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GOVERNMENT OF INDIA
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DEPARTMENT OF REVENUE

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

F. NO. 195/70/WZ/2018-RA /1519 Date of Issue: 16 .03.2023

ORDER NO.12/2023-CX (WZ) /ASRA/Mumbai DATED14 .03.2023 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 Global Health Care Products,
134, Dapada, Silvassa-Khanvel Main Road,
Silvassa-396 230.

Respondent: Commissioner of Customs and Central Excise, Daman.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CCESA-SRT(APPEALS)/PS-275/2017-18 dated 20.11.2017 passed by the Commissioner of CGST & Central Excise (Appeals), Surat.

ORDER

This Revision Application is filed by M/s Global Health Care Products, 134, Dapada, Silvassa-Khanvel Main Road, Silvassa-396 230 (hereinafter referred to as "Applicant") against the Order-in-Appeal No. CCESA-SRT(APPEALS)/PS-275/2017-18 dated 20.11.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Surat Appeals Commissionerate.

2.1. Brief facts of the case are that the Applicant is engaged in the manufacture of excisable goods viz 'Toothpaste' falling under Chapter 33061020 of the Central Excise Tariff, 1985. The Applicant, vide letter dated 15.05.2014 filed rebate claims for Rs. 1,00,59,460/- under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944, in respect of goods exported under 82 ARE-1's, for the period 04.04.2013 to 28.08.2013. As the Applicant only submitted the Xerox copies of the ARE-1's and copies of the E-BRC in respect of the ARE-1's and no other documents as required under Rule 18 of the Central Excise Rules, 2002 read with conditions and procedure prescribed under Notification No 19/2004-Central excise (N.T) dated 06.09.2004 and Para 8 of the CBECs Excise Manual of Supplementary Instructions, 2005, the rebate claim was returned vide letter dated 26.05.2014.

2.2. The Applicant vide letter dated 28.06.2014 (received on 01.07.2014) again submitted the claim and failed to submit the requisite documents. Vide letter dated 03.07.2014, the Applicant requested for 15 days' time to produce and necessary documents.

2.3. As adequate time was given for submission of documents, following the due process of law, the rebate sanctioning authority i.e Deputy Commissioner of Central Excise, Division V, Silvassa vide Order-in-Original No. 783/Rebate/2014-15/Silvassa-V dated 26.03.2015 rejected the rebate claim on the grounds that the claims in respect of majority of the ARE-1's were filed beyond the stipulated period as required under Section 11B of the Central Excise Act and that the Applicant had failed to lodge the rebate claims alongwith proper documents viz. Original ARE-1,

duty paying documents and other relevant documents as per procedure prescribed under Notification No 19/2004-Central excise (N.T) dated 06.09.2004

3. Being aggrieved by the Order-in-Original, the Applicant filed an appeal before the Commissioner (Appeals), CGST and Central Excise, Surat Appeals Commissionerate. The Appellate Authority, vide Order-in-Appeal No. CCESA-SRT(APPEALS)/PS-275/2017-18 dated 20.11.2017, rejected the appeal on the grounds that the rebate cannot be granted in the absence of original and duplicate copies of the ARE-1 and upheld the Order-in-Original passed by the adjudicating authority.

4. Being aggrieved with the impugned Order-in-Appeal, the Applicant has filed this Revision Application on the following grounds :

4.1. That the Commissioner (Appeals) had given no findings in his OIA as regards to the rebate claims being within time and has proceeded to decide the appeal on merits;

4.2. That for the rebate claims at Sr.No.1 to 35, though the same was beyond one year from the date of filing i.e. 19/05/2014, there was no restrictive provisions of one year under the then rebate provisions under Rule 18 read with Notfn.No.19/2004-C.E(NT);

4.3. That the restrictive provisions of applying period of one year and for applying the provisions of Section 11B to the rebate claims under Rule 18 was introduced in law w.e.f 01/03/2016 vide Notfn.No.18/2016- C.E(NT) dated 01.03.2016. Prior to 01/03/2016 there was no time frame provided for filing rebate claim and accordingly the restriction of one year would not apply.

