REGISTERED SPEED POST

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. 195/134/17 /RA /214 Date of Issue: 07.10.2020

ORDER NO. 103 /2020-CX /ASRA/MUMBAI DATED 03.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Idex Fluid & Metering Pvt. Ltd, Vadodara.

Respondent : The Commissioner of Central Excise, Vadodara-I.

Subject : Revision Application filed, under section 35EE of the Central Excise ACT, 1944 against the Order in Appeal No. VAD-EXCUS-001-APP-299-16-17 dated 16.08.2016 passed by the Commissioner (Appeals-I), Central Excise, Customs and Service Tax, Vadodara.

ORDER

1. This Revision Application has been filed by M/s Idex Fluid & Metering Pvt. Ltd, Vadodara. (hereinafter referred to as "the applicant") against Order-in-Appeal No. VAD- EXCUS-001-APP-299-16-17 dated 16.08.2016 passed by the Commissioner (Appeals-I), Central Excise, Customs and Service Tax, Vadodara.

2. The brief facts of the case are that the applicant had filed seven rebate claims amounting to Rs. 13,67,916/-(Rupees Thirteen Lakh Sixty Seven Thousand Nine Hundred and Sixteen only) in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004. During the course of scrutiny of Rebate claims, it was observed that the rebate claims were filed beyond one year from relevant date of export as prescribed under Section 11 B of the Central Excise Act, 1944. Therefore, the adjudicating authority vide Order in Original No. Rebate/0533-0539/Idex/Div.I/16-17 dated 16.05.2016 rejected said rebate claims as time barred.

3. Being aggrieved by the aforesaid Order in Original the applicant preferred an appeal before (Appeals-I), Central Excise, Customs and Service Tax, Vadodara who vide Order in Appeal VAD- EXCUS-001-APP-299-16-17 dated 16.08.2016 upheld the Order in Original and rejected appeal filed by the applicant.

4. Being aggrieved by impugned Order-in-Appeal the applicant has preferred the present Revision Application mainly on the following grounds:

4.1 The Commissioner (Appeals) has erred in holding that remanding the matter back to the adjudicating authority would end up in prolonging the litigation. It is a well settled legal position that any order passed in violation of the principles of natural justice is void ab initio. They rely on the judgment of Hon'ble Supreme Court in the case of Umanath Pandey Vs State of U.P. (2009(237)ELT 241 (SC). They also place reliance on the Judgement of Hon'ble Madras High Court in J.P.P. Mills Pvt. Ltd. reported in 2015(330) ELT 0910(Mad) wherein the matter was remanded back for following the principles of natural justice. The Commissioner (Appeals) could not have ratified the defect in OIO by deciding the issue on limitation.

4.2 On merits they rely on Hon'ble Punjab & Haryana High Court judgment in the case of JSL Lifestyle Limited [2015(326) ELT 0265 (P&H) the Hon'ble Court directed that the application for rebate shall be processed and dealt with in accordance with law on the basis of that it is not barred by the period of limitation prescribed in Section 11B of the Central Excise Act,1944. They also rely and refer on the judgement of Hon'ble Madras High Court in case of Dorcas market Makers Pvt. Ltd. [2015(321) ELT 0045(Mad)] appeal against said judgment before the Hon'ble Supreme Court filed by the department has been dismissed as reported in [2015(325) ELT A 104 (SC)] .

4.3 The judgment of Hon'ble High Court of Mumbai in the case of M/s Uttam Steels Limited reported in 2003 (158) ELT 0274 (Bom) would not be applicable to the facts of the present case wherein it is held that rebate claim should not be rejected only on the ground of limitation if all conditions are satisfied.

