
(2012) 03 BOM CK 0193
In the Bombay High Court
Case No : Writ Petition No. 3262 of 2011

Everest Flavours Ltd.

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Central Excise Rules, 2002 — Rule 11, 18, 57I
Central Excises and Salt Act, 1944 — Section 11A, 11B, 11B(1), 11B(2), 11BB
Constitution of India, 1950 — Article 226

Citation : (2012) 4 ALLMR 810 : (2012) 114 BOMLR 2066 : (2012) 192 ECR 11 :
(2012) 282 ELT 481 : (2013) 18 GSTR 317

Hon'ble Judges : M.S. Sanklecha, J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Prakash Shah with Mr. Jas Sanghavi and Mr. Durgadas Poojari
instructed by PDS Legal, for the Appellant; Pradeep S. Jetly with Mr. S.D.
Bhosale, for the Respondent

Final Decision : Dismissed

Judgement

Dr. D.Y. Chandrachud, J.—The petitioner exported in the normal course of its business a consignment of 360 drums containing Menthol Crystals to Bangkok by a shipping bill dated 3 February 2006. The shipping bill was provisionally assessed on 10 February 2006. The goods were actually exported on 12 February 2006. A finally assessed copy of the shipping bill is stated to have been handed over to the petitioner on 25 June 2007. On 17 July 2007 the petitioner filed two applications claiming a rebate of the Central Excise duty paid on goods which were exported. The petitioner was called upon to show cause by the Assistant Commissioner (Rebate) why the claim should not be rejected. By an order dated 21 September 2007 the Assistant Commissioner rejected the claim for rebate filed by the petitioner. The order was confirmed in appeal by the Commissioner of Central Excise (Appeals). A Revision Application filed by the petitioner has been rejected by the Joint Secretary to the Union Government in the Ministry of Finance. The ground on which the rebate claim filed by the petitioner has been

rejected is that it has been filed beyond the period of limitation prescribed by Section 11B of the Central Excise Act, 1944. u/s 11B a claim for the refund of duty has to be made within a period of one year from the relevant date; the expression "relevant date" being defined to be the date on which the ship or aircraft in which the goods are loaded, leaves India. Since the export of the goods took place on 12 February 2006, the claim has been held to be barred by limitation since it was presented beyond a period of one year.

2. Three submissions have been urged on behalf of the petitioner:

(1) Rule 18 of the Central Excise Rules, 2002 does not prescribe any time limit for making an application for rebate. No time limit has been prescribed in the Notification issued by the Central Government on 6 September 2004. Whereas the earlier Notification dated 12 September 2004 prescribed that the claim for rebate must be made within the period stipulated by Section 11B, such a stipulation is not to be found in the Notification which presently holds the field;

(2) The submission of Form ARE-1 would itself constitute the filing of a rebate claim. Consequently, the actual filing of the rebate claim on 17 July 2007 is a surplusage which must be ignored; and

(3) The Export promotion copy of the shipping bill is required to be filed together with the rebate claim. Since the export promotion copy is a requirement for a rebate claim, the period of limitation cannot commence until this requirement is fulfilled.

3. On the other hand, it has been urged on behalf of the respondents that:

(1) The mandatory requirement of Section 11B must extend to the filing of an application for rebate particularly in view of the fact that Explanation (A) to Section 11B specifically comprehends within the purview of the expression "refund", a rebate of the 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;

(2) The mandatory requirement of Section 11B is that a claim for refund of duty has to be presented within a period of one year from the relevant date which is defined to be the date on which the ship or aircraft in which the goods are loaded leaves India;

(3) The mere presentation of an ARE-1 form does not constitute a claim for rebate as would be evident from the scheme of the Notification dated 6 September 2004;

(4) While filing a claim for rebate in respect of excise duty paid on goods exported from India, it is not necessary for the exporter to furnish the export promotion copy of the shipping bill and the only requirement is the filing of a self attested copy of the shipping bill. Consequently, the period of limitation would not stand extended to the date when an export promotion copy of the shipping

bill was handed over to the petitioner.