4.4. That there is no dispute regarding the factum of the goods being exported and that they had maintained all the proof of export documents in a separate file as required under the CBEC Circular and the said original file itself was misplaced and they had made appropriate complaint and filed FIR with the police station and had provided the copy along with their reply to Show Cause Notice;

4.5. That all the original documents were misplaced and the Applicants had approached various authorities to reconstruct the misplaced documents and procured copies from the various authorities including the customs, excise, Shipping companies & bankers and after due reconstructions of all the documents regarding

the 82 exports, the Applicants had produced the same before the Refund Sanctioning Authority;

4.6. That to safeguard grant of multiplicity of rebate, the Applicant had also produced an NOC/ appropriate communication from the Office of Maritime Commissionerate to substantiate that Applicants had not filed any rebate claim against the above 82 exports from the said Maritime Commissionerate;

4.7. That the documents duly reconstructed from various authorities were provided as required under Para-8.3 of Chapter-8 of the CBEC Excise Manual of Supplementary Instructions and there is no dispute on the same in the impugned OIA and the only dispute raised by the AA was that all the documents provided by the Applicants are zerox copies and accordingly the same cannot be relied upon for granting refund;

4.8. That in cases where the original documents were misplaced and there was police complaint to substantiate the misplacement and the claim was supported by reconstructed documents, the rebate claim cannot be denied only on that grounds and in absence of any evidence or even allegation that the reconstructed documents are incorrect, the rebate claims cannot be denied;

4.9. That in the present case there was no dispute on the fact that the goods have been exported out of India and that they had paid duty for the said goods and duty payment particulars were already provided along with rebate claim. There is no dispute that the original documents have been misplaced and the said fact has been ascertained by way of FIR/Police Complaint. The rebate claim was pending for filing of supporting documents so that the export can be verified. Accordingly the Applicants have provided all the above documents which have been reconstructed and reconciled from various authorities. The same cannot be ignored or set aside on the ground that they are zerox copies and the impugned order deserves to be set aside with consequential relief. The Applicant has relied upon the following case laws in support of their claim

(i) Raj Petro Specialties vs. Union of India – [2017 (345)ELT 496(Guj.)]

(ii) U.M.Cables Ltd. vs. Union of India [2013(293)ELT 641(Bom.)]

(iii) Aarti Industries Ltd. vs. Union of India [2014(305)ELT 196(Bom.)

(iv) Kaizen PlastoMould Pvt.Ltd. vs. Union Of India [2015(330)ELT 40(Bom.)]

(v) Garg Tex-O-Fab Pvt. Ltd. [2011(271)ELT 449 (GOI)]

4.10. That a consistent view has been taken by Bombay High Court as well as Gujarat High Court that the benefit of goods being exported cannot be denied on the ground that the exporter could not produce copies of ARE-1 and that the benefit of export should be granted if the exports are substantiated with other collateral documents such as shipping bill, bill of lading, bank realization certificate of the foreign remittance, etc;

4.11. That in the present case the Applicants have produced all the collateral documents to substantiate the exports and the same is also referred in the OIO. Accordingly the benefit of export cannot be denied and no duty demand can be raised on the goods so exported under LUT;

4.12. That any decision contrary to the above decisions of Bombay High Court would lead to violation of the -principles of judicial discipline

Under the circumstances, the Applicant prayed to set aside the impugned order and grant them all the consequential relief.

5. Personal hearing in the case was scheduled for 12.10.2022 or 02.11.2022, 13.12.2022 or 10.01.2023. Shri Vinay S. Sejpal, Advocate appeared for the hearing on 13.12.2022, on behalf of the Applicant. He submitted an additional written submission and stated that all relevant documents were lost for which an FIR was lodged. He requested to allow the claim.

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

6.1. The facts stated briefly is that the Applicant is engaged in the manufacture of 'Toothpaste' falling under Chapter 33061020 of the Central Excise Tariff, 1985. The Applicant vide letter dated 15.05.2014 filed rebate claims for Rs. 1,00,59,460/- under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944, in respect of goods exported under 82 ARE-1's for the period 04.04.2013 to 28.08.2013.

6.2 On perusal of records, Government observes that of the rebate claims in respect of goods exported, in respect of 35 ARE-1's, there is a delay in filing the claims

and the rebate claims have been filed beyond stipulated period of one year from the date of shipment as envisaged under Section 11B of the Central Excise Act, 1944 and the same were hit by time limitation. The lower authorities have relied upon the provisions of the time limit prescribed under the Central Excise Act, 1944.

