

REGISTERED SPEED POST AD



**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**  
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Mumbai- 400 005

F. No. 195/199-201/17-RA / 1422 Date of Issue: 15.03.2023

ORDER NO. 102-104/2023-CX(WZ)/ASRA/MUMBAI DATED 13.3.23 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. Cosma International (India) Pvt. Ltd.,  
Plot No A-12, MIDC, Talegaon MIDC,  
Village Navlakh Umbre,  
Tal Maval Dist, Pune-410 507

**Respondent :** Pr. Commissioner of CGST & Central Excise, Pune-I.

**Subject :** Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PUN-EXCUS-001- APP-385 TO 387-16-17 dated 25.01.2017 passed by the Commissioner (Appeals-I) Central Excise, Pune.

**ORDER**

The revision application has been filed by M/s. Cosma International (India) Pvt. Ltd Plot No. A-12, MIDC, Talegaon MIDC, Village Navlakh Umbre Tal Maval Dist, Pune-410 507 (herein after to be referred as "Applicant"), against Orders-in-Appeal No. PUN-EXCUS-001- APP-385 TO 387-16-17 dated 25.01.2017 passed by the Commissioner (Appeals-I) Central Excise, Pune.

2. The applicant had filed rebate claims under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002 read with Section 11B of the CEA, 1944 for the goods cleared from the factory for export under ARE-1's. The concerned Assistant Commissioner, Central Excise after following the due process of law rejected / partially rejected the said rebate claims vide his Orders-in-Original No. PI/Talegaon Divn./Ref/47/15-16 dated 18.06.2015, No. PI/Talegaon Divn./Ref/44/15-16 dated 10.06.2015 & No. PI/Talegaon Divn./Ref/22/15-16 dated 27.04.2015 being inadmissible under Section 11B of the CEA, 1944 as the rebate claim had been filed beyond the stipulated time limit of one year from the relevant date.

3. Aggrieved by the Orders-in-Original the applicant filed appeal before the Commissioner(Appeals). The appellate authority after following due process of law rejected the appeal and upheld the Orders vide his Orders-in-Appeal No. PUN-EXCUS-001- APP-385 TO 387-16-17 dated 25.01.2017.

4. Aggrieved by the Orders-in-Appeal dated 25.01.2017, the applicant filed revision applications on the following grounds:

4.1.1 The Applicant submitted that the said Notification nowhere prescribes any time limit for claiming the rebate of duty. Therefore, from the combined reading of Rule 18 and the Notification it can be concluded that there is no

time limit specified to file the rebate claim and thus, the rebate claim can be filed at any point of time as long as the conditions and procedures specified in the Notification are met. The rebate of duty under the erstwhile Central Excise Rules, 1944 was governed by Rule 12 of the erstwhile Rules read with Notification No. 41/94- C.E. (N.T.), dated 12-9-1994. The said Notification specifically lays down the condition that the rebate claim is to be filed within the time limit specified under Section 11B of the Act. The Applicant submits that after the enactment of the Excise Rules, the erstwhile Notifications under the erstwhile Rules were also superseded by new Notifications issued under the Excise Rules. However, it is pertinent to note that the law regarding rebate of duty in erstwhile Rules and the Excise Rules remained broadly the same. Moreover, the conditions mentioned in the erstwhile Notification were retained as it is in the Notification with the only exception being the condition of filing the rebate claim as per the time limit specified in Section 11B of the Act. The said condition under the erstwhile Rules was specifically removed by the Government from the Notification.

4.1.2 The present case of the Applicant is squarely covered by the decision of Hon'ble Madras High Court in case of Dorcas Market Makers Pvt. Ltd. [2012 (281) ELT 227 (Mad.)]. Further, the Divisional bench of the Hon'ble Madras High Court upheld the decision of the single judge bench, reported at [2012 (321) ELT (0045) (Mad.)].

4.1.3 The Department appealed against the above said decision of Hon'ble High Court. The Hon'ble Supreme Court dismissed the appeal filed by the department and affirmed the decision of the Hon'ble Madras High Court. The said decision is reported at Dorcas Market Makers Pvt. Ltd. [(2015) 325 ELT A104 (SC)].

