

REGISTERED  
SPEED POST



F.No. 195/393/15-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 8.9.18....

ORDER NO. 518/2018-Cx dated 6-8-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed, under section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. . LUD-EXCUS-000-APP-94-15-16 dated 24.09.2015, passed by the Commissioner of Central Excise, Chandigarh-I.

APPLICANT : M/s Sanchit Exports Pvt. Ltd., Jalandhar

RESPONDENT : Commissioner of Central Excise, Ludhiana

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**ORDER**

A Revision Application No. 195/393/15-RA dated 16.12.2015 has been filed by M/s Sanchit Exports Pvt. Ltd., (hereinafter referred to as the applicant) against Order-In-Appeal No. LUD-EXCUS-000-APP-94-15-16 dated 24.09.2015, passed by the Commissioner (Appeals), Chandigarh-I, rejecting the appeal of the applicant and upholding the order of the original adjudicating authority.

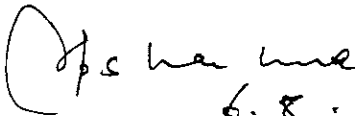
2. Brief facts leading to the filing of the Revision Application are that the applicant filed a rebate claim of Rs. 173,100/- under Rule 18 of Central Excise Rules read with Notification 19/2004 CE(NT) dated 06.09.2004 which was rejected by the original adjudicating authority as time barred under Section 11B of Central Excise Act. The applicant filed an appeal with Commissioner (Appeals) who also rejected their appeal. The applicant has filed the Revision Application mainly on the grounds that the delay in filing the rebate claim was caused because the applicant had requested for conversion of the Shipping Bills for Drawback to DEPB scheme and rule 18 of Central Excise Rules and notification 19/2004 CE(NT) dated 06.09.2004 do not have any limitation period.

3. Personal hearing was held on 23.05.2018 and it was availed by. Sh. Sudhir Malhotra, advocate, on behalf of the applicant who reiterated the grounds of revision already pleaded in their application.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) has rejected the applicant's appeal on the ground of time limitation of rebate claims and the applicant has also not disputed the fact that they had filed rebate claim after expiry of more than one year from date of export of the goods. Therefore, no doubt is left in this case that the Revision Application was hit by time limitation of one year as is stipulated in section 11B of the Central Excise Act, 1944. The applicant has given an explanation that delay in filing the application was caused by the process of amendment in the Shipping Bill from drawback to DEPB scheme. But it can be of no help as the fact of delay in filing the rebate claims remained intact and there is no provision for condonation of any delay by any authority in any situation. The applicant only could avoid such delay and the rebate claims could be

filed well within the time limit even while the process relating to amendment in the Shipping Bills was pending in the department as is pointed out by the Commissioner (Appeals) in his order. As regards the applicant's contention that Rule 18 of Central Excise Rules and notification 19/2004-(CE) dated 06.09.2004 do not have any limitation period of filing of the rebate claims, it is not found legally tenable in the face of Explanation (A) given in section 11B as per which for the purpose of this section '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. Accordingly, all conditions and procedures, including time limitation of one year, as envisaged in section 11B are applicable to rebate of duty sanctionable under Rule 18 of Central Excise Rules and notification 19/2004 which are only subordinate legislations made by the Central Government in exercise of the power conferred upon under section 37 of the Central Excise Act. Hon'ble High Court of Madras has apparently missed the aforesaid Explanation in section 11B while deciding the matter in the case of M/s Dorcas Market Makers Pvt. Ltd. Vs. (CE 2012 (281) ELT) 227 (Mad), heavily relied upon by the applicant, and accordingly this decision is seemingly per incurium. Moreover, the Hon'ble High Court of Bombay in the case of M/s Everest Flavours Ltd. Vs. Union of India 2012(282) ELT 481 (Bom) considered the aforesaid decision of the Madras High Court but differed from it by holding that Rule 18 cannot be read independently from section 11B of the Central Excise Act and limitation period of one year is applicable to the rebate of duty. Therefore, the Government finds that the Commissioner (Appeals) has correctly viewed in his order that the limitation period of one year provided in section 11B of the Central Excise Act is applicable to the rebate of duty also and the rebate claims filed by the applicant beyond one year from the date of the export of the goods are time barred. Accordingly, no deficiency is found in the Order-In-Appeal.

5. In view of the above discussion, the Revision Application is rejected.

  
6.8.18  
(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s Sanchit Exports Pvt. Ltd.,  
C-94-A, Focal Extn, Jalandhar-144 009

ORDER NO. 518/2018-Cx dated 6-8-2018

Copy to:-

1. The Commissioner of Central Excise, Jalandhar, (Hqrs. at Ludhiana), Central Excise House, 'F' Block, Rishi Nagar, Ludhiana-141 001 (Punjab).
2. The Commissioner (Appeals) Central Excise Chd-I, Central Revenue Building, Sector 17-C, Chandigarh.
3. The Ld. Deputy Commissioner Central Excise Division, Jalandhar.
4. Mr. Sudhir Malhotra, Advocate, 13-R, Hukum Chand Colony, Near DAV College, Jalandhar.
5. PS to AS(RA)
6. Guard File.

ATTESTED  
(Debjit Banerjee)  
STO (REVISION APPLICATION)