

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. 195/01/17-RA / 6515

Date of issue: 17.11.2022

ORDER NO. 107M /2022-CX (WZ)/ASRA/MUMBAI DATED 15.11.2022  
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. Kopran Research Laboratories Limited

Respondent: Commissioner of CGST & CX, Raigad

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.  
MKK/14/RGD APP/2017 dated 21.08.2017 passed by the  
Commissioner(Appeals), Central Tax, Central Excise & Service  
Tax, Raigad.

## ORDER

This Revision Application has been filed by M/s. Kopran Research Laboratories Limited, K4/4, Additional MIDC, Mahad, Raigad – 402 301 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal (OIA) No. MKK/14/RGD APP/2017 dated 21.08.2017 passed by the Commissioner (Appeals), Central Tax, Central Excise & Service Tax, Raigad.

2. Brief facts of the case are that the applicant is engaged in manufacturing of excisable goods falling under Ch.29 of Central Excise Tariff Act,1985. They had filed a rebate claim amounting to Rs.1,86,371/- on 09.11.2016 under Section 11B of the Central Excise Act, 1944, in respect of goods exported by them. However, the rebate sanctioning authority vide Order-in-Original No. 4569/16-17/DC(Mahad)/Raigad dated 23.01.2017, rejected the rebate claim on the ground that the rebate claim had been filed beyond the period of one year from the date of export. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) it is now the settled law laid down by the Hon'ble Madras High Court in its judgement in the case of Dorcas Market Markers Pvt. Ltd. V. CCE reported in 2015 (321) ELT 45 that the limitation period of one year prescribe din 11B would not apply to a rebate arising in terms of Rule 18 read with the relevant Notification specifying the terms and conditions subject to which the rebate would be applicable. The Hon'ble High Court has categorically held that in the absence of there being any limitation prescribed either in Rule 18 or in the Notification issued thereunder, the period of one year prescribed in section 11B cannot be read into the same. The Applicant further submits that this judgement of the Hon'ble Madras High Court has been upheld by the Hon'ble Apex Court.

(b) Neither Rule 18 nor Notification 19/2004 of 6th September 2004 issued under Central Excise Rule 18, prescribed for any time period for claiming Rebate under Rule 18 CEA at the relevant date. It is evident from conditions & limitations specified in said Notification that there is no prescribed time limit for claiming rebate in either the Rules 18 or the Notifications issued under rule 18 of CER, 2002. Applicant has filed the requisite information for claiming Rebate by electronic declaration as mentioned under sub clause (c) of section (3) of Notification under Central Excise Rules 18. Applicant has also satisfied all the above conditions as confirmed in the impugned order itself. Thus, the impugned order deserves to be quashed and set aside on this ground alone.

(c) Without prejudice to above, the applicant submits that the rejection of the rebate claim is against the judgement held in Super Spinning Mills Ltd. v. Commissioner of Central Excise., Coimbatore, 2009 (244) KL.T. 463 (Tri- Chennai) i.e. the government policy is to encourage the trade and to ensure that domestic taxes are not to be exported. The same was reiterated in the case of Jolly Board Ltd. v. Commissioner of Central Excise, Aurangabad, 2015 (321) E.L.T. 502 (Tri- Mumbai), where the Court held that Government policy is not to export the domestic duties, on the finished goods or on inputs to the International market as if refund of input duty credit is not allowed, the goods will become costly in International market and less competitive. The above mentioned submissions clearly proves that present rebate claim has been rejected against the stated government policy and position of law.

(d) The Applicant submits that the claim of rebate by electronic declaration was made by the applicant on 9.11.2016 itself, with further supporting documents being submitted on 15.11.2016. Applicant was not able to furnish the rebate claim in time because of continuous illness, caused to the concerned employee. Accordingly, there was minor delay in filing the rebate claim which ought to be.

The delay should not have been the sole cause for rejecting the rebate claim as all other substantial requirements have been full filled by the Applicant.

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal and grant consequential relief.

4. Personal hearing in the case was fixed for 20.10.2022. Shri Karan Sarawagi, Chartered Accountant attended the online hearing and submitted that time limit of one year does not apply to rebate. He submitted that their export is prior to amendment in Notification, therefore judgment of Dorcas Metal be followed.

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

6. Government observes that the main issue in the instant case is whether the rebate claims filed after one year are time barred, being hit by limitation in terms of section 11B of the Central Excise Act, 1944.

