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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27.11.2019

+ **W.P.(C) 7683/2019**

ORIENT MICRO ABRASIVES LIMITED Petitioner
Through: Mr. Karan Sachdev with
Ms. Avisha Khatri, Advs.
versus

UNION OF INDIA & ANR Respondents
Through: Mrs. Shiva Laxmi, CGSC with
Mr. Amit Kr. Dogra, Adv. for R-1.
Mr. Amit Bansal, SSC with
Mr. Aman Rewaria & Ms. Vipasha
Mishra, Advs. for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

D.N. PATEL, CHIEF JUSTICE (*Oral*)

1. The petitioner seeks, by means of this writ petition, quashing and setting aside of Order No.692/18 – CX, 10th December, 2018, passed by the Principal Commissioner and Addl. Secretary to the Government of India, in his capacity as Revisionary Authority, under Section 35EE of the Central Excise Act, 1944 (hereinafter referred to as 'the Act').

2. The facts are brief.

3. On 30th October, 2013, the petitioner filed a claim, for rebate of central excise duty, paid on Chlorinated Paraffin Plasticisers, exported by the petitioner as a merchant-exporter, to USA, during the period 6th June,

2012 to 8th June, 2012.

4. Applications for rebate of Central excise duty paid on excisable goods, consequent on their export, are required to be filed within one year of the date of their export, under Section 11B of the Act. Sub-Section (1) of the Section 11B, and the relevant clauses of the explanation to Section 11B, may, for ready reference, be reproduced thus:

“11B. Claim for refund of duty and interest, if any, paid on such duty. — (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of (1) 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 and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act:]

Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

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;

(B) "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 are 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 exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India.”

(Emphasis supplied)

5. It would be seen, therefore, that (i) refund claims are required to be made within one year of the “relevant date”, (ii) the expression “refund” includes rebate of excise duty paid on goods exported outside India and (iii) the terminus ad quem of the period of limitation, in such cases, is the date of export of the goods.

6. As such, the rebate claim, filed by the petitioner, was rejected by the Assistant Commissioner of Customs (AC), vide Order-in-Original dated 29th January, 2014, on the ground that it was barred by time, as it had been filed after the expiry of one year from the date of export of the goods.

7. The appeal, preferred thereagainst by the petitioner, was dismissed by the Commissioner of Customs (Appeals) vide Order-in-Appeal dated

11th February, 2015.

8. The petitioner challenged the aforesaid Order-in-Appeal, of the Commissioner (Appeals), by way of a Revision Application, under Section 35EE of the Act, before the Revisionary Authority. In the Revision Application, the petitioner contended that the rejection of its rebate claim, on the ground of limitation, was unsustainable, as there was no stipulation of any one year time limit, either in Rule 18 of the Central Excise Rules, 2002 or in Notification 19/04 – CE (NT) dated 6th September, 2004, issued under Rule 18 of the Central Excise Rules (*supra*), whereunder the rebate claim was filed. For ready reference, Rule 18 of the Central Excise Rules, 2002 is reproduced thus:

“RULE 18. Rebate of duty. – Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of 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 or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.”

9. The petitioner also sought to contend that his inability in filing the rebate claim within one year of export of the goods was because the Export Promotion (EP) copy of the Shipping Bills, which were required to be filed with the rebate claim, were not made available to it. It was contended that the rebate claim was filed as soon as the EP copy became available. The non-availability of the EP copies of the shipping bills, it was further sought to be pointed out, was owing to a failure in the computer systems in the Customs house, for which the petitioner could

not be prejudiced.

10. These submissions were not accepted by the Revisionary Authority, who, *vide* the impugned Order, dated 10.12.2018, rejected the petitioner's rebate claim, reiterating the finding, of the authorities below, that the claim was barred by time. Reliance was placed, by the Revisionary Authority, for this purpose, on the judgment of the Supreme Court in *Union of India vs. Uttam Steel Ltd.*¹, as well as of the Bombay High Court in *Everest Flavours vs. Union of India*², and of the Madras High Court in *Hyundai Motors India Ltd. vs. UOI*³.

