



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No.195/212/WZ/2019 / 102

Date of Issue: 12.01.2023

ORDER NO. 08/2023-CX (WZ) /ASRA/Mumbai DATED 10.01.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Piramal Glass Limited,
ONGC Road, Tarsadi Village,
Kosamba, Dist. Surat - 394120

Respondent : Pr. Commissioner of GST & Central Excise, Surat
Commissionerate, GST & Central Excise Building, Opp.
Gandhi Baug, Chowk Bazar, Surat - 395001.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CCESA-SRT (APPEALS) /PS-830/2018-19 dated
28.02.2019 passed by the Commissioner, CGST &
Central Excise, Appeals, Surat.

ORDER

The subject Revision Application has been filed by M/s Piramal Glass Limited, Surat, (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 28.02.2019 passed by the Commissioner, CGST & Central Excise, Appeals, Surat which decided an appeal filed by the applicant against the Order-in-Original dated 18.12.2018 passed by the original Adjudicating Authority, which in turn decided a rebate claim filed by the applicant.

2. Brief facts of the case are that the applicant filed a rebate claim on 04.10.2018 in respect of goods exported by them under ARE-1 No.933 dated 28.06.2017 under Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE(NT) dated 06.09.2004. The original authority vide Order-in-Original dated 18.12.2018 rejected the same on grounds of the claim being time barred. The applicant preferred appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal dated 28.02.2019 upheld the Order of the original authority and rejected the appeal of the applicant.

3. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal dated 28.02.2019 on the following grounds: -

(a) The issue had already been decided by the Hon'ble Supreme Court in their favor; they cited the decision of the Hon'ble High Court of Madras in the case of Dorcas Market Makers Pvt. Limited [2012 (281) ELT 227 (Mad)] wherein it was held that if the notification does not prescribe a time limit, then the provisions of Section 11B of the Central Excise Act, 1944 would not apply; a decision which was upheld by the Hon'ble Supreme Court [2015 (325) ELT A 104 (SC)]; they also sought to rely on the decision of the Hon'ble Tribunal in the case of DSS Image Tech (P) Limited [2016 (2) TMI (CESTAT-Del)] in support of their case;

(b) They submitted that the rebate claim was not barred by limitation as it is only a procedural law and not substantive law; that the provision of Section 11B in this regard is only procedural in nature; that Rule 18 of the

Central Excise Rules, 2002 and notification no.19/2004-CE(NT) do not prescribe time limit provided in Section 11B of the Central Excise Act, 1944 and hence period of limitation in respect of rebate claims should not be seen and placed reliance on the following decisions -

- JSL Lifestyle Ltd. vs UOI [2005 (326) ELT 265 (P & H)];
- CCE vs Raghuvar (India) Limited [2000 (118) ELT 311 (SC)]
- Uttam Steel vs UOI [2003 (158) ELT 274 (Bom)]
- UOI vs Dewas Flour, Oil and Deoiled Cake Factory [1993 (68) ELT 36 (M.P.);

It was submitted that there was no specific provision that Section 11B of the Central Excise Act, 1944 shall be applicable to refund of duty in the present case;

(c) They submitted that non-production of Original and Duplicate copies of ARE-1 is merely a procedural error and rebate should be allowed when all other conditions of grant of rebate has been fulfilled; they relied upon the following decisions -

- UM Cables vs UOI [2013 (293) ELT 641(Bom)]
- United Phosphorus Limited [2015 (321) ELT 148 (GOI)]
- Aarti Industries Limited [2014 (305) ELT 196 (Bom)]
- Shreeji Colour Chem Industries [2009 (233) ELT 367 (Tri-Ahmd)]
- Barot Exports [2006 (203) ELT 321 (GOI)]
- Hebenkraft [2001 (136) ELT 979 (GOI)]

In view of the above, the applicant requested that the rebate claim should be allowed to them.

4. Personal hearing in the matter was granted to the applicant and the respondent. Shri Mehul Jivani, C.A., from M/s S.S. Gupta, Chartered Accountant, appeared online on 09.11.2022 on behalf of the applicant and submitted that their claim was rejected as time barred. He submitted that the time limit under Section 11B of the Central Excise Act, 1944 is not applicable to rebate. He further submitted that no duty was required to be paid. He requested to allow the claim.

5. Government has gone through the case records available, the written and oral submissions and also perused the impugned Order-in-Original and Order-in-Appeal.

6. Government finds that the issue involved in the present case is limited to deciding whether the impugned Order-in-Appeal is proper in upholding the rejection of rebate claim of the applicant for being time barred. The applicant has submitted that there is no time limit prescribed in the relevant rule/notification and hence the claims should be allowed. Government finds that the Commissioner (Appeals) has recorded that the goods were exported on 13.07.2017 and the rebate claim with respect to the said exported goods was filed on 04.10.2018. These dates have not been disputed by the applicant. Thus, Government finds that it is an admitted position that the rebate claim in question has been filed after one year from the date of export. The applicant has also submitted that non-submission of the Original and Duplicate copies of ARE-1s has to be treated as a procedural lapse, however, Government finds that their claim was not rejected on this ground and hence finds these submissions to be unwarranted at this stage.

