

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.1220 of 2018
C.M.P.No.9967 of 2018

1. The Maritime Commissioner of Central Excise,
26/1, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600 034.
2. The Joint Secretary,
Ministry of Finance (Department
of Revenue), Government of India,
No.14, Hudco Vishala Building,
B Wing, 6th Floor, Bhikaji Cama Place,
New Delhi 110 066. ...Appellants

vs.

M/s.Shasun Pharmaceuticals Ltd.,
Rep., by Senior General Manager,
C.Baskar Rao,
Shansun Road, Periyakalapet,
Pondicherry 605 014. ...Respondent

Writ Appeal filed under clause 15 of the Letters Patent
against the order of the writ court, dated 30.11.2012 made in
W.P.No.25105 of 2012.

PRAYER IN W.P.NO.25105 OF 2012: Calling for the records in
Order No.521/ 2012 dated 30.4.2012 passed by the 1st respondent
and quash the same as arbitrary and illegal and direct the 2nd
respondent to grant rebate to the petitioner along with interest
at appropriate rate for the period of delay.

For Appellant : Mrs.Aparna Nandakumar

JUDGMENT

(Order of this Court was made by S.MANIKUMAR, J)

Challenge in this appeal is to an order made in W.P.No.25105 of 2012, dated 30.11.2012, by which the writ court, while setting aside the order passed by the Joint Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi, 1st appellant, directed the Maritime Commissioner of Central Excise, Nungambakkam, Chennai, 2nd appellant herein, to grant rebate to the respondent herein, as per the application, dated 05.11.2007, along with the interest accrued thereon, as per law, if the respondent is otherwise qualified for the same.

2. Facts and submissions, leading to the appeal, considered by the writ Court, are as follows:

"2. It has been stated that the petitioner is a leading manufacturer-Exporter of bulk drugs and intermediates like Ibuprofen, Ranitidine, Nizatidine and Naprozen etc. The petitioner is also certified as an ISO 9002 company and enjoys the status of a Trading House, conferred by the Ministry of Commerce.

3. It has been further stated that the petitioner had been claiming the refund of Central Excise Duty, paid on the goods manufactured and exported by it, periodically. The claims made by the petitioner were also being sanctioned by the second respondent in terms of the provisions of Section 11B of the Central Excise Act, 1944, read with the rules made thereunder. The petitioner had filed rebate claims, on 29.10.2007, for an amount of Rs.31,25,957/-, as rebate of duty, paid on finished exported goods, in respect of four AREIs. The rebate claims had been received by the second respondent, on 5.11.2007. The department had sought specific clarifications, with regard to the date of the shipment of the goods in question, vide letter dated 28.12.2007. The petitioner had also taken up the matter with the agencies concerned and had requested them to furnish proper documentary evidence containing the correct information relating to the date of the shipment of the goods in question. In such circumstances, the second respondent, vide letter, dated 20.2.2008, returned the enclosures filed along with the claims. However, the second respondent had retained the applications for rebate of duty in Form C.

4. It has been further stated that the petitioner had obtained a certification from the Shipping Corporation of India Limited, confirming the date of

the shipment of the goods in question, relating to all the four AREIs, as 20.9.2007. Thereafter, the second respondent had issued a show cause notice, dated 26.2.2009, calling upon the petitioner to show cause as to why the rebate claims, amounting to Rs.31,25,957/-, should not be rejected, on the ground of limitation, under Section 11B of the Central Excise Act, 1944.

5. It has been further stated that the petitioner had replied to the notice stating that the claims had been filed by the petitioner, on 5.11.2007, vide letter, dated 29.10.2007. Hence, the claims cannot be considered as fresh claims, filed on 23.12.2008, as alleged by the respondent Department. It had been further stated that 23.12.2008 cannot be considered to be the relevant date, for considering the issue relating to limitation, under Section 11B of the Central Excise Act, 1944, especially, since, the second respondent had retained the application for rebate, in Form C.