11. Mr. Karan Sachdev, learned counsel appearing for the petitioner, has, basically, urged two grounds, in support of the writ petition. Firstly, Mr. Sachdev submits that, owing to the technical fault at the end of the respondent, because of which the EP copies of the shipping bills could not be made available to the petitioner in time, the petitioner could not be made to suffer prejudice. He relies, for this submission, on the judgment of the High Court of Gujarat in *Cosmonaut Chemicals vs. Union of India*⁴, as well as of the High Court of Rajasthan in *Gravita India Ltd. vs. Union of India*⁵.

12. Mr. Sachdev submits, alternatively, that the date of submission of the ARE-1 form, to the customs authorities, should be regarded as the date of filing of the rebate claim.

¹ (2015) 13 SCC 209

² (2012) 282 ELT 481

³ 2014 SCC Online Mad 12157

⁴ 2009 (233) ELT 46 (Guj)

⁵ 2016 (334) ELT 321 (Raj)

13. We find ourselves unable to accede to either submission.

14. Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, the rebate claim of the petitioner was required to be filed within one year of the export of the goods.

15. In *Everest Flavours Ltd. v. Union of India*², the High Court of Bombay, speaking through Dr. D.Y. Chandrachud, J. (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree.

16. We also record our respectful disagreement with the views expressed by the High Court of Gujarat in *Cosmonaut Chemicals*⁴ and the High Court of Rajasthan in *Gravita India Ltd.*⁵, to the effect that, where there was a delay in obtaining the EP copy of the Shipping Bill, the period of one year, stipulated in Section 11B of the Act should be reckoned from the date when the EP copy of the Shipping Bill became available. This, in our view, amounts to rewriting of Explanation (B) to Section 11B of the Act, which, in our view, is not permissible.

17. We are also unable to subscribe to the submission, vehemently urged by Mr. Sachdev, that the date of submission of the ARE-1, to the Customs Officer, ought to be treated as the date of filing of the rebate claim. “ARE-1” expands to “Application for Removal of Excisable Goods”. The ARE-1 is, therefore, an application which accompanies the removal of the excisable goods, and its submission is necessarily anterior,

in point of time, to the export of the goods. Indeed, this is apparent from Clauses 3(a) (vii), (xii), (xiv) and 3(b) of Notification 19/2004 – CE (NT) (*supra*), which deal with the procedure for sealing of goods, examination thereof and presentation of rebate claim, and may be reproduced thus:-

“(3) Procedures :-

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

(vii) The triplicate copy of application shall be –

(a) sent to the office 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;

(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;

(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.

(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.”

18. Clearly, the submission of the ARE-1 is anterior to the filing of the rebate claim and the date of submission of the said application cannot, therefore, be treated as the date of filing of the rebate claim. Mr. Sachdev was unable to draw our attention to any statutory provision, or judicial authority, enabling the date of submission of the ARE-1 application to be treated as the date of filing of the rebate claim.

19. Periods of limitation, stipulated in taxing statutes, are sacrosanct. It is settled, as far back as in *Cape Brandy Syndicate vs. Inland Revenue Commissioners*⁶, thus:

“... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

20. Section 11(B)(1) of the Act read with the Explanation thereto, clearly requires any claim for rebate to be submitted within one year of export of the goods, whereagainst rebate is claimed. There is no provision which permits relaxation of this stipulated one year time limit.

21. We, therefore, find no reason to disturb the concurrent view of all three authorities below i.e. the AC, the Commissioner (Appeals) and the Revisionary Authority, that the rebate claim of the petitioner merited rejection, as it was barred by time.

22. Resultantly, the writ petition is dismissed, with no orders as to costs.

CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 27, 2019
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⁶ (1921) 2 K.B. 403