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.195/13/WZ/2019/1025 Date of Issue: 27.03.2023

ORDER NO. 172 /2023-CX(WZ)/ASRA/MUMBAI DATED 23.03.23 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. KEC International Limited,
Plot No. 803, Samlaya Savli Road,
Village – Godampura,
Taluka – Savli,
Vadodara – 391 520.

M/s. KEC International Limited,
1st, Floor, RPG House,
463, Annie Besant Road,
Worli, Mumbai 400 030 .

Respondent : Commissioner of CGST & Central Excise, Vadodara.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. 98/AGU/ADT-VAD/2017-18 dated 12.09.2018 passed by the Commissioner (Appeals), GST & Central Excise Vadodara.

ORDER

The revision application has been filed by M/s. KEC International Limited, Plot No. 803, Samlaya Savli Road, Village – Godampura, Taluka – Savli, Vadodara – 391 520 having their registered office at 1st floor, RPG House 463, Annie Besant Road Worli, Mumbai 400 030 (herein after to be referred as "Applicant"), against Order-in-Appeal No. 98/AGU/ADT-VAD/2017-18 dated 12.09.2018 passed by the Commissioner (Appeals), GST & Central Excise Vadodara.

2. The applicant had filed 02 (Two) Rebate Claims amounting to Rs.5,25,809/- 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 Central Excise Act, 1944 for the goods cleared from the factory for export under ARE-1's. The concerned Assistant Commissioner, Central Excise, Customs & Service Tax, Division-I, Silvassa after following the due process rejected the said rebate claims vide his Order-In-Original No. 134/AC/SLV-I/REB/2016-17 dated 09.11.2016 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 Order-In-Original dated 09.11.2016, the applicant filed appeal before the Commissioner(Appeals). The appellate authority after following due process of law rejected the appeal and upheld the Order-In-Original vide his Order-in-Appeal No. 98/AGU/ADT-VAD/2017-18 dated 12.09.2018.

4. Aggrieved by the Order-in-Appeal dated 12.09.2018, the applicant filed revision application on the following grounds:

4.1 The rebate claim is not hit by the limitation prescribed in Section 11B of the Central Excise Act, 1944.

The appellants have filed rebate claim under Notification No. 19/2004-CE(N.T.) dated 06/09/2004 as amended. It is submitted that this notification for the period 2013-2015 did not prescribe any time limit to file the rebate claim. The notification did not even refer to any Section for the purpose to specify any time limit. Therefore, it is submitted that there was no time limit to file rebate claim. The rebate claim has been rejected on the ground that it has not been filed within a period of one year from the date of payment of duty. This time limit has been prescribed in Section 11B of the Central Excise Act, 1944. The notification does not refer to this Section for prescription of time limit to file the rebate claim. Therefore, it is submitted that the rebate claim is not hit by limitation.

4.2 The Notification No. 19/2004 should be interpreted in light of earlier notification and subsequent amendments made to this notification:

4.2.1 Prior to the Notification No. 19/2004, the rebate was granted under Notification No. 41/1994-CE(NT) dated 12/09/1994. This notification also prescribed the conditions and the procedures required to be followed to claim rebate of duty. The clause (iv) of the said notification prescribed that the claim for rebate should be lodged with the Maritime Collector of Collector of Central Excise having jurisdiction over the factory within the time period prescribed u/s. 11B of the Central Excise Act, 1944. Hence, under this notification there was as specific reference of applicability of the time limit under Section 11B of the Central Excise Act, 1944.

4.2.2 This notification was superseded by Notification No. 19/2004 - CE(NT). The procedure to present the rebate claim has been prescribed in para 3(b) of the notification. The clause (i) & clause (ii) prescribed the manner to lodge the rebate claim to the Maritime Commissioner or Assistant Commissioner of Central Excise having jurisdiction over the factory. However, there is no specific reference for the applicability of Section 11B of the Central Excise Act, 1944.

Therefore, it is submitted that the specific omission of this condition itself substantiates that it is not applicable for filing of rebate claim. This view has also been upheld by the Madras High Court in the case of DORCAS MARKET MAKERS PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE 2012 (281) E.L.T. 227 (Mad.). The appellant also relies on the judgment of COLLECTOR OF CENTRAL EXCISE, JAIPUR Versus RAGHUVAR (INDIA) LTD. 2000 (118) E.L.T. 311 (S.C.)

