

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**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/477/16-RA / 2994

Date of Issue: 03.01.2022

ORDER NO. 1258 /2022-CX(SZ)/ASRA/MUMBAI DATED 09.12.2022
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. ACC Ltd.,
Cement House,
Maharshi Karve Road,
Mumbai – 400 020.

Respondent : Commissioner of CGST & Central Excise, Mumbai South.

Subject : Revision Application filed under Section 35EE of the Central Excise
Act, 1944 against Order-in-Appeal No. SK/36/LTU/MUM/2016-17
dated 20.06.2016 passed by the Commissioner Central Excise (Appeals),
LTU, Mumbai-I.

ORDER

The revision application has been filed by M/s. ACC Ltd., Cement House, Maharshi Karve Road, Mumbai – 400 020 (hereinafter referred to as “the applicant”) against Order-in-Appeal No. SK/36/LTU/MUM/2016-17 dated 20.06.2016 passed by the Commissioner Central Excise (Appeals), LTU, Mumbai-I.

2.1 M/s. ACC Limited, 121, Maharishi Karve Road, Churchgate, Mumbai - 400 020 registered with LTU, Mumbai holding LTU membership: LTU/MUM/3303 dated 29.09.2009. M/s.ACC Ltd. (Kymore, Tikaria, Lakheri & Chanda Cement Works), the Manufacturer Exporter had filed 08 rebate claims totally amounting to Rs. 4,21,60,952/- under Notification No. 19/2004 C.Ex (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules 2002 read with Section 11B of Central Excise Act, 1944 for the goods “ACC Cement PPC-PP Bags cleared from the factory of manufacturer, M/s. ACC Limited (Kymore, Tikaria, Lakheri & Chanda Cement Works), having Registration No. AA ACT1507CXM009, AA ACT1507CXM023, AA ACT1507CXM013 & AA ACT1507CXM010 respectively, for export to Nepal by Road against the ARE-1’s.

2.2 After following the due process, the Deputy Commissioner rejected the rebate claim as time barred vide his Order-i-Original No. LTU/MUM/CX/GLT-6/ANK/R-10 to17/2014 dated 17.04.2014.

3. Aggrieved by the OIO dated 17.04.2014, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) examined Section 11B of the CEA, 1944, the submissions made by the applicant and the case laws relied upon by the applicant and rejected the appeal vide his Order-in-Appeal No. SK/36/LTU/MUM/2016-17 dated 20.06.2016.

4. Aggrieved by the Order-in-Appeal dated 20.06.2016 passed by the Commissioner(Appeals)the applicant has filed revision application on the following grounds :

4.1 Time limit prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to rebate filed under Rule 18 of the Central Excise Rules, 2002.

4.1.1 It is submitted that since specific law and procedure has been set with regard to the rebate claims and when there is no dispute as to fulfilment of the conditions and limitations as prescribed in Rule 18 of the Rules read with notification issued there under, the substantial benefit of rebate shall not be denied as time barred or on any other point, which is outside the ambit of specific Rule 18 of the Rules and notification issued there under. Therefore, imposition of any condition & limitation beyond those prescribed under Notification No. 19/2004 dated 06.09.2004 (as amended) is grossly unjustified, outside the jurisdiction and denies the Applicant legitimate benefits allowed for promoting export.

4.1.2 Without prejudice to the above, it is settled principle of law that when specific provision has been made for certain act, the same would apply and prevail over general provision. Therefore, when specific provision as to Rule 18 of the Rules and Notification 19/2004 -CE (NT) dated 06.09.2004 have been made by the Central Government exercising powers under Section 37 of the Act, general provision as applicable for refund claim like Section 11B of the Act would not apply.