6.3. The Applicant, relying on the ruling of the Hon'ble Madras High Court in the matter of M/s Dorcas market Makers Pvt Ltd has stated that Section 11B of CEA, 1944 cannot be made applicable to Notification No. 19/2004-CE (NT) dated 06.09.2004 as there were no provisions under Rule 18 of Notification No 19/2004-CE(N.T) dated 06.09.2004 visualizing time frame for filing of rebate claims and that the provisions of applying period of one year and for applying the provisions of Section 11B to the rebate claims under Rule 18 was introduced in law with effect from 01.03.2016.

7.1. Since the basic issue concerns the relevant date for filing rebate claim, resort must be had to Section 11B of the CEA, 1944. The relevant portion of Section 11B of the CEA, 1944 is reproduced as under:

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the Applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

***"Explanation.** - For the purposes of this section, -*

(A) "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

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) .....;

"(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 despatch of goods by the Post Office concerned to a place outside India;"

7.2. The text of the Explanation appended to Section 11B(5) of the CEA, 1944 states that the relevant date when limitation commences is the date on which the ship or aircraft in which such goods are loaded leaves India. Going further, it can be seen that for export by land, the date on which the goods pass the frontier is the relevant date. The bill of lading and mates receipt issued at the point in time when the goods are loaded on the vessel records the time when the goods have passed into the possession of the master of the vessel and are out of customs control. In the case of the exports by air, the airway bill and the documents showing the date and time of the departure of the aircraft would be the point where the goods are out of customs control and the point where the aircraft leaves the country. After this point when the bill of lading/airway bill is issued, the goods leave the port/airport and transit to the country of the buyer of the exported goods.

7.3. Government notes that the contention of the Applicant that Section 11B of the CEA, 1944 cannot be made applicable to rebate claims under Notification No 19/2004-CE (NT) dated 06.09.2004 and does not prescribe any time limit is flawed. In the face of the repeated references to rebate in Section 11B and the period of limitation specified under Section 11B of the CEA, 1944, such an averment would be unreasonable. The statute is sacrosant and is the bedrock on which the rules and other delegated legislations like notifications, circulars, instructions are based. An argument which suggests that a notification/circular can reduce the time limit or does not prescribe a time limit for refund of rebate stipulated by Section 11B of the

CEA, 1944 cannot be endured. 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."

7.4. Any delegated legislation which derives its existence from the statute cannot stand by itself, much less override the statute.

8 The Applicant has placed reliance upon the judgment of the Hon'ble Madras High Court in the case of Deputy Commissioner of Central Excise vs Dorcas Market Makers Pvt. Ltd. (2015-TIOL-820-HC-MAD-CX), 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.

8.1 Be that as it may, 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."

8.2 Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UO1|2020 (371)ELT 380(Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below.

"14. *Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.*

15. In Everest Flavours Ltd. v. Union of India [2012 (282) ELT 481(Bom)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree."

8.3 The Hon'ble High Courts of Karnataka and Delhi have reiterated that limitation specified in Section 11B would be applicable to rebate claims. Government is persuaded by the ratios of judgments of M/s Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru [2020(371) ELT 29(Kar)] and M/s Orient Micro Abrasives Ltd. vs. UOI [2020(371)ELT 380 (Del.)] which unequivocally hold that the time limit specified in Section 11B of the CEA, 1944 would be applicable to rebate claims.

9.1. Of the remaining claims, though the claims were filed with the stipulated time prescribed under Section 11 B of the Central Excise Act,1944, the Applicant had not submitted/provided the documents required in terms of Para 8.3 and 8.4 of Chapter 8 of CBEC's Excise Manual. As the Applicant had filed only copies of the ARE-1, cenvat register substantiating payment of duty, available BRC copy and copy of the police complaint etc and had not submitted the documents in terms of Para 8.3 and 8.4 of Chapter 8 of CBEC's Excise Manual, which are mandatory for sanction of

rebate. Due to the deficiency. the claims were returned to the Applicant, who again resubmitted the claim without the relevant documents and sought more time to reconstruct and reconcile the claims.