4.3 The ground to reject rebate claim is not tenable in law:

The Commissioner has rejected the rebate claim on the ground that Central Excise Rules, 2002 are a subordinate legislature to Central Excise Act, 1944. Therefore, any notification issued under the Central Excise Rules, 2002 cannot over step the parent legislature. Hence, notification 19/2004 is subject to Section 11B of the Central Excise Act, 1944. It is submitted that the Commissioner has mis-interpreted the Central Excise Rules, 2002 and notification issued thereunder. There is no dispute that the Central Excise Rules, 2002 are subordinate to the Central Excise Act, 1944. However, Section 11B prescribes the manner of claiming refund of any duty paid in excess by the manufacturer, buyer, etc. from the Government. On the other hand, rule 18 of the Central Excise Rules, 2002 specifically prescribes for rebate of duty on export of goods. Hence, it is evident that these two provisions operate in different areas. Therefore, the provisions of one section will not be applicable to the rule merely based on the fact that the rule is subordinate to the act. The rule has to be read independently, and any provisions of the act will be applicable to the rule only by way of subsequent reference of the said section. This view was also upheld in the case of DY. COMMISSIONER OF C. EX., CHENNAI versus DORCAS MARKET MAKERS PVT. LTD. 2015 (321) E.L.T. 45 (Mad.).

4.4 Where no time limit has been prescribed in Central Excise Act, reference shall be made to Limitation Act, 1963

As per part II Division III of the Schedule to the Limitation Act, 1963, in case of any other application for which no period of limitation is provided elsewhere in this Division, period of limitation would be reckoned after a period of three years when the right to apply accrues. It is submitted that the appellant had filled Two Rebate Claims amounting to Rs.5,25,809/-. It is evident that the refund claim has been filled well within the period of three years from the date of export. Hence, it is submitted that in instant case the period of limitation would not be reckoned.

4.5 The appellant shall be allowed refund of cenvat credit in cash under transitional provision section 142(3) of the CGST Act 2017:

In view of the aforesaid submission and provisions of the law and relevant notifications, it is evident that Order-in-Appeal No. 98/AGU/ADT-VAD/2017-18 dated 12.09.2018 invoking section 11B for rebate claim filed under Rule 18 read with Notification no 19/2004 (supra) is bad-in law and should be set aside. The rebate claims filed by Appellant would be governed by Rule 18 of Central Excise Rules read with the notification issued thereunder. The said notification does not provide any period of limitation for a claim for rebate. Hence, none of the rebate claim filed by Appellant are time barred. Therefore, the appellant is eligible to claim rebate claim. W.e.f. 01.07.2017, Central Excise has been subsumed in GST and the provisions of Central Excise are no longer in existence after such date. The section 142(3) of the CGST Act, 2017 is a transitional provision. It provides that any claim for refund of duty filed by any person under erstwhile law should be disposed off as per said law and the amount of refund should be paid in cash.

5. The applicant was thereafter granted opportunity of personal hearing on 24.11.2022, Shri Mehul Jivani, CA appeared online and submitted that their rebate claim was rejected as time bar. He submitted that Section 11B time limit is not applicable for rebate. He referred to Dorcas Metal case.

He submitted that in case their claim is time barred, the duty should be returned to them in the manner it was paid.

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

10. The Order-in-Appeal No. 98/AGU/ADT-VAD/2017-18 dated 12.09.2018 passed by the Commissioner(Appeals) is upheld. The revision application filed by the applicant is rejected as devoid of merits.

23/3/23

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

ORDER No. 172 /2023-CX(WZ) /ASRA/Mumbai DATED 23.03.23

To,
M/s. KEC International Limited,
Plot No. 803, Samlaya Savli Road,
Village – Godampura,
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M/s. KEC International Limited,
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Copy to:

1) The Commissioner of CGST & Central Excise, Vadodara.

2) Commissioner (Appeals), GST & Central Excise Vadodara.
3) Mehul Jivani, 1009-1015, 10th Floor, Topiwala Centre, Topiwala Theatre Compound, Near Railway Station, Goregaon(West), Mumbai 400 104.
4) Sr. P.S. to AS (RA), Mumbai.
5) Guard file.
6) Spare Copy.