6. It has been further stated that the matter had been adjudicated by the second respondent, who had passed the Order-in-Original No.357(R)/2009-RSV, dated 2.6.2009. In the said order it had been held that the claim of rebate was time barred, as per section 11B of the Central Excise Act, 1944, by taking the date of the filing of the claims, as 23.12.2008, instead of 5.11.2007. Aggrieved by the said order the petitioner had filed an appeal before the Commissioner of Central Excise (Appeals), Chennai. The Commissioner of Central Excise (Appeals), Chennai, had passed an order, in Appeal No.85/2010 (M-I), dated 29.3.2010, holding that 5.11.2007 should be taken as the date of the filing of the claims, for the purpose of computing the period of limitation, under Section 11B of the Central Excise Act, 1944. Accordingly, the appeal filed by the petitioner had been allowed. However, the second respondent had preferred a revision petition before the first respondent, challenging the order passed by the Commissioner of Central Excise (Appeals), Chennai, dated 29.3.2010. The first respondent had held that the claim of rebate made by the petitioner was barred by time, under Section 11B of the Central Excise Act, 1944, by taking the date of the filing of the claims as 23.12.2008, instead of 5.11.2007. Therefore, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

7. The learned counsel appearing on behalf of the petitioner had submitted that the petitioner had filed the rebate claim, on 5.11.2007, and the second respondent had returned only the documents filed along with the application for the confirmation of the actual date of shipment. However, the second respondent had retained the application for rebate of duty, in Form C, relating to the four AREIs in question. The actual date of shipment was to be furnished by the Shipping Corporation of India Limited. Therefore, the delay caused by the Shipping Corporation of India Limited cannot be attributed to the petitioner. As such, the date of the re-submission of the claim, by the petitioner, cannot be taken as the date of the filing of the refund claim, for computing the period of limitation.

8. It had also been submitted that the Gujarat High Court, in United Phosphorus Ltd. Vs. Union of India, 2005 (184) E.L.T. 240 (Guj.) had held that, once a refund application had been filed before the authority concerned the said authority cannot part with it by returning the same to the claimant. The application, in Form C, submitted by the petitioner had been retained by the second respondent, from 5.11.2007, till the final confirmation of the date of shipment on 23.12.2008. He had further submitted that the rebate claim made under Rule 18 of the Central Excise Rules, 2002, is not subject to the time limit prescribed under Section 11B of the Central Excise Act, 1944. Hence, the rebate claim made by the petitioner cannot be rejected on account of the time limit prescribed under Section 11B of the Central Excise Act, 1944, as held in Dorcas Market Makers Pvt. Ltd. Vs. Commissioner of Central Excise, 2012(281) E.L.T 227 (Mad).

9. The learned counsel had also relied on the decision of a Division Bench of this Court, in Ford India Pvt. Ltd. Vs. Assistant Commissioner of Central Excise, Chennai, 2011 (272) E.L.T. 353 (Mad.), wherein, it had been held that a rebate claim, being a beneficial scheme, cannot be denied on mere technicalities. The learned counsel had also relied on the decision made in In Re: Dagger Forst Tools Ltd. 2011 (271) E.L.T. 471 (G.O.I) wherein, it had been stated that the rebate claims filed in respect of the exports cannot be hit by limitation, even if certain documents are found to be incomplete and when the rebate claims had been returned. Technical deviation or procedural lapses ought to be condoned if there is

sufficient proof of export of duty paid goods.

10. Per contra the learned counsel appearing on behalf of the respondents had submitted that, even though the petitioner had filed the rebate claim, initially, on 5.11.2007, it had been returned for the confirmation of the actual date of shipment of the goods in question. The final confirmation of the date of shipment was made only on 23.12.2008. Therefore, the rebate claim made by the petitioner is barred by limitation, as per Section 11B of the Central Excise Act, 1944. Therefore, the impugned orders challenged by the petitioner, in the present writ petition, cannot be held to be arbitrary and erroneous, as alleged by the petitioner."