5. The rival submissions now fall for consideration. Section 11B stipulates that any person claiming refund of any duty of excise and interest may make an application for refund to the Assistant Commissioner of Central Excise, or as the case may be, to the 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 that application shall be accompanied by such documentary or other evidence establishing, inter alia, the duty paid character of the goods. Explanation (A) to Section 11B specifically provides that the expression "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. Explanation (B) defines the expression "relevant date". Clause (a) of Explanation (B) provides that 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, 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 would be regarded as the relevant date. Parliament having specifically brought within the sweep of Section 11B a claim for rebate, it cannot be postulated that Rule 18 of the Central Excise Rules, 2002 would operate independent of the provisions of Section 11B.

5. Rule 18 provides as follows:

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 of processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment 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.

6. Counsel appearing on behalf of the petitioner sought to place reliance on a decision of the Supreme Court in Collector of Central Excise, Jaipur Vs. M/s. Raghuvar (India) Ltd., The issue which fell for determination before the Supreme Court, inter alia, was whether action for the recovery of MODVAT credit wrongly availed of or utilised in an irregular manner under Rule 57-I would be governed by the period of limitation of six months (at the relevant time) prescribed in Section 11A. The Supreme Court noted that Section 11A is not an omnibus provision which provides any period of limitation for all or any and every kind of action to be taken under the Act or the Rules but would be attracted only to cases where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded. The judgment of the Supreme Court holds that Rule 57-I envisages disallowance of the credit and consequential adjustment in the credit account or the account current maintained by the

manufacturer and it is only if such adjustments are not possible, that an amount equivalent to the credit illegally availed of could be recovered. Consequently Rule 57-I, it was held, could not involve a case of manufacture and removal of excisable goods without subjecting such goods to levy or payment in the various circumstances enumerated in Section 11A. Hence, on its own terms, it was held that Section 11A will have no application or operation to cases covered under Rule 57-I. The Supreme Court ruled that the situation on hand and the one which is to be dealt with under Rule 57-I as it stood prior to amendment, did not fall under any of those contingencies provided in Section 11A.

7. In contrast, in so far as Section 11B is concerned, the provision categorically comprehends a rebate of excise 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 for refund in Section 11B brings within its purview, a rebate of excise duty on goods exported out of India or materials used in the manufacture of such goods, Rule 18 cannot be read independent of the requirement of limitation prescribed in Section 11B. The Judgment of the Supreme Court in Raghuvardhan dealt with a situation where Section 11A did not bring within its purview an action for the recovery of MODVAT credit wrongly availed of which formed the subject matter of Rule 57-I. It was in this view of the matter that the Supreme Court held that the period of limitation prescribed u/s 11A would not apply to an action for recovery of MODVAT credit under Rule 57-I. This can have no application in the present situation which is clearly distinctive, in the sense that Section 11B specifically comprehends an application for rebate of excise duty on goods exported or materials used in their manufacture.

8. A judgment of the Madras High Court in Dorcas Market Makers Private Limited, Chennai Vs. CIT (Appeals) 2012 TIOL 108 HC MAD CX was sought to be relied upon to submit that Section 11B of the Central Excise Act would not operate in respect of an application under Rule 18 of the Central Excise Rules, 2002. The learned Single Judge of the Madras High Court held that when a statutory Notification which was issued under Rule 18 does not prescribe any time limit, Section 11B would not be attracted. With respect, the learned Single Judge of the Madras High Court has not had due regard to the specific provision of Explanation (A) to Section 11B of the Act under which the expression "refund" is defined to include rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of such goods. The judgment of the Supreme Court in Raghuvardhan which has been relied upon by the learned Single Judge of the Madras High Court has already been considered hereinabove.

