

REGISTERED
SPEED POST



F.No. 195/243-250/2017-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..7/11/18..

Order No. 618-625/2018-CX dated 04-12-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & 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. 218-225/CE/AAPL-1/DLH-I/2015 dated 14.09.2016, passed by the Commissioner (Appeals), Delhi.

Applicant : M/s Kanodia Technoplast Ltd., Delhi.

Respondent : Commissioner of CGST (West), Delhi.

ORDER

Eight Revision Application Nos. 195/243-250/17-RA dated 06.07.2017 have been filed by the M/s Kanodia Technoplast Ltd., Delhi (hereinafter referred to as the applicant) against the Orders-in-Appeal Nos. 218-225/CE/Appl-I/DLH/2015 dated 14/09/2016, passed by the Commissioner (Appeals), Delhi, whereby the applicant's appeals against the orders-in-original have been rejected.

2. The brief facts leading to the present proceeding before the Government are that the applicant had filed rebate claims under Rule 18 of Central Excise Rules, 2002, read with notification no. 19/2004-CE (NT) dated 06/09/2004, in respect of central excise duty paid on the exported goods which were rejected by the original adjudicating authority on the ground that the claims were time-barred. Their appeals against these orders-in-original before the Commissioner (Appeals) were also rejected and the present revision applications have been filed against orders-in-appeal by the applicant mainly on the ground that the Commissioner (Appeals) has erred in rejecting their appeals and upholding the orders-in-original as delayed filing of

rebate claims was simply a procedural lapse and substantive benefits cannot be denied for this reason only.

3. Personal hearing was held in this case on 15.10.2018 which was availed by Sh. Gaurav Gupta, CA and Sh. Ravindra Singh, Assistant Commissioner, for the applicant and the respondent respectively. While Sh. Gupta reiterated the grounds of revision as discussed above, Sh. Ravindra Singh emphasized that the order-in-appeal is legal and proper.

4. The Government has examined the matter and it is noticed at the outset that the revision application has been filed after delay of 203 days and the reason for the same is stated to be that they had earlier wrongly filed application before the CESTAT which was rejected vide order dated 09/06/2017 for the reason that the CESTAT did not have jurisdiction in the matter and for the rebate claims the appellant should approach the Central Government and. As per Sub Section 2 of Section 35EE of Central Excise Act, 1944, the Government is empowered to condone a delay of 3 months only if "sufficient cause" is shown by the applicant which prevented him from filing the same initially. But the government considers that first of all wrong filing of appeal before CESTAT cannot be accepted as a sufficient cause which might have prevented the applicant in filing

the revision application in time as from Section 35B read with Section 35EE it is abundantly clear that for the rebate matters, the Central Government is only the appropriate authority to be approached against the order-in-appeal and there was no reason for filing the wrong appeal before the CESTAT. Above all, the delay involved in filing the present revision application is of 203 days which cannot be condoned by the government as the delay of more than 3 months cannot be condoned in any circumstance under the aforesaid Section. Consequently, the revision application is time barred in the light of Section 35EE(2) of the Central Excise Act as per which the revision application was required to be filed within 3 months from the receipt of the OIA which was received in this case on 16.09.2016.

5. Further, it is also observed that the revision application dated 06.07.2017 was not accompanied by a fee of Rs.1000/- which was required to be paid as per sub-section 3 of Section 35EE of Central Excise Act. As per this Section a fee of Rs.1000/- is mandatorily to be accompanied along with the revision application where the amount of duty and interest demanded, fine or penalty levied by an Officer of Central Excise in the case to which the application relates is more than Rs.1.00 lakh. This requirement of payment of fee before

or at the time of filing the application is statutorily mandatory and no relaxation in this regard is provided under the aforesaid provision or any other Section. Thus if any application is not accompanied by the specified fee, such application cannot be accepted as properly filed. Since in this case the amount of rebate involved is more than Rs. 1 lakh, the revision application should have been accompanied by the requisite fee of Rs. 1000/- which has not been done and the subject application is considered non-maintainable on this account also by the Government by virtue of the above mentioned provision.

