of the goods under clause a(ii) of

Section 11(5)(B) and thereby allowing the rebate claimed on goods exported for which the rebate claim was filed beyond the stipulated period of one year from the date of actual export.

4. Personal hearings in the matter was held on 20.11.2023 which was attended by Ms. Rukumani Menon, Advocate for the Respondents. Ms. Menon submitted that there is indeed a delay in filing the claims, but she stated that the exports through SEZ could be treated as crossing the "frontiers" and therefore the relevant date under Section 11(b)(2) could be taken into account for her case. She however accepted that the Sansera judgment of the Hon'ble apex court has given finality to the issue of limitation. None appeared from the Applicant's side.

5.1 The Government has carefully examined the matter. The moot questions involved in the subject revision application are as to whether the limitation provided under Section 11B of the Central Excise Act, 1944 is applicable to the claims for rebate of duty, under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-CE(NT) dated 06.09.2004 and whether the relevant date in respect to the supplies made by a DTA unit to SEZ unit would be the date as provided under Section 11B(5)(B)(a)(ii) or as provided under Section 11B(5)(f).

5.2 On the first question involved, the Government observes 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 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 Central Excise is a type of refund of duty, but 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 is no scope for doubt that the limitation provided under Section 11B is applicable to the cases of rebate as well. In the instant case, relevant date to be ascertained is in relation to the rebate sought on the goods deemed to have been exported to SEZ unit by the Applicants.

5.3 The Government also observes that in terms of the Apex Court's judgment dated 29.11.2022 in the case of Sansera Engineering Ltd {2022-TIOL-102-SC-CX}, the limitation provided under Section 11B of the Central Excise Act, 1944 shall be applicable in respect of claims for rebate under Rule 18 *ibid*, read with Notification No. 19/2004-CE(NT) dated 06.09.2004, irrespective of whether the provisions regarding limitation were specifically adopted in the notification dated 06.09.2004 or otherwise.

6.1 On the second question involved, the Government observes the Commissioner (Appeals) has in para 5.1 of the impugned OIA held that there is no specific mention of the relevant date for export to SEZ under Section 11(B) and therefore Clause B (f) of the explanation to Section 11(B) of the Central Excise Act determines the relevant date i.e. date of payment of duty. This appears erroneous in light of the fact that supply from a DTA unit to an SEZ unit is also deemed export in terms of Circular No. 1001/8/2015-CX dated 28.04.2015, issued from F.No. 267/18/2015-CX. Relevant para of the circular is reproduced below as:

"3. It can thus be seen that according to the SEZ Act, supply of goods from DTA to the SEZ constitutes export. Further, as per Section 51 of the SEZ Act, the provisions

of the SEZ Act shall have overriding effect over provisions of any other law in case of any inconsistency. Section 53 of the SEZ Act makes an SEZ a territory outside the customs territory of India.....”

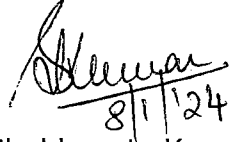
It is also observed here that the relevant date for the goods exported through land has already been provided at Section 11B(5)(B)(a)(ii) of Central Excise Act, 1944. As SEZ territory is deemed to be outside the Customs territory of India in terms of Circular mentioned above, the relevant date for the goods exported through land from a DTA unit to SEZ unit holds good in terms of Section 11B(5)(B)(a)(ii) of Central Excise Act, 1944.

6.2 In the instant matter, during the personal hearing, the respondent through their counsel has admitted that there had indeed been a delay in their filing the rebate claim, but the relevant date in their case could be taken in terms of Section 11 b(2) which stipulates that the relevant date would be *“If the goods are by land, the date on which such goods pass the frontier”*. It is observed that in this context the Respondent exported goods from their factory at Dandeli, Uttar Kannada District, Karnataka to SEZ unit M/s Repro India Ltd., Unit No.2, Surat, Gujarat vide 26 ARE-1s with dates ranging from 16.02.2015 to 28.02.2015. This implies that the last consignment of goods exported vide ARE-1 No.302 dated 28.02.2015 left the factory premises on 28.02.2015 for the destination i.e. Surat. The rebate claims have been filed on 03.03.2016, which is beyond the time limit even in terms of this section. It is further observed that at no time during the entire proceedings, have the Respondents contended that the exports goods for which they are claiming rebate entered the municipal limits of Surat city after 03.03.2015 nor produced any evidence to this effect. Rather from the material placed on record, it has come to fore that before the lower authorities, the Respondents have been contesting the limitation under Section 11B by relying upon the judgment of the Hon’ble High Court of Madras in the case of the Deputy Commissioner of Central Excise vs. M/s. Dorcas Market Makers Pvt. Ltd. {2015 (4) TMI-118} and the judgment of the Hon’ble High Court of Punjab & Haryana in the case of M/s JSL Lifestyle Ltd. {2015 (326) ELT 265 (P & H)}. It may be seen that both these judgments have been set aside by the

Hon'ble Apex Court in the case of Sansera Engineering Ltd.(supra). Thus, the Government finds that the rebate claims have been filed by the respondent beyond the stipulated period and are hit by limitations.

7. Therefore, in light of the discussion in the preceding paras, impugned OIA does not stand and accordingly is set aside.

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


8/1/24
(Shubhagata Kumar)

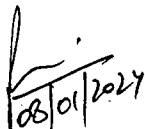
Additional Secretary to the Government of India

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G.O.I. Order No. 01 /24-CX dated 02-01-2024

Copy to: -

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2. The Commissioner of Central Goods & Service Tax (Appeals), Belagavi, No.71, Club Road, Belagavi-590001.
3. PPS to AS (RA).
4. Guard File.
5. Spare Copy
6. Notice Board


108/01/2024
ATTESTED
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