9. In exercise of the powers conferred by Rule 18, the Central Government has issued a Notification No. 19/2004 dated 6 September 2004. The Notification prescribes the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that the excisable goods shall be exported

within six months from the date on which they were cleared from the factory of manufacture or warehouse. The procedures are stipulated in Clause (3). Sub-clause (iv) provides for the sealing of goods intended for export, at the place of dispatch and the exporter shall present goods along with four copies of an application in Form ARE-I specified in the Annexure to the Notification to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse. Sub-clause (v) then stipulates that the Superintendent or Inspector shall verify the identity of goods mentioned in the application, the particulars of the duty paid or payable and if found in order, shall seal each package or the container and endorse each copy of the application in token of having carried out the examination. The original and duplicate copies of the application are returned to the exporter. The triplicate copy of the application is to be sent to the Officer with whom a rebate claim is to be filed either by post or by handing over to the exporter in a sealed cover after posting the particulars in the official record or to be sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration. Sub-clause (b) of Clause (3) of the Notification makes a provision for presenting a claim for rebate of Central Excise duty in the following terms:

(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 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 the 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.

The provisions of the Notification thus make it abundantly clear that a mere submission of the ARE-I form does not constitute the presentation of a claim for rebate of Central Excise. Form ARE-1 in turn has various parts including Part A which deals with the certification by Central Excise Officer, Part B which deals with certification by the Officer of Customs and Part D which is the actual Rebate Sanction Order. Moreover, it would be necessary to take note of the fact that u/s 11BB of the Act, interest is liable to be paid if any duty which is ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of Section 11B. For the purpose of Section 11BB, presentation of the application is the relevant date from which the period of three months has to be reckoned. If the submission of the petitioner were to be accepted, viz. that the mere

presentation of the ARE-1 form would constitute an application for rebate of Central Excise Duty, that would defeat the whole scheme that has been enunciated in Section 11B and Section 11BB. Before the application for rebate can be allowed, an exporter has to furnish various documents including a request on the letterhead of the exporter containing a claim for rebate, the ARE-1 numbers and dates, corresponding invoice numbers and dates, the original copy of the ARE-1, invoice issued under Rule 11, self attested copy of shipping bill and self attested copy of bill of lading together with a Disclaimer Certificate in case where a claimant is other than the exporter. These requirements have been spelt out in para 8.3 of the CBEC Excise Manual. The mere presentation of an ARE-1 form does not, therefore, constitute the filing of a valid application for rebate. An application for refund has to be filed, together with documentary material as required. We, therefore, do not accept the second submission which has been urged on behalf of the petitioner.

10. Finally it has been sought to be urged that the filing of an export promotion copy of the shipping bill is a requirement for obtaining a rebate of excise duty. This has been controverted in the affidavit in reply that has been filed in these proceedings by the Deputy Commissioner (Rebate), Central Excise. Reliance has been placed in the reply upon Paragraph 8.3 of the CBEC Manual to which a reference has been made above, and on a Trade Notice dated 1 June 2004 which is issued by the Commissioner of Central Excise and Customs. Paragraph 8.3 of the Manual makes it abundantly clear that what is required to be filed for the sanctioning of a rebate claim is, inter alia, a self attested copy of the shipping bill. The affidavit in reply also makes it clear that under the Central Excise Rules, 2002 there are two types of rebates : (i) A rebate on duty paid on excisable goods and (ii) A rebate on duty paid on material used in the manufacture or processing of such goods. The first kind of rebate is governed by Notification No. 19/2004 dated 6 September 2004, whereas the second kind is governed by Notification No. 21/2004 dated 6 September 2004. In the case of the rebate on duty paid on excisable goods, one of the documents required is a self attested copy of the shipping bill. For the second kind of rebate a self attested copy of the export promotion copy of the shipping bill is required. Counsel appearing on behalf of the petitioner sought to rely upon a Notification issued by the Central Board of Excise and Customs on 1 May 2000. However, it is abundantly clear that this Notification predates the Manual which has been issued by the Central Board of Excise and Customs. The requirement of the Manual is that it is only a self attested copy of the shipping bill that is required to be filed together with the claim for rebate on duty paid on excisable goods exported.

11. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of

law. Hence no case for interference under Article 226 of the Constitution is made out. The petition is accordingly dismissed. No order as to costs.