6. Apart from the above reasons, the revision application is not found maintainable on merit also as there is no dispute regarding the fact that the rebate claim was filed in this case on 30/01/2015 after expiry of more than a year from the export of goods spanning from 23/11/2013 to 29/01/2014. Hence, the claim is clearly hit by time limitation of one year as is envisaged in Section 11B of Central Excise Act and accordingly the Commissioner (Appeals) has upheld the order of the Assistant Commissioner whereby the rebate claim of the applicant was rejected as time barred. The applicant has vehemently contended that limitation period prescribed under Section 11B of the Central Excise Act is not applicable to the rebate of duty as no time

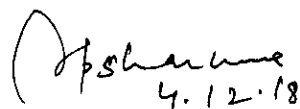
limit has been prescribed under rule 18 of Central Excise Rules, 2002 and in the Notification No. 19/2004-CE (N.T.) dated 6.9.2004 and reliance has been placed on Madras High Court's decision in the case of Dorcas Market Makers Pvt. Ltd. Vs CCE, Chennai. But it was dismissed by the Commissioner (Appeals) by observing that the refund claim can be filed within the prescribed period of 1 year only as per Section 11B of the Act and the Rules and Notification cannot prevail over the statutory provision contained in Section 11B of the Act wherein 1 year's limitation period for filing the rebate claim has been specified. The Government also fully agrees with the Commissioner (Appeal)'s view and does not accept the applicant's above argument in the face of Section 11B of the Central Excise Act which is a dealing statutory provision wherein it is clearly mandated that the application for refund of duty is to be filed with the Assistant/Deputy Commissioner of Central Excise before expiry of one year from the relevant date which is date of export of goods in case of rebate of duty. Further in Explanation to this Section, it is clarified that refund includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. In addition to time limitation, other substantive provisions like the Authority which

has to deal with the refund or rebate claim, the application of principle of undue enrichment and the method of payment of the rebate of duty etc. are prescribed in Section 11B only. Whereas Rule 18 is a piece of subordinate legislation made by Central Government in exercise of the power given under Central Excise Act whereby the Central Government has been empowered to further prescribe conditions, limitations and procedure for granting the rebate of duty by issuing a notification. Being a subordinate legislation, the basic features and conditions already stipulated in Section 11B in relation of rebate duty are not repeated in Rule 18 and other areas not covered in Section 11B have been left to the Central Government for regulation from time to time. But by combined reading of both Section 11B and Rule 18 of Central Excise Rules, 2002 it cannot be contemplated that rule 18 is independent from Section 11B of the Act. In fact if Section 11 B is not applied to rebate matters, Rule 18 and Notification No. 19/2004-CE (N.T.) dated 6.9.2004 will not be able to handle rebate of duty as these provisions do not even specify the rebate sanctioning authority and do not contain several other essential provisions as discussed above. Since the time limitation of 1 year is expressly specified in Section 11B and as per this section refund includes rebate of duty, the condition of filing rebate claim

within 1 year is squarely applicable to the rebate of duty when dealt by Assistant/Deputy Commissioner of a Division under Rule 18. This issue regarding application of time limitation of one year to the rebate matter is dealt by Hon'ble High Court of Bombay in detail in the case of M/s. Everest Flavour Vs. Union of India, [2012(282) ELT 48] wherein it is held that since the statutory provision for refund in Section 11B specifically covers within its purview a rebate of excise duty on goods exported, Rule 18 cannot be independent of requirement of limitation prescribed in Section 11B. In the said decision the Hon'ble High court has expressly differed from the Madras High Court's decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. Moreover, the Hon'ble Supreme Court has unambiguously held in the case of UOI Vs M/s Uttam Steels [2015(ELT)319(598)SC], mentioned in the Order-in-Appeal, that rebate claims can only be filed under Section 11B within the period of limitation stated therein. Further, the averment of the applicant that a liberal interpretation should be accorded to a beneficial legislation clearly amounts to saying that a rebate claim can be filed any time without any time limit which is not only against Section 11B of the Central Excise Act but is also antithetic to the public interest which demands that such matters should be settled in definite time. The

applicant's other explanation that they could not file the rebate claims due to their CA quitting his job is also not found tenable in this context as no relaxation in the prescribed time limit of 1 year can be provided by any authority under Section 11B or any other legal provision in any circumstance.

7. In view of the above discussions, the revision applications are rejected.


4.12.18

(R. P. Sharma)

Additional Secretary to the Government of India

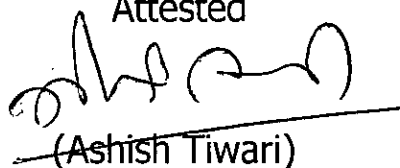
M/s Kanodia Technoplast Limited,
A-54, Wazirpur Industrial Area,
Delhi-110 052

G.O.I. Order No. 6/8 - 625/18-Cx dated 4/12-2018

Copy to:-

1. Commissioner of CGST(West), Delhi.
2. Commissioner (Appeals) , Delhi.
3. P.S to AS (RA).
4. ☒ Guard file.

Attested


(Ashish Tiwari)

Assistant Commissioner (Revision Application)