4.4 Earlier Notification in this regard, i.e. Notification No. 41/94 dated 12.09.1994, made the provisions of Section 11 B of the Central Excise Act, 1944 applicable to such rebate claims. Whereas, Notification No. 40/2001-CE (NT) dated 26.06.2001 which superseded the Notification No. 41/94 dated 12.09.1994 and which was in turn superseded by the current Notfn.No.19/2004-CE _NT) dated 06.09.2004, does not state that the rebate claims would be subject to the provisions of , Section 11 B of the Central Excise Act, 1944. It would be interesting to note that both the subsequent Notifications which laid down the procedure for claim of rebate, do not refer to or state that the limitation prescribed under Section 11B of the Central Excise Act, 1944 would apply to the rebate claims. This omission in the subsequent two notifications was a conscious decision of the law makers with a view of ensure that no rebate claims are rejected on the ground of limitation alone. That they are entitled to rebate as per the Notfn.No.19/2004-CE (NT) dated 06.09.2004, wherein no limitation has been prescribed for claiming rebate. It is a well settled legal position that a Notification has to be read as it is and nothing can be added or deleted from it. The Notfn.No.19/2004-CE (NT) dated 06.09.2004, since does not refer to Section 11 B of the Central Excise Act, 1944, it was beyond the powers of the learned adjudicating authority to invoke the limitation under this provision by interposing the provisions of Section 11 B ibid into the Notification for denying the rebate claim. They would like to place reliance on the Hon'ble Supreme Court in Union of India v. Wood Papers Ltd. reported in 1990 (047) ELT 0500 (S.C.) in which it was held that a notification should be construed strictly at the stage of considering availability of the benefit of the Notification to an assessee. However, once

that issue was held in favour of the assessee, then a liberal interpretation should be given as to the availability of the entire benefit to an assessee.

4.5 They also place reliance on the decision of Tribunal in the case of Algappa Cements (P) Ltd reported in 2002 (148) ELT 1220 (T) wherein it is held that it is settled proposition of law that a Notification has to be interpreted in terms of the words used therein and nothing can be added or deleted. Accordingly, the attempt of the learned Assistant Commissioner and Commissioner (Appeals) in reading the limitation clause prescribed in Section 11B of the Central Excise Act, 1944 into Noffn.No.19/2004-CE (NT) dated 06.09.2004 is an attempt to deny the substantive benefit to the applicants without the authority of law. Hence, the impugned order needs to be quashed and set aside.

4.6 Without prejudice to the submission that the limitation prescribed under Section 11 B of the Central Excise Act, 1944 would not be applicable to rebate claims under Rule 18 of the Central Excise Rules, 2002, without admitting but assuming, they submit that if the application for rebate of duty is not made within the period of limitation prescribed under Section 11 B, only the remedy is barred and not the substantive right to claim rebate of duty accrued under Rule 18. To put it differently, the limitation prescribed under Section 11 B ibid only deals with the procedural law and not the substantive law. They submit that the scheme of providing rebate of Central Excise duty paid on the materials used in the manufacture of finished goods or the duty paid on the finished goods exported to any country (except Nepal or Bhutan), is a reward to the exporters by the Government of India for the foreign currency which these exporters bring into the Country. 'Besides, the incentive scheme is extended to the exporters with a view to ensure that taxes/duties are not exported along with the goods. Such incentives also help the exporters in selling their goods at competitive prices and thus withstand the competition in the international market. If the exporters are denied such benefits on procedural grounds it will lead to situation where the Central Excise duty paid by the manufacturer / exporter are retained by Government with consequential export of goods along with taxes.

4.7 There are no provisions under Section 11 B of the Central Excise Act, 1944 which empowers or permits the Central Government to retain the amount of refund (refund also includes "rebate of duty paid on exported goods" as per Explanation (A) to the said provisions). Even the provisions of unjust enrichment do not find applicability to exports under claim of rebate. As per inbuilt provisions of Section 11B of the Act and allegation made in the impugned show cause notice, the delay in filing of rebate claim can only be classified as a contravention in relation to period of

limitation attracting penal provisions, but denial of the rebate claim on the ground of limitation is certainly out of scope and jurisdiction of the said statute. In this regard the applicants reiterate their reliance on the judgment of the Honorable Madras High Court in the case of M/s Ford India Pvt. Ltd reported in 2011 (272) ELT 353

5. A personal hearing in this case was held on 03.10.2019 and was attended by Shri Shivam Mishra and Shri Ajay Tiwari, Consultants, on behalf of the applicant. They and reiterated the grounds of Revision Application and submitted that Rule 18 of Central Excise Rules, 2002 does not itself have a limitation.

6. Government has carefully gone through the relevant case records available in case files, perused the impugned Orders-in-Original and Order-in-Appeal and considered oral & written submissions made by the applicant in their Revision Application.

