

SPEED POST



F. No. 198/149-150/SZ/2018-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. 21/02/24

Order No. 05-06/2024-CX dated 21-02-2024 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 Applications, filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal Nos. 485 to 486/2018 dated 15.05.2018, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru.

Applicant : The Commissioner of CGST, Bengaluru South.

Respondent : M/s Sansera Engineering Pvt. Ltd., Bengaluru.

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ORDER

Two revision applications No. 198/149/SZ/2018-R.A. dated 13.08.2018 & 198/150/SZ/2018-R.A. dated 13.08.2018, have been filed by the Commissioner of CGST (South), Bengaluru (hereinafter referred to as the Applicant), against the Order-in-Appeal Nos. 485 to 486/2018 dated 15.05.2018, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, remanded back the issue to the original authority for fresh adjudication. The original authority vide OIO Nos. 240/2017-18 dated 09.02.2018 & 241/2017-18 dated 09.02.2018 had rejected the rebate claims filed by M/s Sansera Engineering Pvt. Ltd., Bangalore (hereinafter referred to as Respondent).

2. Brief facts of the case are that the Respondents had initially filed rebate claims amounting to Rs.4,46,018/- & Rs.5,44,232/- for the goods exported during the period 13.08.2015 to 12.10.2015 and 20.07.2015 to 06.01.2016 respectively under Rule 18 the Central Excise Rules, 2002. Both the claims were filed on 09.05.2017. As the claims were found to have been filed beyond the period of one year from the date of export of goods, the original authority rejected both the claims vide OIO Nos. 240/2017-18 dated 09.02.2018 & 241/2017-18 dated 09.02.2018. Aggrieved, the respondent filed appeals with the Commissioner (Appeals), who in-turn vide the impugned OIAs remanded back the matter to the original authority for fresh adjudication by holding that the claims have been filed within one year from the date of export. However, the facts placed on record are found to be contrary to the view of the Commissioner (Appeals).

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 in the instant matter in hand the rebate claims were filed beyond the time limit of one year from the relevant date as prescribed under Section 11B ibid; that the Commissioner(Appeals) while remanding the matter to the original adjudicating authority in the impugned OIA dated 15.05.2018 has without proper discussion on the export dates , period involved and the date of filing the rebate claims

,plainly observed that the rebate claims have been filed within one year from the date of export, while the facts contradict the above view and hence the decision of remand remains unsubstantiated.

4. Personal hearings in the matter, was held on 05.01.2024. Sh. Deepak Rao, Advocate appeared for the Respondent . Sh. Rao submitted that the matter has already been decided by the Apex Court and the matter can be decided on that basis. No one appeared for the Applicants nor has any request for adjournment etc. been received. Therefore, it is presumed that the Applicant has nothing to add in the matter.

5. The Government has carefully examined the matter. The moot question involved in the subject revision application is 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.

5.1 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 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.,"*

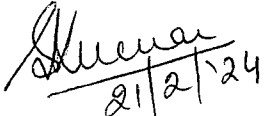
Thus, Section 11B not only provides that the rebate of duty of Central Excise is a type of refund of duty, but the relevant date for determining limitation in the cases of rebate is also specifically provided. As such, on a plain reading of Section 11B, there is no scope for doubt that the limitation provided under Section 11B is applicable to the cases of rebate as well.

5.2 The Government observes that the Commissioner (Appeals) at para 5 of the impugned OIA has held that *"it is seen that the claims have been filed within one year from the date of export"*. The Government observes that the impugned OIA is silent as to when the goods involved in the rebate claims were exported and when the rebate claims were filed by the Respondents. Thus, the basis of the Commissioner (Appeals) for having held the above view is missing. Whereas, the original adjudicating authority categorically recorded in Para 3 of OIO No. 240/2017-18 dated 09.02.2018 that the goods involved in rebate claim of Rs.4,46,018/- were exported during the period 13.08.2015 to 12.10.2015 and rebate claim was filed on 11.05.2017. Similarly, the original adjudicating authority categorically recorded in Para 5 of OIO No. 241/2017-18 dated 09.02.2018 that the goods involved in rebate claim of Rs.5,44,232/- were exported during the period 24.07.2015 to 07.01.2016 and rebate claim was filed on 11.05.2017. Thus, it is clearly evident that the claims in both the cases were filed beyond the one year period from the date of export.

6. The issue is no longer *res-integra* in light of the decision by the Hon'ble Apex Court in the case of Sansera Engineering Ltd. vs. Deputy Commissioner, Large Tax Payer Unit, Bengaluru (Supra). The Hon'ble Supreme Court noted the statutory position as above and vide its judgment dated 29.11.2022, held that *"15-----While making claim for rebate of duty under rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable."*

Therefore, in light of the aforesaid judgment of the Hon'ble Supreme Court, impugned OIAs do not stand and are accordingly set aside.

6. In view of the above, both the revision applications are allowed.


21/2/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

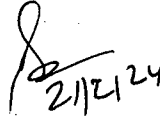
The Commissioner of Central Goods & Services Tax (South),
C.R. Building, Queen's Road,
Bengaluru-560001.

G.O.I. Order No. 05-06/24-CX dated 21-02-2024

Copy to:

1. M/s Sansera Engineering (P) Ltd., No. 261/C , Bammasandra Industrial Area, Hebbagodi Post, Anekal Taluk, Bengaluru-560099.
2. The Commissioner of Central Tax (Appeals-I), Traffic Transit Management Centre, BMTc Building, 4th Floor, Above BMTc Bus Stand, Domluru, Old Airport Road, Bengaluru-560071.
3. PPS to AS(RA).
4. Guard file.
5. Spare Copy.
6. Notice Board.

ATTESTED


21/2/24

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