4.1.3 In the case of Dorcas Market Makers Pvt. Ltd. V/s. Commissioner of Central Excise (2012 (281) E.L.T. 227 (Mad.) wherein the Hon'ble Madras High Court was pleased to hold that:

"A comparison of earlier Notification No. 41/94 dated 12-9-1994 and Notification No. 19/2004 dated 6-9-2004, shows that an apparent omission is the time limit in the later notification, viz, the omission of the time limit as per Section 11B of the Central Excise Act. It is only a

conscious omission when all other conditions are retained in the Notification No. 19 of 2004. Once Rule 18 of the Central Excise Rules gives the power to the authorities to issue notification prescribing conditions, limitation and procedures the same have to be followed . What is not prescribed in the notification cannot be imported into the said notification. No time limit has been prescribed in the relevant Notification No. 19 of 2004 dated 6-9- 2004 When the statutory notification issued under Rule 18 does not prescribe any time limit, Section 11B is not applicable and based on which the benefit cannot be denied to the petitioner”

The above judgment makes it clear that Rule will act independently and any action taken under the Rule are to be considered independently. Therefore, Rule 18 of the Rules is not subject to Section 11B of the Act. In this case, the claim is with regard to the rebate of the excise duty already paid by the manufacturer under Rule 18 of the Rules.

4.1.4 It is submitted that the aforesaid judgement was affirmed by the division bench of Hon'ble Madras High Court in the case of Deputy Commissioner of Central Excise, Chennai V/s. Dorcas Market Makers Pvt. Ltd. [2015 (321) ELT 45 (Mad.)].

4.1.5 It is submitted that the department preferred a Special Leave Petition (SLP) against the aforesaid order before the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed the SLP filed by the department. The said Order is reported at 2015 (325) E.L.T. A104 (S.C.)

4.1.6 In the case of JSL Lifestyle Ltd. v/s. Union of India (2015 (326) ELT 265 (P&H)), the Hon'ble High Court was pleased to hold that:

“15. It is held, therefore, that the petitioner's aim for refund would be governed by Rule 18 of the Central Excise Rules, 2002 read with the notification issued thereunder. The said notification does not provide any period of limitation for a claim for rebate. The rejection of the petitioner's claim for rebate, therefore, is not well founded.

19. In the circumstances, the impugned order dated 26-5-2014 of the Commissioner of Central Excise (Appeals) is quashed wild set aside. The application for rebate shall be processed and dealt with in

accordance with law on the basis that it is not barred by the period of limitation prescribed in Section 11B of the Central Excise Act, 1944."

4.2 The Ld. Commissioner (Appeals) erred in relying upon the Judgement of The Hon'ble Bombay High Court in the case of Everest Flavors Ltd.

4.2.1 It is submitted that the Ld. Commissioner (Appeals) erred in relying upon the judgment of the Hon'ble Mumbai High Court in the case of Everest Flavours Ltd. Vs Union of India, 2012 (282) ELT 481 to hold that the provisions of Section 11B of the Act are applicable to the rebate applications filed under Rule 18 of the Rules under Notification 19/2004-CE (NT) dated 06.09.2004.

4.2.3 It is submitted that the Ld. Commissioner (Appeals) failed to consider the Special leave petition filed by the department against the judgment of the Hon'ble Madras High Court in the case Dorcas Market Makers (supra) has been dismissed by the Hon'ble Supreme Court and in view of the same, the judgment of the Hon'ble Bombay High Court in the case of Everest Flavours Ltd (supra) is no longer a good law.

4.3 Substantive benefit cannot be denied on procedural issues / fallacies

4.3.1 The export of excisable goods is undisputed and once the same has been established, the substantial benefit of rebate should not be denied to the assessee on grounds of procedural lapses. Neither Rule 18 of the Rules nor Section 11B of the Act contemplates that if the application for rebate of duty is not made within the period of limitation the accrued right to rebate of duty lapses. It is a settled position of law that substantial benefit of rebate, which is granted for promotion of export and accrues to an assessee on export of goods shall not be denied on any procedural lapse, including inter alia the time limit prescribed under Section 11B of the Act.

