

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30-11-2012

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.No.25105 of 2012

Shasun Pharmaceuticals Ltd.,  
rep. By Senior General Manager  
C.Baskar Rao,  
Shansun Road,  
Periyakalapet,  
Pondicherry-605 014.

.. Petitioner.

Versus

1. Joint Secretary,  
Ministry of Finance (Department of Revenue)  
Government of India,  
No.14, Hudco Vishala Building, B Wing,  
6<sup>th</sup> Floor, Bhikaji Cama Place,  
New Delhi-110 066.

2. The Maritime Commissioner of Central Excise,  
26/1, Mahatma Gandhi Salai,  
Nungambakkam, Chennai-600 034.

.. Respondents.

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records in Order No.521/2012, dated 30.4.2012 passed by the 1<sup>st</sup> respondent and quash the same as arbitrary and illegal and direct the 2<sup>nd</sup> respondent to grant rebate to the petitioner along with interest at appropriate rate, for the period of delay.

For Petitioner : Mr.V.Ravindran

For Respondents : Mr.P.Mahadevan (R1)  
Mr.Rajnish Pathiyil (R2)

O R D E R

Heard the learned counsel appearing for the petitioner, as well as the learned counsels appearing on behalf of the respondents.

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.

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. No costs.

Sd/-  
Deputy Registrar.

/true copy/

सत्यमेव जयते  
Sub Asst. Registrar.

csH

To

1. Joint Secretary,  
Ministry of Finance (Department of Revenue)  
Government of India,  
No.14, Hudco Vishala Building, B Wing,  
6<sup>th</sup> Floor, Bhikaji Cama Place,  
New Delhi-110 066.

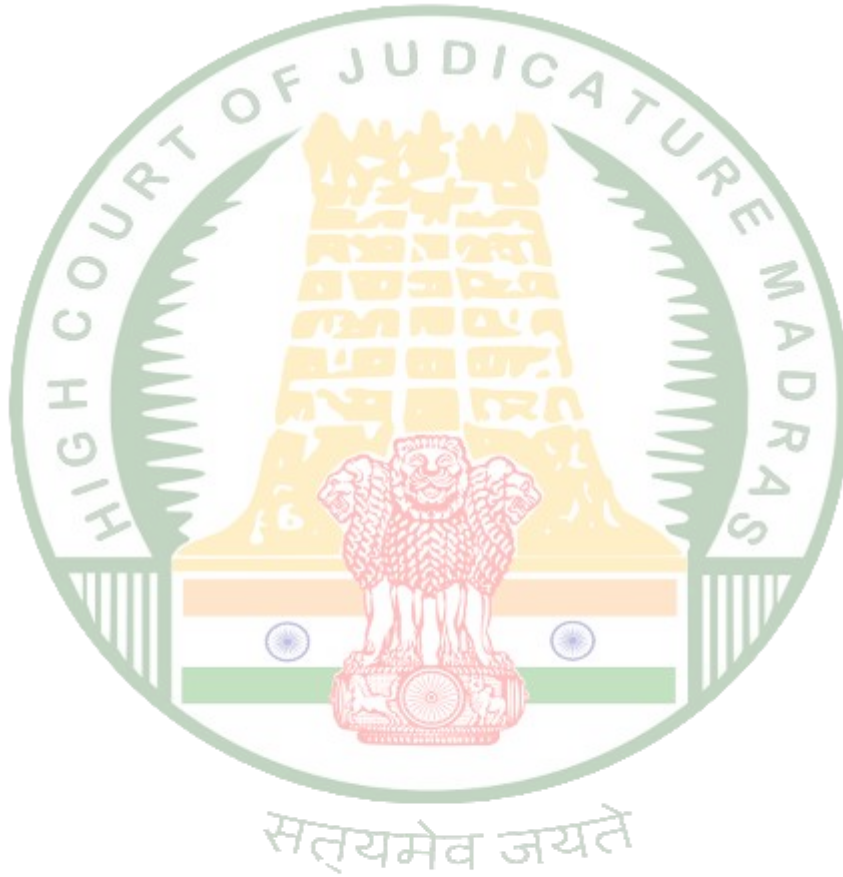
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2. The Maritime Commissioner of Central Excise,  
26/1, Mahatma Gandhi Salai,  
Nungambakkam, Chennai-600 034.

1 CC To M/s. Joseph Prabakar Advocate SR NO.73211

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