7. Government observes that Original authority had rejected the refund claims of the applicant amounting to Rs.13,67,916/- holding that the said rebate claims filed by the applicant on 29.10.2012 were filed beyond the period of one year from the relevant date of export as prescribed under Section 11 B of the Central Excise Act, 1944 and hence time barred. In their appeal filed before Commissioner (Appeals) the applicant contended that as per the Central Excise Rules, the Refund has to be filed within one year from the quarter ending (i.e. Last day of Quarter Ending) and therefore, they have already filed the application for the Sr. No. 1 to 3 accordingly; that the shipment is affected in January, February & March, 15; that as per the Rule Quarter ending within One year i.e. in their case the quarter ending within One year will be considered as 31.03.2016 and they have filed the claim accordingly; that the adjudicating authority has calculated one year from the date of export, but as per the rule it is one year from the quarter and not the actual export and hence, they are eligible for refund. However, the Commissioner (Appeals) holding all the rebate claims have been filed beyond the time limit prescribed under Section 11B of the Central Excise Act, 1944, upheld the Order in Original rejecting the rebate claims.

8. Government also observes that while dealing with the issue whether limitation of one year is applicable to the rebate claims filed under Rule 18 and Notification No. 19/2004, GOI in its Order No. 366-367/2017-CX, dated 7-12-2017 In Re : Dsm

Sinochem Pharmaceuticals India Pvt. Ltd. reported in [2018 (15) G.S.T.L. 476 (G.O.I.)] observed as under:-

> *"5. .....This issue regarding application of time limitation of one year is dealt [with] by Hon'ble High Court of Bombay in detail in the case of M/s. Everest Flavour v. Union of India, 2012 (282) E.L.T. 481 wherein it is held that since the statutory provision for refund in Section 11B specifically covers within its purview a rebate of Excise duty on goods exported, Rule 18 cannot be independent of requirement of limitation prescribed in Section 11B. In the said decision the Hon'ble High Court has differed from the Madras High Court's decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. [2015 (321) E.L.T. 45 (Mad.)] and even distinguished Supreme Court's decision in the case of M/s. Raghuvar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.)]. Hence, the applicant's reliance on the decision in the case of M/s. Dorcas Market Makers Pvt. Ltd. is not of much value. The above averment of the applicant based on the above decisions clearly amounts to saying that a rebate claim can be filed at any time without any time-limit which is not only against Section 11B of the Central Excise Act but is also not in the public interest as per which litigations cannot be allowed for infinite period".*

9. The applicant has placed reliance upon the judgments in the case of Dorcas Market Makers Pvt. Ltd.[2012(281)ELT 227(Mad)], [2015(321)ELT 45(Mad)] and Uttam Steel Ltd.[2003(158)ELT 274(Bom)]. Incidentally, the Special Leave to Appeal(Civil) CC No. 17561 of 2015 filed by the Deputy Commissioner of Central Excise, Chennai against the Judgment and Order dated 26.03.2015 of the Madras High Court in Writ Appeal No. 821 of 2012[2015(321)ELT 45(Mad)] has been dismissed *in limine* by the Supreme Court. With due respect to these judgments of the Hon'ble High Courts relied upon by the applicant, it is observed that these judgments have been delivered in exercise of the powers vested in these courts in terms of Article 226/Article 227 of the Constitution of India. Needless to say, no statute passed by Parliament or State Legislative Assembly or any existing law can abridge the powers vested in the High Courts which is known as writ jurisdiction of the High Court under Article 226 of the Constitution of India. However, the irrefutable fact in the present case is that the Central Excise Act, 1944 provides for a period of limitation in Section 11B of the Central Excise Act, 1944. The powers of revision vested in the Central Government under Section 35EE of the Central Excise Act, 1944 are required to be exercised within the scope of the Central Excise Act, 1944 which includes Section 11B of the

Central Excise Act, 1944. In other words, notwithstanding the mitigating circumstances or compelling facts, there can be no exercise of powers in revision outside the scope of the Central Excise Act, 1944. Thus, there is a great difference in the degree of powers exercisable by the by the High Courts and creatures of statute.