3. Considering the above submissions, writ Court, vide order, dated 30.11.2012, held as follows:

"11. The learned counsel had relied on the decision of the Bombay High Court, in Everest Flavours Ltd. Vs. The Union of India and Ors., 2012 (282) E.L.T. 481 (Bom.), wherein, it had been held that Section 11B specifically comprehends a duty on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. Since, the statutory provision in Section 11B of the Central Excise Act, 1944, brings within its purview, a rebate of excise duty on goods exported out of India or on the materials used in the manufacture of such goods, Rule 18 cannot be read independent of the requirement of the Rule of Limitation prescribed in Section 11B of the Central Excise Act, 1944. Since, the application for rebate claim had been made by the petitioner, belatedly, it had been rejected as time barred. Therefore, the contentions made by the petitioner in the present writ petition are devoid of merits.

12. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents and on a perusal of the records available, and in view of the decisions cited supra, it is noted that the petitioner had submitted the rebate claim on 5.11.2007, along with the relevant documents. The second respondent had returned the enclosures submitted by the petitioner, along with the rebate claim application, vide letter, dated 20.2.2008. However, the second respondent had retained the application for rebate of duty, in Form C. It is also noted that the final confirmation of the date of shipment had been made only on 23.12.2008. In view of the fact that the rebate claim scheme has been

introduced as a beneficial scheme to encourage exports it has to be construed in a liberal manner. As such, the relevant date for calculating the period of limitation should be taken as 5.11.2007, when the petitioner had submitted the rebate claim application. Even though certain documents filed along with the rebate claim application had been returned to the petitioner, it cannot be said that the rebate claim application had not been filed on 5.11.2007. In fact, the second respondent had retained the application for rebate of duty, in Form C. It is also noted that the final confirmation of the date of shipment was made only on 23.12.2008, due to the delay by the Shipping Corporation of India Limited. Therefore, it cannot be said that the rebate claim had been made by the petitioner, belatedly, beyond the period of limitation prescribed, under Section 11B of the Central Excise Act, 1944. In such circumstances, this Court finds it appropriate to set aside the order passed by the first respondent, dated 30.4.2012. Consequently, the second respondent is directed to grant the rebate to the petitioner, as per its application, dated 5.11.2007, along with the interest accrued thereon, as per law, if the petitioner is otherwise qualified for the same. The petition is ordered accordingly."

4. Grounds raised, assailing the correctness of the order of the writ Court, are hereunder:

"(i) Writ Court has erred in not considering the very vital fact that the law as laid down under Section 11B requires an application for refund to be in order and complete. However, in the case of the respondent, the application was not complete and was lacking the very imperative document from the Shipping Corporation of India, confirming the date of shipment of the goods, which is the very basis to decide, as to whether, the claim was made within the period of limitation.

(ii) Writ Court ought to have considered the fact that as per Para 2.3 of Chapter 8 of Supplementary Instructions, 2005, there is no specified form for filling the rebate claim and the same may be done by the exporter on their letterhead along with the requisite documents. When the said instruction is read with the provisions of Section 11B of the Central Excise Act, 1944 and the details of Para 8.3 of Chapter 8 of Supplementary Instructions, 2005, it is clear and fair that the Rebate Claim as such would be considered only if the requisite documents, supplemented by the details in the letterhead relating to the rebate claim is furnished. Hence, whether Form 'C' has been returned

or not has no relevance.

(iii) Writ Court ought to have considered the fact that as per paragraph 2.4 of chapter 9 of Central Excise Manual, The claim shall be taken on file only when all relevant documents are available and thus, the application for rebate claim was complete only on 23.12.2008 and hence, the claim of the respondent is barred by limitation.

(iv) Writ Court ought to have considered the fact that when admittedly the rebate claim application of the respondent was not complete in all respects and it was only after a year that the respondent could complete the application, the relevant date of filing the rebate claim application would be the date when the completed application was received i.e. on 23.12.2008 and not on 05.11.2007 and therefore, the date of filing of the claim in the instant case would be 23.12.2008 and not 05.11.2007, which is clearly barred by limitation.

