

**SPEED POST**



F.No.198/38/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.....15/11/23

Order No. 91/2023-CX dated 15-11-2023 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. TNL/CEX/000/APP/063/2017 dated 31.08.2017, passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai.

Applicant : The Commissioner of CGST & Central Excise, Madurai.

Respondent : M/s. Seshasayee Paper & Boards Ltd., Tirunelveli.

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**ORDER**

A revision application No. 198/38/SZ/2018-R.A. dated 20.12.2017, has been filed by the Commissioner of GST & Central Excise, Madurai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TNL/CEX/000/APP/063/2017 dated 31.08.2017, passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. R-86/2016 dated 28.09.2016, passed by the Assistant Commissioner of Central Excise, Tirunelveli Division, wherein, rebate amounting Rs. 16,81,821/- was sanctioned to M/s. Seshasayee Paper & Boards Ltd., Tirunelveli (hereinafter referred to as the Respondents).

2. Brief facts of the case are that the Respondents herein had initially filed a rebate claim amounting to Rs.16,81,821/- under Rule 18 the Central Excise Rules, 2002. 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 OIO No. R-26/2015 dated 13.08.2015. Aggrieved, the respondent filed an appeal with the Commissioner (Appeals), who in-turn allowed the appeal with consequential relief to the Respondent. The Respondent re-filed the rebate claim on the strength of Commissioner (Appeals) order. This time rebate was sanctioned vide Order-in-Original No. R-86/2016 dated 28.09.2016. The Applicant department filed an appeal with the Commissioner (Appeals). The Commissioner (Appeals) vide the impugned OIA rejected the departmental appeal, hence, this revision application.

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 absence of limitation under Central Excise Rules or the relevant notification cannot nullify the provisions made in the parent statute. The respondents vide their reply dated 15.06.2018 submitted that revision application filed by the department is beyond the time limit of 3 months; that Commissioner (Appeals) has relied on the decision of Hon'ble High Court of Madras on the issue; that appeal filed by the department against the said decision of Hon'ble High Court of Madras has been dismissed by the Hon'ble Apex Court.

4.1. Personal hearings in the matter, were held on 11.10.2023 & 30.10.2023. On 11.10.2023, Sh. Jesu Chandra Bose, AC appeared for the department and submitted that the OIA should be set aside as it relies on the Dorcas 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} , whereas, the matter has finally been settled by the Hon'ble Apex Court in the case of Sansera Engineering Ltd. vs. Deputy Commissioner, Large Tax Payer Unit, Bengaluru, vide its judgment dated 29.11.2022 {2022-TIOL-102-SC-CX}; that even for cases of rebate , the limitation shall be in terms of Section 11B of the Central Excise Act, 1944. He stated that the relief given by Commissioner (Appeals) was incorrect and should be set aside. As the Respondents did not join the personal hearing, a final opportunity was given for personal hearing on 30.10.2023. On 30.10.2023, Ac Tirunelveli appeared for the applicants and reiterated the submissions made in the previous personal hearing. No one appeared for the Respondent nor has any request for adjournment been received. Therefore, it is presumed that the Respondent has nothing to add in the matter.

4.2. It has been observed that the RA has been filed with a delay of 14 days. However, from the condonation of delay application filed and explanation therein, it is observed that the delay was due to administrative exigencies. As the office of the Commissioner and Tirunelveli Sub-Commissionerate (an independent administrative unit) are functioning at Madurai and Tirunelveli respectively, there was administrative difficulty in submitting files to and fro and obtaining necessary approvals. The delay is condoned.

5.1 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.

5.2 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 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.,"*

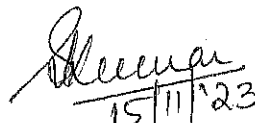
Thus, Section 11B not only provides that the rebate of duty of Central Excise is a type of refund of duty, but the relevant date for determining limitation in the cases of rebate is also specifically provided. As such, on a plain reading of Section 11B, there is no scope for doubt that the limitation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

5.3 The Government observes that the Commissioner (Appeals) has relied heavily upon the judgment of the Hon'ble Madras High Court in the case of the Deputy Commissioner of Central Excise vs. M/s. Dorcas Market Makers Pvt. Ltd. (supra) in which the Hon'ble Madras High Court held that Rule 18 of the Central Excise Rules, 2002 and the notification No.19/2004 dated 06.09.2004 do not stipulate a period of limitation. Further, it has also been recorded in the impugned OIA that the departmental appeal filed against this judgment was dismissed by the Hon'ble Apex Court. However, the Government observes that reasoning applied by the Commissioner (Appeals) appears to be erroneous as the judgments relied upon by the Commissioner (Appeals) have been overturned 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.*" While deciding this matter the Hon'ble

Supreme Court has also overruled the contrary judgments of the Hon'ble High Courts in the cases of M/s. Dorcas Market Makers Pvt. Ltd. {2015 (321) ELT 45 (Mad.)}, Camphor and Allied Products Ltd. {2019 (360) ELT 865 (All.)}, JSL Lifestyle Ltd. {2015 (326) ELT 265 (P & H)} and Gravita India Ltd. {2016 (334) ELT 321 (Raj.)}. Thus with this judgment of the Hon'ble Apex Court, the issue has obtained finality. From the material placed on record, the Government observes that goods involved in the 12 rebate claims amounting to Rs. 16,81,821 were exported during the period 08.05.2013 to 27.05.2013 and the said rebate claims were filed on 30.01.2015, which is beyond the period of limitation by almost 8 months in terms of the provisions of section 11B of the Central Excise Act, 1944.

5.4 Thus, there is no doubt that in terms of the judgment of the Apex Court in the case of Sansera Engineering Ltd (supra), 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. Therefore, in light of the aforesaid judgment of the Hon'ble Supreme Court, impugned OIA does not stand and accordingly is set aside.

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

  
15/11/23  
(Shubhagata Kumar)

Additional Secretary to the Government of India

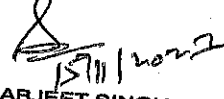
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Central Revenue Building, Bibikulam,  
Madurai – 625002.

G.O.I. Order No. 91 /23-CX dated 15-11-2023

Copy to: -

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2. The Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, Lal Bahadur Shastri Marg, C.R. Building, Madurai-2.
3. PPS to AS (RA).
- ✓ 4. Guard File.
5. Spare Copy
6. Notice Board

ATTESTED



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