7.1 Government observes that the applicant, a manufacturer exporter, had exported goods, 'Cefotaxime Sodium Sterile EP', vide ARE1 No. 250 dated 26.10.2015. Against this export, they filed a rebate claim for an amount of Rs.1,86,371/-, being duty paid on the goods exported, on 15.11.2016 in the office of rebate sanctioning authority. After verification of documents submitted, the rebate sanctioning authority rejected the rebate claim on the grounds of being time barred in terms of section 11B of the Central Excise Act, 1944 as it was filed after the prescribed period of one year from the relevant date, viz. 26.10.2015 (the date of shipment).

7.2 Government observes that the applicant has contended that the time limit prescribed by Section 11B of the Central Excise Act, 1944 (hereinafter referred to as CEA), is not applicable to rebate claims as the notification issued under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred

to as CER) did not make the provisions of Section 11B applicable thereto. In this regard, Government observes that Rule 18 of the CER has been made by the Central Government in exercise of the powers vested in it under Section 37 of the CEA to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA. Moreover, Section 37 of the CEA by virtue of its sub-section (2)(xvi) through the CER 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 and Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the CER to set out the procedure to be followed for grant of rebate of duty on export of goods. The applicants contention that the time limit has been done away as provision for filing of electronic declaration in Notification No. 19/2004-CE dated 06.09.2004 does not stand to reason because the provisions of Section 11B making reference to rebate have not been done away with and continue to subsist.

7.3 Government observes that the view that notifications for grant of rebate are not covered by the limitation prescribed by Section 11B of the CEA has been agitated before the courts on several occasions. Both Notification No. 19/2004-CE(NT) dated 06.09.2004 for rebate of duty paid on excisable goods exported and Notification No. 21/2004-CE(NT) dated 06.09.2004 for rebate of duty paid on excisable goods used in the manufacture of export goods did not contain any reference to Section 11B of the CEA till they were substituted in these notifications on 01.03.2016. The applicants contention that when the relevant notification does not prescribe any time limit, limitation cannot be read into it is precarious as there are recent judgments where the Honorable Courts have categorically held that limitation under Section 11B of the CEA would be applicable to notifications granting rebate. 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

7.4 Further, the observations of the Hon'ble High Court of Karnataka in the case of 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."*

7.5 In a recent judgment in a matter relating to GST, the Hon'ble Gujarat High Court had occasion to deal with the powers that can be given effect through a delegated legislation in its judgment dated 23.01.2020 in the case of Mohit Minerals Pvt. Ltd. vs. UOI [2020(33)GSTL 321(Guj.)]. Para 151 of the said judgment is reproduced below.

*"151. It is a settled principle of law that if a delegated legislation goes beyond the power conferred by the statute, such delegated legislation has to be declared ultra vires. The delegated legislation derives power from the parent statute and not without it. The delegated legislation is to supplant the statute and not to supplement it."*

The inference that follows from the judgment of the Hon'ble High Court is that if the view of the applicant is presumed to be tenable, a notification which goes beyond the power conferred by the statute would have to be declared ultra vires. Any delegated legislation derives its power from the parent statute and cannot stand by itself. In the present case the Notification No. 19/2004-CE dated 06.09.2004 has been validly issued under Rule 18 of the CER and the provisions of Section 11B of the CEA have expressly been made applicable to the refund of rebate and therefore the notification cannot exceed the scope of the statute.

8. In view of the findings recorded above, Government upholds the Order-in-Appeal No. MKK/14/RGD APP/2017 dated 21.08.2017 passed by the Commissioner (Appeals), Central Tax, Central Excise & Service Tax, Raigad and rejects the impugned Revision Application.

  
(SHRAWAN KUMAR)

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

ORDER No.

1074/2022-CX (WZ)/ASRA/Mumbai dated 15.11.2022

To,

M/s. Koprani Research Laboratories Limited,  
K4/4, Additional MIDC, Mahad, Raigad - 402 301.

Copy to:

1. Pr. Commissioner of CGST & CX,  
Raigad, Plot No.1, Sector-17,  
Khandeshwar, Navi Mumbai - 410 206.
2. Shri Karan Sarawagi,  
TLC Legal, 1<sup>st</sup> Floor,  
Nirmal, Nariman Point,  
Mumbai - 400 021.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.