(v) Writ Court has erred in not considering the fact that as . per Board's Circular No.209/68/96-CX dated 26/07/1996 (From F.No.209/19/96-CX.6) issued in the context of Rule 12 of Central Excise Rules, 1944 (Corresponding to the present Rule 18 of Central Excise Rules, 2002), the time limit prescribed in rebate claim is with reference to Section 11 B of Central Excise Act, 1944 and the limitation period prescribed is absolute in nature and thus, has no scope for any relaxation at any point of time. In the instant case, three deficiency memos were issued and later, the claim was taken-back by the respondent, on his own request and not at the instance of Department and thus, the deficiency memo raised by the department in respect of limitation clause was just and proper and under no circumstances, can be construed as unreasonable.

(vi) Writ Court ought to have considered the fact that the law under Rule 18 of the Central Excise rules does not empower the Department to condone the delay and hence, it is the mandate that the delay in making rebate claims under Section 11B r/w. Rule 18 cannot be condoned.

(vii) Writ Court has erred in not enquiring the facts as to when the respondent made the application to the Shipping Corporation of India for obtaining the Certificate of Shipment and as to whether the delay was actually on the Shipping Corporation of India in issuing the certificate.

(viii) Writ Court has also erred in not considering the fact that after the Department returned the application, which took almost a year to the respondent to file the application and this inordinate delay on the part of the respondent has not been explained or substantiated by proper reasons.

(ix) Writ Court ought to have considered that the respondent had not produced any documents on record to substantiate the fact that the inordinate delay was only caused by the Shipping Corporation of India.

(x) Writ Court ought not to have adjudicated upon the fact as to whether the delay was due to the Shipping Corporation of India or otherwise, without impleading the Shipping Corporation of India as a party to the above writ Petition. Therefore the above writ petition is bad for non-joinder of necessary parties and therefore, the order is liable to be set-aside.

(xi) Writ Court has failed to appreciate that if time for rectification of errors is not limited then all such rebate claims would be reopened at the convenience of the applicants and ultimately, the interest of the revenue would be greatly prejudiced.

(xii) Writ Court has erred in assuming that the application is filed on 5.11.2007, while the onus is entirely on the respondent to complete the application in terms of 11B of the Central Excise Act, 1944 and only an application which includes all the details required under the said Section can be claimed to be an application preferred on time.

(xiii) Writ Court has erred in assuming that the subsequent application is relatable to the earlier date, when the period of limitation set out, under Section 11 B of the Central Excise Act, 1944 is not expandable.

(xiv) Writ Court ought to have considered the ratio laid down by the Hon'ble Apex Court in the Landmark judgement pronounced in Mafatlal Industries Ltd., (1997-89-ELT247 (SC) wherein it was held that all cases of refund would be subject to the aspect of limitation as defined under Sec. 11(b) of the Central Excise Act, 1944, except those which are been declared as unconstitutional. In the instant case, since the refund claim was filed beyond the period stipulated the same will be hit by the Limitation aspect.

(xv) Writ Court ought to have considered that from the boards circular No.234/68/96-CX dated 26.07.1996, it is unambiguous that the limitation period prescribed

is absolute in nature and cannot be condoned at any stage and therefore, the refund claim of the respondent was rightly rejected by the appellant on the ground that the same was time-barred."

Heard the learned counsel for the appellants and perused the materials available on record.

5. The main issue in this writ appeal is that whether the retention of the application for rebate of duty in Form C, falls within the limitation.

6. Section 11B of the Central Excise Act, 1944, deals with claim for refund of duty and said section reads as follows:-

"11B. Claim for refund of duty-

(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] from the relevant date] [in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty had not been passed on by him to any other person:

(2).....

(3).....

(4).....

(5).....

[Explanation For the purposes of this section, -

(A) 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."

7. Rule 18 of the Central Excise Rules, deals with rebate of duty and the same is extracted hereunder:

"18. Rebate of duty. - Where any goods are exported, the Central Government may, by Notification, grant rebate of duty paid on such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the Notification.

Explanation. - "Export" includes goods shipped as provision stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."