5. The applicant was granted a personal hearing on 28.06.2022, Shri Prakash shah, Advocate and Shri Pradeep Sawant appeared online and submitted

a compilation of judgements. They submitted that time limit of Section 11B is not applicable to rebate claims. They requested to allow the claims.

6.1 In the written submissions dated 08.07.2022 filed by the applicant, they stated that –

6.1.1 Once no time limit is prescribed under Rule 18 of the Rules read with Notification dated 06.09.2004, the same cannot be extraneously inserted. Reliance in this regard, is placed on the following judgments:

(1) Dorcas Market Makers Pvt. Ltd. Vs CCE, 2012 (281) ELT 227 (Mad.)-
Hon'ble Single Judge

CCE Vs Dorcas Market Makers Pvt. Ltd., 2015 (321) ELT 45 (Mad.)

-Hon'ble Division Bench

SLP filed against the aforesaid Order dismissed by the Hon'ble
Supreme Court, 2015 (325) ELT A104

(ii) JSL Lifestyle Ltd. Vs Union of India, 2015 (326) ELT 265 (P&H)

(iii) Camphor and Allied Products Ltd. Vs Anam Electrical Manufacturing
Co., 2019 (368) ELT 12 (All.)

6.2 Without prejudice to the above, it is submitted that vide Notification no. 18/2016-CE (N.T.) dated 01.03.2016 the aforesaid Notification no. 19/2004-CE (N.T.) was specifically amended to include the reference to the time limit prescribed under Section 11B of the Act.

6.3 It is clear that prior to issuance of Notification no. 19/2004-CE(N.T.), under the Notification no. 41/1994 - C.E (N.T.) and post the amendment of the Notification no. 19/2004-CE (N.T.) vide Notification no. 18/2016-CE (N.T.) time limit has been prescribed for filing of the rebate claim by making specific reference to Section 11B of the Act.

6.4 During the intervening period i.e. post the issuance of the Notification no. 19/2004-CE till its amendment by Notification no. 18/2016-CE (N.T.), no time limit was prescribed for claiming the rebate. As submitted above, the condition which was not prescribed in a specific legislation, cannot be extraneously imported into the same by relying upon a generic provision.

6.5 It is submitted that aforesaid scheme of events, has been considered in detail by the Hon'ble Allahabad High Court in the case of Camphor and Allied Products Ltd. (supra),

6.6 It is submitted that during the course of the hearing, your Honour had referred to the judgment of the Hon'ble Madras High Court in the case of Hyundai Motors India Ltd. Vs Dept. of Revenue, Ministry of Finance, 2017 (355) ELT 0342 (Mad.). While the Hon'ble High Court has held that the time limit prescribed under Section 11B of the Act is applicable to rebate claims filed under Rule 18 of the Rules read with Notification no. 19/2004-CE (N.T.), it has not considered and given specific finding in relation to the aforesaid subsequent amendment vide Notification no. 18/2016-CE (N.T.) and the judgment of the Hon'ble Allahabad High Court in the case of Camphor and Allied Products (supra).

7. Government has carefully gone through the impugned OIA, the OIO, the revision application, the written submissions filed by the applicant and their oral submissions at the time of personal hearing. The issue involved in the present case is whether the rebate claim filed by the applicant after a period of one year from the date of export of the goods can be considered as filed within the mandatory time limit. The applicants case is based on the assertion that the amendment of Notification No. 19/2004-CE(NT) dated 06.09.2004 by Notification No. 18/2016-CE(NT) dated 01.03.2016 specifically mentioning the time limit under Section 11B of the

CEA, 1944 as applicable to rebate claims filed under its auspices is prospective in effect. The applicant has also placed reliance on certain judgments to fortify their arguments.

8.1 On going through the facts of the case, it is observed that it is an admitted fact that the applicant has filed the rebate claim on a date beyond the period of one year from the date of export of the goods. The main submission of the applicant is that time limit prescribed by Section 11B of the CEA, 1944 is not applicable to rebate claims as the notification issued under Rule 18 of the CER, 2002 did not make the provisions of Section 11B applicable thereto. In this regard, Government observes that Rule 18 of the CER, 2002 has been made 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 11B(2) 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.