10. The judgment of the Hon'ble Bombay High Court in Uttam Steel Ltd.[2003(158)ELT 274(Bom)] has been reversed by the Hon'ble Supreme Court in Civil Appeal No. 7449 of 2004 decided on 05.05.2015 reported at [2015(319)ELT 598(SC)]. Similarly, the Hon'ble Madras High Court has in its judgment dated 18.04.2017 in the case of Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry of Finance [2017(355)ELT 342(Mad)] held that the contention that no specific relevant date was prescribed in Notification No. 19/2004-CE(NT) was not acceptable in view of proviso (a) to sub-section (2) of Section 11B of the Central Excise Act, 1944. The relevant Paragraph of the order is extracted hereunder :-

> "8. *For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."*

11. Rule 18 of the Central Excise Rules, 2002 has been made by the Central Government in exercise of the powers vested in it under Section 37 of the Central Excise Act, 1944 to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the Central Excise Act, 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 Central Excise Act, 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. It would be apparent from these facts that Section 11B of the Central Excise Act, 1944 is purposed to cover refund of rebate within its ambit. If the contention of the applicant that Section 11B is not relevant for processing rebate claims is accepted, it would render these references to rebate in Section 11B superfluous.

12. Moreover, Section 37 of the Central Excise Act, 1944 by virtue of sub-section (2)(xvi) through the Central Excise Rules, 2002 specifically institutes Rule 18 thereof to grant rebate of duty paid on goods exported out of India. Notification No. 19/2004-CE(NT) dated 06.09.2004, Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the Central Excise Rules, 2002 to set out the procedure to be followed for grant of rebate of duty on export of goods.

13. Since it is unambiguously clear that the limitation under Section 11B applies to export of goods under claim of rebate, the next issue that arises is whether the applicant had filed these rebate claims within one year of date of shipment of the goods. The answer to same is simply no as the Commissioner (Appeals) in his impugned Order by reproducing the Section 11 B of the Central Excise Act, 1944 has rightly held that all the rebate claims in the impugned Order In Original had been filed beyond the time limit prescribed / relevant date specified in the said Section. Therefore, the applicant's contention that the refund has to be filed within one year from the quarter ending but not from the date of export has also rightly held to be unsustainable by the Commissioner (Appeals).

14. With regard to applicant's contentions that the Commissioner (Appeals) has erred in holding that remanding the matter back to the adjudicating authority would end up in prolonging the litigation and he could not have ratified the defect in OIO by deciding the issue on limitation, the issue is now well settled that remand powers of Commissioner (Appeals) have been withdrawn w.e.f. 11-5-2001 as per amendment in Section 35A(3) of the Central Excise Act,1944. After the amendment in 2001, the said Section read as follows:-

> *"The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against."*

15. The Hon'ble Supreme Court in its judgement dated 1.3.2007 in Civil Appeal No. 6988/2005 in the case of MIL India Ltd. [2007(210) ELT.188(SC)] has observed that "in fact, the power of remand by the Commissioner(Appeals) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001 and has also categorically stated that the Commissioner (A) continues to exercise the power of adjudicating authority in the matter of assessment and the Commissioner(A) can add or subtract certain items from the order of assessment made by the adjudicating authority and the order of Commissioner (A) could also be treated as an order of assessment The CBEC issued instruction vide F. No. 275/34/2006-CX.8A dt. 18.02.2010 wherein it was instructed that the Commissioner (Appeals) should follow the said judgments strictly. Further, the Commissioner (Appeals) has examined the merits of the case following the principles of natural justice.

16. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that the applicant has failed to act diligently in as much as they have failed to file rebate claims within the statutory time limit of one year from the date of shipment of the export goods. 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 order.

17. The Order-in-Appeal No. VAD- EXCUS-001-APP-299-16-17 dated 16.08.2016 passed by the Commissioner (Appeals-I), Central Excise, Customs and Service Tax, Vadodara is upheld.

18. The revision application filed by the applicant is dismissed as being devoid of merits.

19. So ordered.

3/1/20

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.103 /2020-CX (WZ) /ASRA/Mumbai Dated 03.01.2020.

To,

M/s Idex Fluid & Metering Pvt Ltd.,
Survey No.256, Near Bombardier Circle,
Manjusar Savli, GIDC,
Vadodara- 391 770.

Copy to :

1. Commissioner of Goods & Service Tax, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
2. The Commissioner of Central Tax (Appeals), Central Excise Building , 1st Floor Annexe, Race Cource Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissioner, of Goods & Service Tax, Division-II, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
4. Sr.P.S. to AS (RA),Mumbai.
5. Guard file.
6. Spare Copy.