8. From the material on record, we could see that to boost exports of the goods manufactured or produced in India, Government of India have promoted various policy measures, in order to promote foreign exchange. Several schemes have been introduced and made available for manufacturer exporters and merchant exporters, for the goods and services exported by them. The basic principle of the various schemes is to offer incentives to the exporter, with an object that goods are to be exported. Similarly, in order to encourage local manufacturers to manufacture and export goods, notification have been incorporated under the central excise law itself. As a matter of policy, Government of India do not levy tax on export of goods and services, and if levied/collected, the amount of tax, so levied/collected, is given back, by way of refund/rebate/drawback. As an incentive to exporters, Government also return the amount of duties and taxes collected on inputs and input services, used for production of export goods or for exporting services. Notification No.19/2004-CE(NT) is an exemption Notification and such exemption is made available, by way of rebate of duty paid, on export goods. The said notification is extracted hereunder:

"Rebate of duty for exports to countries other than Nepal and Bhutan - Procedure - Notification No. 40/2001-C.E. (N.T.) partially superseded

In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (N.T.), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] insofar as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

(2) Conditions and limitations :-

(a) that the excisable goods shall be exported after payment of duty, directly from a factory

or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

(b) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;

(c) that the excisable goods supplied as ship's stores for consumption on board a vessel bound for any foreign port are in such quantities as the Commissioner of Customs at the port of shipment may consider reasonable;

(d) the rebate claim by filing electronic declaration shall be allowed from such place of export and such date, as may be specified by the Board in this behalf;

(e) that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;

(f) that the amount of rebate of duty admissible is not less than five hundred rupees;

(g) that the rebate of duty paid on those excisable goods, export of which is prohibited under any law for the time being in force, shall not be made.

(3) Procedures :-

(a) Sealing of Goods and examination at the place of dispatch and export :-

(i) The manufacturer exporters registered under the Central Excise Rules, 2002 and merchant-exporters who procure and export the goods directly from the factory or warehouse can exercise the option of exporting the goods sealed at the place of dispatch by a Central Excise Officer or under self-sealing;

(ii) Where the exporter desires self-sealing and self-certification, the manufacturer of the export goods or owner of the warehouse shall take the responsibility of sealing and certification;

(iii) The merchant-exporters other than those procuring the goods directly from the factory or warehouse shall export the goods sealed at the place of dispatch by a Central Excise Officer;

(iv) For the sealing of goods intended for

export, at the place of dispatch, the exporter shall present the goods along with four copies of application in the Form ARE-I specified in the Annexure to this notification to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse;

(v) The said Superintendent or Inspector of Central Excise shall verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, shall seal each package or the container in the manner as may be specified by the Commissioner of Central Excise and endorse each copy of the application in token of having such examination done;

(vi) The said Superintendent or Inspector of Central Excise shall return the original and duplicate copies of application to the exporter;

(vii) The triplicate copy of application shall be -

(a) sent to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(b) sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;

(viii) The exporter may prepare quadruplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application;

(ix) Where goods are not exported directly from the factory of manufacture or warehouse, the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse, who shall, after verification, forward the triplicate copy in the manner specified in subparagraph (vii);

(x) In case of export by parcel post after the goods intended for export have been sealed, the exporter shall affix to the duplicate application sufficient postage stamps to cover postal charges and shall present the documents, together with the package or packages to which it refers, to the postmaster at the office of booking;

(xi) Where the exporter desires self-sealing and

self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods;

(xii) In case of self-sealing, the said Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars -

(a) send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(b) send to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;

(xiii) On arrival at the place of export, the goods shall be presented together with original, duplicate and quadruplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer;

(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export :

Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to

declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export.

(xv) The officer of customs shall return the original and quadruplicate (optional copy for exporter) copies of application to the exporter and forward the duplicate copy of application either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the application, from whom the exporter wants to claim rebate :

Provided that where the exporter claims rebate by electronic declaration on the Electronic Data Inter-change system of Customs, the duplicate shall be sent to the Excise Rebate Audit Section at the place of export.

