

SPEED POST



F.No.198/34/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 24/11/23

Order No. 92/2023-CX dated 24.11.2023 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/93/2017 dated 26.10.2017, passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore at Madurai.

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

Respondent : M/s. SDR Polymers Pvt. Ltd., Tuticorin.

ORDER

A revision application No. 198/223/2016-R.A. dated 23.01.2018, has been filed by the Commissioner of CGST & Central Excise, Madurai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TNL/CEX/000/APP/93/2017 dated 26.10.2017, 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. 30/2016 (Rebate) dated 26.09.2016, passed by the Assistant Commissioner of Central Excise, Tuticorin Division and rejected the appeal filed by the Applicant department herein.

2. Brief facts of the case are that M/s. SDR Polymers Pvt. Ltd., Tuticorin (hereinafter referred to as the Respondents) had exported poly propylene flexible intermediate bulk container bags, on payment of Central Excise duty and claimed rebate under Rule 18 the Central Excise Rules, 2002. Chronology of events leading to instant RA is tabulated below as:

S.No.	Event	Date	Outcome
1.	08 rebate claims for a total amount of Rs. 19,07,859/- filed	18.09.2014	Claims returned to the assessee by pointing certain discrepancies.
2.	Claims resubmitted after removal of the discrepancies	17.03.2015	Claims rejected vide Order-in-Original No. 36/2015 (Rebate) dated 20.10.2015 in terms of Section 11B of the CEA, 1944.
3.	Respondent herein filed an appeal with Commissioner (Appeals) against OIO No.36/2015(Rebate) dated 20.10.2015.		Appeal allowed vide Order-in-Appeal No.TNL/CEX/000/APP/095/2016 dated 19.08.2016 with consequential relief.

4.	Applicant department filed revision application No. 198/223/2016-RA challenging the OIA	22.11.2016	RA rejected vide order No. 40/2022-CX dated 20.09.2022
5.	Respondent herein re-filed the rebate claim on the strength of OIA at Sr. No.3	31.08.2016	Rebate sanctioned vide Order-in-Original No. 30/2016 (Rebate) dated 26.09.2016.
6.	Applicant department filed an appeal with the Commissioner (Appeals) against OIO No. 30/2016 (Rebate) dated 26.09.2016.		Appeal dismissed vide Order-in-Appeal No. TNL/CEX/000/APP/93/2017 dated 26.10.2017.

From the above tabulation, it has come to fore that 08 rebate claims for an amount of Rs. 19,07,859/- were submitted by the Respondents herein on 18.09.2014. However, these 08 claims were returned to the Respondents on 10.12.2014 pointing out deficiencies. After rectification, Respondents combined these 08 claims into a single claim dated 17.12.2014 and submitted the same on 24.12.2014. The said claim was once again returned to the Respondents, vide letter dated 23.02.2015, pointing out deficiencies once again. The claim was resubmitted on 17.03.2015, which was ultimately rejected by the original authority, as barred by limitation in view of the provisions of Section 11B of the Central Excise Act, 1944 vide Order-in-Original No. 36/2015 (Rebate) dated 20.10.2015. The appeal filed by the Respondents herein was allowed by the Commissioner (Appeals) with consequential relief, vide Order-in-Appeal No. TNL/CEX/000/APP/095/2016 dated 19.08.2016. On the strength of the said OIA, the Respondents herein re-filed the rebate claim with the jurisdictional authority. The rebate was sanctioned by the original authority vide Order-in-Original No. 30/2016 (Rebate) dated 26.09.2016. Aggrieved, the Applicant

department preferred an appeal with the Commissioner (Appeals). The Commissioner (Appeals) vide the impugned OIA, dismissed the departmental appeal and upheld the OIO passed by the original authority.

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 filed a detailed reply, vide letter dated 26.05.2018.

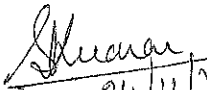
4 The personal hearing, in virtual mode, was held on 30.10.2023. Assistant Commissioner, Tuticorin appeared for the department and submitted that the OIA is not proper as the rebate claim was hit by limitation. M/s A K Associates, Advocates appeared for the Respondent and submitted that the settled position of law as per Hon'ble Gujarat High Court's decision in the case of United Phosphorus Ltd vs. Union of India {2005(184) E.L.T. 240 (Guj.)} is that date of first application submitted to the department is the relevant date and therefore the claim is not hit by limitation. He also submitted that documents/clarifications sought by the department in respect of ARE-1s and proof of payment were things that the department also had access to and the claims returned by the department were not returned under any order or notice and therefore cannot be treated as a formal query. He also quoted the order of Revisionary Authority in the RA No. 198/223/2016-RA dated 22.11.2016, filed by the department, against OIA No. TNL/CEX/000/APP/095/2016 dated 19.08.2016 and stated that the facts are identical and apply in the subject RA as well.

5.2 At the outset, the Government notes that the issue involved in the present case is whether the date of original filing should be taken for computing the time limit under Section 11B of the Central Excise Act, 1944 or should it be the date when the rebate claim is resubmitted after removal of the discrepancies pointed out by the department in the original filing. On this issue, it is observed that Hon'ble Gujarat

High Court, has, in the above mentioned case at para 4, held that once any refund application is filed before the concerned authority, it becomes a part of the record of that authority. Such an authority can, therefore, not part with the refund application by returning the same. The Hon'ble High Court, accordingly, held that returning the claim, without making an order thereon by the Assistant Commissioner, amounts to refusal to perform the statutory duty imposed on him and such return of claim is, therefore, illegal and void. Similarly, in the case of Apar Industries (Polymer Division) vs. Union of India {2016 (333) E.L.T. 246 (Guj.)}, Hon'ble Gujarat High Court has held that in case of resubmission of a rebate claim, the date of original filing should be taken for computing the time limit under Section 11B of the Central Excise Act, 1944 even if the rebate claim was submitted originally in wrong format.

The Government observes that as correctly pointed out by the Respondent, an identical issue arose for consideration in RA No.198/223/2016-RA dated 22.11.2016, filed by the department, against OIA No. TNL/CEX/000/APP/095/2016 dated 19.08.2016. The said RA has been decided by the Government, vide GOI Order No. 40/2022-CX dated 20.09.2022, and the Order-in-Appeal impugned therein has been upheld. Since the instant RA is arising out of the order issued in pursuance of the Order-in-Appeal that has already been upheld, vide GOI Order dated 20.09.2022, the Order-in-Appeal impugned herein, against which the instant RA has been filed, also stands.

6. In view of the above, the Revision Application is rejected and the impugned Order-in-Appeal is upheld.


24/11/23
(Shubhagata Kumar)

Additional Secretary to the Government of India


M/s SDR Polymers Pvt. Ltd. 7/55/1, Kamraj
Nagar West, Servaikranmadam
Sawyerpuram, Tuticorin- 628251 (Tamil Nadu)

G.O.I. Order No. 92 /23-CX dated 24.11.2023

Copy to: -

1. The Commissioner CGST & Central Excise, Central Revenue Building, Bibikulam, Madurai – 625002.
2. The Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, Lal Bahadur Shastri Marg, C.R. Building, Madurai.
3. Sh. Shunmuga Sundaram, Advocate, AB Consultancy G-4, Divya Sundari Apartment, Opp. to New Bus Stand, Perumalpuram, Tirunelveli- 627007
4. PS to AS (RA).
5. ~~Guard File.~~
6. Spare Copy

ATTESTED


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