4.1.4 Without appreciating the submissions of the Applicant, the Ld. Comm. (Appeals) refused to accept the contention of the Applicant on the ground that the above referred judgment of the Madras High Court has not considered the decision of the Hon'ble Supreme Court in the case of Uttam

Steel Ltd. [2015 (319) ELT 598 (SC)] or the Mafatlal Industries Ltd. [1997 (89) ELT 247 (SC)].

4.1.5 Further, the Applicant submits that decision relied on by the Ld. Comm. (Appeals) in case of Uttam Steel (supra) is not applicable in the present case in as much as the said decision was considering the erstwhile notification which had borrowed the provisions of Section 11B. However, the said erstwhile notification was superseded by the Notification No. 19/2004-CE(NT) wherein the provisions of Section 11B are not being borrowed. Therefore, the decision relied on by the Ld. Comm. (Appeals) is not applicable in the present case.

4.1.6 Further, it is submitted that the Ld. Comm. (Appeals) has placed reliance on the judgment of the jurisdictional High Court in the case of Everest Flavours Ltd. [2012 (282) ELT 481 (Bom)] wherein it was held that Rule 18 of the excise Rules cannot operate independently from the provisions of Section 11B of the Act.

4.1.7 In this regard, the Applicant submits that the aforesaid decision in case of Everest is not applicable in the present case in as much as the Hon'ble Bombay High Court has failed to appreciate the decision of Hon'ble Supreme Court in case of Raghuvar India Ltd. [2000 (118) ELT 311 (SC)] wherein the Hon'ble Supreme Court has held that section itself cannot be omnibus and specific situations would be governed by specific rules. In the present case, Rule 18 of the Excise Rules read with Notification No. 19/2004-CE(NT) is a self-contained code in as much as rebate will be filed and processed under the said provisions only. In fact, neither Rule 18 or the Notification No. 19/2004-CE(NT) or CBEC Manuel provides any reference to Section 11B of the Act. Therefore, merely rebate covered under Section 11B would not be relevant to apply the restrictions. Hence the said decision of Hon'ble Bombay High Court is not applicable in the present case.

4.2 Without prejudice to the above, the Notification is to be construed liberally when there is no dispute with respect to the applicability of the

Notification. The Applicant submits that it is well settled law that once the applicability of Exemption Notification is not in dispute then the Exemption Notification must be construed liberally and the benefits under the same cannot be denied to the assessee for the procedural lapse. For this reliance is placed on the case of Associated Cement Companies Ltd. v. State of Bihar & Ors., (2004) 7 SCC 642.

4.3 Without prejudice to the above submissions, the Ld, Comm. (Appeals) in his impugned order has wrongly denied the rebate claim in respect of ARE-1 No. 27 amounting to Rs 6,43,483/-. In this regard, the Applicant submits that though the Applicant had filed ARE-1 on 20.01.2014 in respect of the Commercial Invoice No. 1314200019, the shipping bill for export was filed on 22.01.2014. However, the said shipping bill was allowed the let export order only 03.02.2014. Further the said date of issuance of Let of Export order can be verified from the Bill of Lading and corresponding Mate Receipt which is pertaining to shipping bill dated 22.01.2014. Further, summary of the above said documents was mentioned in the rebate application filed by the Applicant which was brought to the notice of the Ld. Comm. (Appeals) during the personal hearing and in fact the details of shipping bill dated 22.01.2014 is appearing in Bill of Lading as well as Mate Receipt. Accordingly, the rebate claimed was filed by the Applicant within the period of limitation as prescribed under Section 11B of the Act and should have been allowed. The Applicant had had filed the shipping bill for export on 22.01.2014 for which the corresponding let export order was allowed only on 03.02.2014 and subsequently the Applicant filed the rebate application on 30.01.2015. Thus, the Applicant has filed the rebate application within the time period of one year and the application is not time barred.

5. The applicant was thereafter granted opportunity of personal hearing on 11.11.2022. Shri Bipin Kumar Verma, Consultant appeared online and submitted that 3 rebate claims were rejected as time barred in terms of Section 11B. He submitted that in one ARE-1, B/L and date of

shipment are within one year from the date of filing, hence claim was wrongly rejected. He submitted that Dorcas Metal case and a 2019 Allahabad High Court case be referred. He requested to allow rebate considering main policy objectives of export.

6. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Orders-in-Original, the Orders-in-Appeal and the RA. The issue for decision in the present case is the admissibility of rebate claim filed by the applicant beyond one year of the date of export of goods.

7.1 Before delving into the issue, it would be apposite to examine the statutory provisions regulating the grant of rebate. Rule 18 of the CER, 2002 has been instituted by the Central Government in exercise of the powers vested in it under Section 37 of the CEA, 1944 to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA, 1944. Moreover, the Explanation (A) to Section 11B explicitly sets out that for the purposes of the section "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. 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 covers the entire Rule 18 within its encompass. Likewise, the third proviso to Section 11A(1) of the CEA, 1944 identifies "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" as the first category of refunds which is payable to the applicant instead of being credited to the Fund. Finally, yet importantly, the Explanation (B) of "relevant date" in clause (a) specifies the date from which limitation would commence for filing refund claim for excise duty paid on the excisable goods and the excisable goods used in the manufacture of such goods. The relevant text is reproduced below.

*"(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 dispatch of goods by the Post Office concerned to a place outside India;”*

7.2 It would be apparent from the definition of relevant date in Section 11B of the CEA, 1944, that for cases of refund of excise duty paid on exported goods or on excisable materials used in exported goods, the date of export is the relevant date for commencement of time limit for filing rebate claim.

8.1 The applicant has placed reliance upon the judgment of the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. vs. CCE[2012(281)ELT 227(Mad.)] although the same High Court has reaffirmed the applicability of Section 11B to rebate claims in its later judgment in Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance[2017(355)ELT 342(Mad.)] by relying upon the judgment of the Hon'ble Supreme Court in UOI vs. Uttam Steel Ltd.[2015(319)ELT 598(SC)]. Incidentally, the special leave to appeal against the judgment of the Hon'ble High Court of Madras in Dorcas Market Makers Pvt. Ltd. has been dismissed *in limine* by the Apex Court whereas the judgment in the case of Uttam Steel Ltd. is exhaustive and contains a detailed discussion explaining the reasons for arriving at the conclusions therein.

8.2 The observations of the Hon'ble High Court of Karnataka in Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru[2020(371)ELT 29(Kar)] at para 13 of the judgment dated 22.11.2019 made after distinguishing the judgments in the case of Dorcas

Market Makers Pvt. Ltd. and by following the judgment in the case of Hyundai Motors India Ltd. reiterate this position.

*“13. The reference made by the Learned Counsel for the petitioners to the circular instructions issued by the Central Board of Excise and Customs, New Delhi, is of little assistance to the petitioners since there is no estoppel against a statute. It is well settled principle that the claim for rebate can be made only under section 11B and it is not open to the subordinate legislation to dispense with the requirements of Section 11B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11B is only clarificatory.”*

8.3 Be that as it may, the Hon’ble Delhi High Court has in its judgment in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)] dealt with the issue involved in the present revision application. The text of the relevant judgment is reproduced below.

*“16. We also record our respectful disagreement with the views expressed by the High Court of Gujarat in Cosmonaut Chemicals[2009(233)ELT 46(Guj.)] and the High Court of Rajasthan in Gravita India Ltd.[2016(334)ELT 321(Raj.)], 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.”*

8.4 The judgment of the Hon’ble Delhi High Court has very unambiguously held that the period of one year must be reckoned from the date of export and not from the date when the copy of shipping bills is received.

8.5 the Hon’ble Supreme Court has in its judgment in the case of Sansera Engineering Limited V/s. Deputy Commissioner, Large Tax Payer Unit, Bengaluru [(2022) 1 Centax 6 (S.C.)] held that:



“9. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, “refund” includes “rebate of duty” of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The “relevant date” is defined under Explanation (B) to Section 11B of the Act, which means 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 goods..... Thus, the “relevant date” is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the “relevant date” and in such form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004 issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.

10. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002 Rules and notification dated 6.9.2004 can be said to be a subordinate legislation. The subordinate legislation cannot override the parent statute. Subordinate legislation can always be in aid of the parent statute. At the cost of repetition, it is observed that subordinate legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory. If the submission on behalf of the appellant that as there is no mention/reference to Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 and therefore

*the period of limitation prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate of duty is accepted, in that case, the substantive provision – Section 11B of the Act would become otiose, redundant and/or nugatory. If the submission on behalf of the appellant is accepted, in that case, there shall not be any period of limitation for making an application for rebate of duty. Even the submission on behalf of the appellant that in such a case the claim has to be made within a reasonable time cannot be accepted. When the statute specifically prescribes the period of limitation, it has to be adhered to.*

*11. It is required to be noted that Rule 18 of the 2002 Rules has been enacted in exercise of rule making powers under Section 37(xvi) of the Act. Section 37(xxiii) of the Act also provides that the Central Government may make the rules specifying the form and manner in which application for refund shall be made under section 11B of the Act. In exercise of the aforesaid powers, Rule 18 has been made and notification dated 6.9.2004 has been issued. At this stage, it is required to be noted that as per Section 11B of the Act, an application has to be made in such form and manner as may be prescribed. Therefore, the application for rebate of duty has to be made in such form and manner as prescribed in notification dated 6.9.2004. However, that does not mean that period of limitation prescribed under Section 11B of the Act shall not be applicable at all as contended on behalf of the appellant. Merely because there is no reference of Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 on the applicability of Section 11B of the Act, it cannot be said that the parent statute – Section 11B of the Act shall not be applicable at all, which otherwise as observed hereinabove shall be applicable with respect to rebate of duty claim.*

.....

*15. In view of the above and for the reasons stated above, it is observed and held that while making claim for rebate of duty under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable. In the present case, as the respective claims were beyond the period of limitation of one year from the relevant date, the same are rightly rejected by the appropriate authority and the same are rightly confirmed by the High Court. We see no reason to interfere with the impugned judgment and order passed*

*by the High Court. Under the circumstances, the present appeal fails and deserves to be dismissed and is accordingly dismissed."*

9. In the light of the foregoing facts and in keeping with the judicial principle of *contemporanea exposito est optima et fortissinia in lege*(contemporaneous exposition is the best and strongest in law), Government respectfully follows the ratio of the above judgment of the Hon'ble Supreme Court. The criteria for the commencement of time limit for filing rebate claim under the Central Excise law has been specified as the date of export of goods and applicability of Section 11B for rebate has been settled conclusively and cannot be varied by any exercise of discretion. Therefore, the rebate claims filed by the applicant have correctly been held to be hit by bar of limitation by the Commissioner(Appeals) in the impugned orders.

10. Government observes that the applicant has contended that ARE-1 No. 27 dated 20.01.2015 in respect of Commercial Invoice No. 1314200039 the shipping bill for export was filed on 22.01.2014. However, the Shipping Bill was allowed the let export order on 03.02.2014 which can be verified from the Bill of Lading and corresponding Mate Receipt, the rebate claim for which was filed on 30.01.2015. The facts clearly indicate that the said claim is filed within time and not hit by bar of limitation.

11. The Order-in-Appeal No. PUN-EXCUS-001- APP-385 TO 387-16-17 dated 25.01.2017 passed by the Commissioner (Appeals) is modified to the extent discussed in Para 10 above.

12. Government directs the original authority to carry out necessary verification in respect of ARE-1 No. 27 dated 20.01.2014 on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents relating to relevant export proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit

the documents, if any, required by the original authority. Sufficient opportunity to be accorded to the applicant to present their case.

13. The Revision applications are disposed off on the above terms.

  
( SHRAWAN KUMAR )

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

ORDER No. 102-104/2023-CX(WZ) /ASRA/Mumbai DATED 13.3.2023

To,  
M/s. Cosma International (India) Pvt. Ltd.,  
Plot No A12, MIDC, Talegaon MIDC,  
Village Navlakh Umbre,  
Tal Maval Dist, Pune-410 507.

Copy to:

- 1) Pr. Commissioner of CGST & Central Excise, Pune-I.
- 2) The Commissioner (Appeals-I), CGST & Central Excise, Pune.
- 3) Lakshmikumaran & Sridharan, 607-609, Nucleaus, Church Road,  
Opp. Police Commissioner Office, Camp, Pune - 411 001.
- 4) Sr. P.S. to AS (RA), Mumbai
- 5) Guard file.
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