(xvi) The exporter shall use the quadruplicate copy for the purposes of claiming any other export incentive.

(b) Presentation of claim for rebate to Central Excise:-

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part.

(c) Claim of rebate by electronic declaration :-
An exporter may enter the requisite information in the shipping bill filed at such place of export, as may be specified by the Board, for claiming rebate by electronic declaration on Electronic Data Inter-change system of Customs. The details of the corresponding application shall be entered in the Electronic Data Inter-change system of Customs upon arrival of the

goods in the Customs area. After goods are exported or order under section 51 of the Customs Act, 1962 (52 of 1962) has been issued, the rebate of excise duty shall, if the claim is found in order, be sanctioned and disbursed by the Assistant Commissioner of Customs or the Deputy Commissioner of Customs.

(d) Special procedure for store for consumption on board an aircraft on foreign run :- Notwithstanding anything contained in the above paragraphs, in case of mineral oil products falling under Chapter 27 of the First Schedule to the Central Excise Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run, the rebate shall be granted for such quantity of the products as remain on board the aircraft after completion of an internal flight but prior to its reversion to foreign run. The concerned officer of Customs shall certify in the manner specified by the Commissioner of Central Excise the quantity of products left on board for determining the quantum of rebate.

(e) Cancellation of documents :- If the excisable goods are not exported, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall cancel the export documents.

Explanation I. - "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely :

(a) the Central Excise Act, 1944 (1 of 1944);

(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);

(e) special excise duty collected under a Finance Act;

(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);

(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the

Finance (No. 2) Bill, 2004.

Explanation II. - For the purpose of this notification, the expression "electronic declaration" means the declaration of the particulars relating to the export goods, lodged in the Customs Computer System, through the data-entry facility provided at the Service Center or the data communication networking facility provided by the Indian Customs and Central Excise Gateway (called ICEGATE), from the computer of the person authorized for this purpose.

Explanation III. - For the purposes of this notification, "Maritime Commissioner" means the Commissioner of Central Excise under whose jurisdiction one or more of the port, airport, land customs station or post office of exportation, is located."

9. Limitation of filing the rebate claim within one year, under Section 11B of the Central Excise Act, 1944, is a mandatory provision. As per explanation (A) to Section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such, rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. Explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim has to be filed within one year from the relevant date, rebate claim is also required to be filed within one year from the relevant date.

10. In the instant case, the respondent had submitted the rebate claim on 5.11.2007, along with relevant documents. The Joint Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi, second appellant, vide letter, dated 20.2.2008, returned the enclosures submitted by the respondent, along with the rebate claim application. However, the second appellant retained the application for rebate of duty, in Form C. Final confirmation of the date of shipment has been made on 23.12.2008. Considering the material on record, Writ Court, while observing that the rebate claim scheme has been introduced, as a beneficial scheme to encourage exports, held that the relevant date for calculating the period of limitation should be taken as 5.11.2007, when the respondent submitted the rebate claim application.

11. Writ Court has further held that even though certain documents filed along with the rebate claim application had been returned to the respondent, it cannot be said that rebate claim application had not been filed on 5.11.2007 and in fact, the Joint Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi, second appellant, had retained the application for rebate of duty, in Form C. On the facts and circumstances of the case on hand, writ Court held that final confirmation of the date of shipment was due to the delay by the Shipping Corporation of India Limited and therefore, it cannot be said that rebate claim was made by the respondent, belatedly and beyond the period of limitation prescribed, under Section 11B of the Central Excise Act, 1944.

12. In view of the discussion, we do not find that there is any manifest illegality or irregularity, in the order impugned in the instant appeal. Hence, the Writ Appeal is dismissed.

skm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Maritime Commissioner of Central Excise,
26/1, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600 034.
2. The Joint Secretary,
Ministry of Finance (Department
of Revenue), Government of India,
No.14, Hudco Vishala Building,
B Wing, 6th Floor, Bhikaji Cama Place,
New Delhi 110 066.

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