7. Government proceeds to examine whether the impugned order was correct to hold that the rebate claim was time barred and hence liable to be rejected. Government notes that the applicant has, in their written submissions, stated that there is no time limit prescribed for filing of rebate claims and has sought to place reliance on the decision of the Apex Court in the case of Deputy Commissioner vs Dorcas Market Makers Pvt. Ltd [2015 (325) ELT A104 (SC)] in support of their argument. Government notes that this decision was passed by the Hon'ble High Court of Madras and the Supreme Court had, while rejecting the appeal against the same, not gone into the merits of the case. Government finds that this issue is no longer *res integra* and has been laid to rest by a number of decisions of the higher Courts. Government observes that the Hon'ble High Court of Madras in a subsequent decision, while dismissing a Writ Petition filed by Hyundai Motors India Limited [2017 (355) E.L.T. 342 (Mad.)] had upheld the rejection of rebate claims which were filed after one year from the date of export and held that the limitations provided by a Section will prevail over the Rules. Further, Government also notes that the Hon'ble High Court of Karnataka while deciding the case of Sansera Engineering Pvt. Ltd. Vs Dy.

Commissioner, Bengaluru [2020 (371) ELT 29 (Kar.)], an identical case, had distinguished the decision of the Apex Court referred to by the applicant and had held as under:-

“ It is well settled principle that the claim for rebate can be made only under section 11-B and it is not open to the subordinate legislation to dispense with the requirements of Section 11-B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11-B is only clarificatory.

14. It is not in dispute that the claims for rebate in the present cases were made beyond the period of one year prescribed under Section 11-B of the Act. Any Notification issued under Rule 18 has to be in conformity with Section 11-B of the Act.

15. The decision of Original Authority rejecting the claim of rebate made by the petitioners as time-barred applying Section 11-B of the Act to the Notification No. 19 of 2004 cannot be faulted with.”

A Writ petition filed against the above decision was decided by a Larger Bench of the Hon'ble High Court of Karnataka in Sansera Engineering Limited vs Deputy Commissioner, LTU, Bengaluru [2021 (372) ELT 747 (Kar.)] wherein the Hon'ble High Court upheld the decision by the Single Judge in the above cited case with the following remarks :-

“ A reading of Section 11B of the Act makes it explicitly clear that claim for refund of duty of excise shall be made before the expiry of one year from the relevant date. The time prescribed under Section 11B of the Act was earlier six months which was later on amended on 12-5-2000 by Section 101 of the Finance Act, 2000. Rule 18 of the Central Excise Rules and the Notification dated 6-9-2004 did not prescribe any time for making any claim for refund as Section 11B of the Act already mandated that such application shall be filed within one year. Section 11B of the Act being the substantive provision, the same cannot yield to Rule 18 of the Rules or the Notification dated 6-9-2004. As rightly held by the Learned Single Judge, the Notification dated 1-3-2016 was mere reiteration of what was contained in Section 11B of the Act, and therefore, the Law as declared by the Hon'ble Supreme Court in Uttam Steel (supra) is applicable to the facts of this case. In that view of the matter, the judgment of the Madras High Court in the case of Dorcas Market Makers Pvt. Ltd., (supra) is not applicable to the facts of this case. As a matter of fact, the Madras High Court in the case of Hyundai Motors India Ltd. v. Department of Revenue, Ministry of Finance reported in 2017 (355) E.L.T. 342 (Mad.) did not subscribe to the law declared in Dorcas Market Makers Pvt. Ltd., (supra) and held that the time prescribed under Section 11B of the Act is applicable.

13. In view of the aforesaid, the Learned Single Judge had extensively considered the questions of law and the applicability of Section 11B of the Act and has rightly held that the claim of the appellant for refund was time-barred as it was filed beyond the period of one year. We do not find any justification to interfere with the findings of the Learned Single Judge. Hence, W.A. No. 249/2020 lacks merit and is dismissed.”

Government finds the above decision is squarely applicable to the issue on hand and finds that it relies on the decision of the Hon'ble Supreme Court in the case of UOI & Others vs. Uttam Steel Limited [2015 (319) E.L.T. 598 (S.C.)] to hold that the limitation of one year prescribed by Section 11B of the Central Excise Act, 1944 is applicable to claims for rebate. Government finds that the decisions cited by applicant will not be applicable here as the judgments discussed above have been pronounced after the decisions cited and would hence prevail over the earlier decisions in the matter. In light of the above, Government finds that the claim for rebate in the present case having been filed after a period of one year from the relevant date is hit by the limitation prescribed in Section 11B of the Central Excise Act, 1944 and is hence time barred and accordingly holds so.

8. The subject Revision Application is rejected.


10/1/23
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 08/2023-CX (WZ) /ASRA/Mumbai dated 10.01.2023

To,

M/s Piramal Glass Private Limited,
ONGC Road, Tarsadi Village,
Kosamba, Dist. Surat - 394120.

Copy to:

1. Commissioner of CGST & Central Excise, Surat Commissionerate, New Central Excise Building, Chowk Bazar, Surat - 395001.
2. Commissioner, Central Excise & CGST Appeals, Surat, 3rd floor, Magnus Mall, Althan Bhimrad Canal Road, Near Atlanta Shopping Mall, Althan, Surat - 395 017.
3. M/s S.S. Gupta, Chartered Accountant, 1009-1015, Topiwala Centre, Topiwala theatre Compound, Near Railway Station, Goregaon (W), Mumbai - 400 104.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.