9.2. The Government notes that the Excise Manual of Supplementary Instructions issued by the CBEC, under Chapter 8, has specified the procedure related to exports under claim of rebate. The procedure relating to claim of rebate and submission of documents is set out in paragraph 8 of Chapter 8 of the said Manual. Government notes that Para 8.3 of Chapter 8 of CBEC's Central Excise Manual prescribes the document that shall be required for filing claim of rebate:

> *8.3 The following documents shall be required for filing claim of rebate:*
> *(i) A request on the letterhead of the exporter containing claim of rebate, A.R.E. numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,*
> *(ii) original copy of the A.R.E.1,*
> *(iii) invoice issued under rule 11,*
> *(iv) self attested copy of shipping Bill, and*
> *(v) self attested copy of Bill of Lading.*
> *(vi) Disclaimer Certificate [in case where claimant is other than exporter]*

9.3. In this regard, the Government finds that the Excise Manual of Supplementary Instructions, issued by the CBEC, specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

9.4. In the instant case, in the absence of any document in original, the lower authorities were not able to satisfy themselves of the genuineness of export and the correctness of the duty paid by the Applicant. In the cases submitted by the

Applicant, only a few original documents were lost and remaining original documents were sufficient to decide the claim. Since in the instant case, no original document is available, these case laws are clearly distinguishable.

10. Further, Government observes that the Appellate Authority at para 15 and 16 of the OIA has stated as under

> *"15. On the other hand, in the instant case, the appellant has lost the Bill of Lading, LEO Copy & EP Copy OF Shipping Bills, Mate Receipt, ARE-1 copy (original & duplicate having certificate of Customs Officer) and other documents. Thus, the appellant is lacking the entire set of documents which may prove or establish the chain of events which led to the export of goods. I find that while ARE-1 is an absolute document to establish the handing over of goods to customs authority, the rest of the documents such as Mate receipt, Leo Copy or Bill of lading are corroborative evidences for an assessee/individual to establish the export of goods. On the basis of court judgments, it is learnt that even if the absolute necessity is not met, the appellant could produce the corroborative evidences and show that the export of goods actually took place. However, in the instant case, it is seen that the entire chain of events is broken and the appellant has attempted to (re)create the entire event(s) by adducing only the Xerox copy of the documents.*
>
> *16. Thus, I find that in relation to any of the export transactions, the appellant could not produce the original copy of A.R.E-1 duly certified by the Customs Officers as required under Rule 18 as well an any other corroborative evidences such as Mate receipt/ Leo Order/ Bill of Lading. The appellant has only produced Xerox copy of these documents. I find that a refund claim cannot be solely based upon the Xerox copy of documents. The rules and the statutes made for deciding the claim of rebate cannot be circumvented. Though it is unfortunate that the appellant lost the entire set of documents and tried tooth and nail to find the documents, allowing the rebate claims only on the strength of Xerox documents would be gross injustice to the exchequer. In the absence of any documents to substantiate the claims of the appellant, or without credible evidences, I find no reason to merit in the claims of the appellant and obligated to reject the appeal of the appellant."*

11. Government observes that as rightly held by the Appellate Authority, a rebate claim cannot be solely based on the Xerox copy of the documents and the Rules and statutes made for deciding the claim of rebate cannot be circumvented and the Appellate Authority has rightly rejected the appeal in respect of the rebate claims which are barred by limitation of time and also where the original documents were not submitted and Government concurs with the same.

12. In view of the above discussion, Government holds that the Appellate Authority has rightly rejected the appeal filed by the Applicant. Thus, Government does not find any infirmity in the Order-in-Appeal No. CCESA-SRT(APPEALS)/PS-275/2017-18 dated 20.11.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Surat Appeals Commissionerate and upholds the impugned Order-in-Appeal.

13. The Revision Application is rejected as being devoid of merit.

14/3/23

(SHRAWAN KUMAR)
Principal Commissioner &Ex-Officio
Additional Secretary to Government of India

ORDER No.12-\/2023-CX (WZ) /ASRA/Mumbai DATED\14.03.2023

To,
M/s Global Health Care Products,
134, Dapada, Silvassa-Khanvel Main Road,
Silvassa-396 230

Copy to:

1. The Commissioner of CGST, GST Bhavan, RCP Compound, Vapi 396191
2. The Commissioner of CGST & Central Excise, Appeals Commissionerate, Surat, 3rd Floor, Magnnus Mall, Althan Bhimrad Canal Road, Near Atlantas Shopping Mall. Althan, Surat 395 017
3. Shri Vinay Sejpal, Advocate, 6, Makanji Mansion, Balgovindas Road, Mahim, Mumbai 400 016
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board
6. Spare Copy.