8.2 It would be apparent from these facts that Section 11B of the CEA, 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 superfluous these references to

rebate in Section 11B. Moreover, Section 37 of the CEA, 1944 by virtue of sub-section (2)(xvi) through the CER, 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 CER, 2002 to set out the procedure to be followed for grant of rebate of duty on export of goods.

9.1 The applicant has cited various case laws and placed reliance upon their ratio to contend that the time limit under Section 11B of the CEA, 1944 is not applicable for the period prior to 01.03.2016. As it were, the judgments/orders cited by the applicant are not squarely on this point and therefore would not be applicable to the facts of the case. Government therefore refrains from discussing these case laws and proceeds to discuss only cases which have specifically dealt with the issue at hand. It is observed that the view that notifications for grant of rebate are not covered by the limitation prescribed by Section 11B of the CEA, 1944 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, 1944 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 Honourable Courts have categorically held that limitation under Section 11B of the CEA, 1944 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.

9.2 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."

9.3 Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UOI[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."

In such manner, the Hon'ble High Courts of Karnataka and Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it.

10.1 In so far as the judgment dated 03.07.2019 rendered by the Hon'ble High Court of Allahabad in the case of Camphor and Allied Products Ltd. vs. UOI[2019(368)ELT 865(All.)] & JSL Lifestyle Ltd. vs. UOI[2015(326)ELT 265(P & H)] relied upon by the applicant is concerned, it seems Hon'ble High Court made an error in judgement. While applying maxim that special law should prevail over general law. Rules & Notifications issued under Central Excise law remain Central Excise law, the same cannot be said to be a special law. Government is persuaded by the principle of contemporaneous exposition of law in the later judgments of Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru[2020(371)ELT 29(Kar.)] and Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)] which very unequivocally hold that the time limit specified in Section 11B of the CEA, 1944 would be applicable to rebate claims.

10.2 With due respect to the judgments 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 CEA, 1944. The powers of revision vested in the Central Government under Section 35EE of the CEA, 1944 are

required to be exercised within the scope of the CEA, 1944 which includes Section 11B of the CEA, 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 High Courts and creatures of statute.

11.1 In sum and substance, the implication of the submissions of the applicant are that a notification which is a delegated legislation issued under Rule 18 of the CER, 2002, which again is a delegated legislation issued under Section 37 of the CEA, 1944 can allow refund of rebate which can be refunded only in terms of statutory provisions under Section 11B of the CEA, 1944 to be claimed indefinitely. 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.

11.2 The statute is sacrosanct and is the edifice on which the rules and other delegated legislations like notifications are based. An argument which suggests that a delegated legislation can allow greater liberties for refund of rebate than the statute itself 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."

11.3 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, 2002 and the provisions of Section 11B of the CEA, 1944 have expressly been made applicable to the refund of rebate and therefore there is no question of the notification exceeding the scope of the statute. In the light of these discussions, the rebate claim filed by the applicant beyond the period of one year from the date of export of the excisable goods is clearly hit by limitation and has rightly been rejected as time barred.

12. In the result, the rebate claims having been filed by the applicant beyond the time limit of one year specified under Section 11B of the CEA, 1944 are time barred. Government therefore finds no reason to interfere with the impugned orders-in-appeal. The revision applications filed by the applicant are rejected as being devoid of merits.


9/12/22

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

ORDER No. 1258/2022-CX(SZ) /ASRA/Mumbai DATED 09.12.2022

To,

M/s. ACC Ltd.,
Cement House,
Maharshi Karve Road,
Mumbai - 400 020.

Copy to:

- 1) The Commissioner of CGST & Central Excise, Mumbai South.
- 2) The Commissioner(Appeals-I), CGST & Central Excise, Mumbai
- 3) Sr. P.S. to AS (RA), Mumbai.