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**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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

F.No.195/116-A/15-RA / 100

Date of Issue: 14.02.2022

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ORDER NO. 176 /2022-CX (SZ) /ASRA/MUMBAI DATED 10.02.2022  
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.Gaviranga Enterprises (Electronic Division),  
C-9, Industrial Estate,  
Tumkur 572103

Respondent: Commissioner of CGST, Bangalore North West

Subject : Revision Applications filed under Section 35EE of Central  
Excise Act, 1944 against the Order-in-Appeal No. 52/2015-CE  
dated 30.01.2015 passed by the Commissioner of Central  
Excise (Appeals-I), Bangalore

**ORDER**

This Revision Application has been filed by M/s Gaviranga Enterprises (Electronic Division) C-9, Industrial Estate, Tumkur 572 103 (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. 52/2015-CE dated 30.01.2015 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. The facts briefly stated are that the applicant is registered with the Central Excise vide R.C. No. AADFG0002HXM001 and are manufacturers of transformers falling under Ch. 85441110 of CETA 1985. The applicant had filed a claim on 26.08.2013 for Rs.51,16,041/- for the rebate of Central Excise duty paid on the goods exported during the period from July 2012 to September 2012, through 18 ARE-I's. Out of the 18 ARE-I's, claims in respect of 4 ARE-I's, amounting to Rs.15,50,248/- were rejected by the sanctioning authority as the claims were hit by limitation of time as stipulated under Section 11B of the Central Excise Act, 1944. The details of the claims rejected are as under:

Sr. No	ARE-I no and Date	Date of clearance from the factory	Let export order date	Amount of duty involved	Date of filing of rebate claim
1	206/12-13/23.08.2012	23.08.2012	24.08.2012	3,36,185	26.08.2013
2	202/12-13/17.08.2012	17.08.2012	18.08.2012	4,36,818	26.08.2012
3	192/12-13/08.08.2012	08.08.2012	09.08.2012	3,16,664	26.08.2013
4	160/12-13/21.07.2012	21.07.2012	21.07.2012	4,60,581	26.08.2013
				15,50,248	

3. Being aggrieved with the impugned order, the applicant filed an appeal before the Commissioner of Central Excise (Appeals-I), Bangalore. The Appellate Authority vide Order-in-Appeal No. 52/2015 dated 30.01.2015 rejected the appeal filed by the applicants.

4. Being aggrieved by the order-in-appeal, the applicant has filed this revision application on the following grounds:

i) That the rebate claim was filed under Rule 18 of Central Excise Rules, which is a self-contained Rule, therefore the claim cannot be considered as time barred, by applying the general principles mentioned in section 11B of Central Excise Act, 1944.

ii) That the detailed procedure to claim rebate under Rule 18 is prescribed in Notification No. 19/2004 dated 06.09.2004. In the said notification, there is no time limit being specified to claim rebate. Also Notification No. 41/1994 dated 12.09.1994 which was superseded by Notification 19/2004 dated 06.09.2004, has a specific reference to section 11B. of the CEA, 1944, whereas Notification No. 19/2004 dated 06.09.2004, does not prescribe the time limit, neither has any reference to Section 11B of the CEA, 1944. The applicant cited an analogy in about Notification No. 102/2007-Cus. dated 14.9.2007 which was amended vide Notification No.93/2008-Cus. dated 01.08.2008 by which the limitation period of one year was incorporated. That going by the analogy, claim for rebate has to be considered on a standalone basis. Accordingly, the time limit of one year would not apply to rebate claim filed under Rule 18 of Central Excise Rules

iii) That the period of limitation of one year as is set out in Section 11B is applicable to rebate of duty paid on exports claimed under notification No. 19/2004-CE (NT), as per the definition of 'relevant date' for exports, under section 11B, the date should be considered for limitation is the date of ship or aircraft leaving India and not the 'let export order'.

iv) In case of the one shipment under ARE 1 No. 206/12-13 dated 23.08.2012, the Shipping Bill No. 1425073 is dated 23.08.201, the 'Let Export order' date was 24.08.2012 and the date of leaving India is 27.08.2012 vide Flt. No.MI-423 and as per the Customs' endorsement the

goods left India on 27.08.2012. The rebate claim was filed on 26.08.2013. Therefore the rebate claim was well within the period of one year and the rebate of Rs. 3,36,185/- needs to be allowed.

v) If the rebate is held to be not eligible, the amount debited should be allowed to be credited into CENVAT account.

vi) The applicant has relied upon the following case laws

a) Commissioner of Central Excise. Vs. M/s Dorcas Market Makers Pvt Ltd 2015-TIOL-820-HC-MAD-CX

b) Order No. 229/2013-Cx dated 07.03.2013 of the Revisionary Authority in the case of M/s Radiall India Pvt. Ltd.

5. Personal hearing was scheduled in this case on 07.09.2021 and 14.09.2021. Shri Akbar, Consultant appeared online for the hearing on 14.09.2021 on behalf of the applicants and Shri Jitendra Kumar Meena, Assistant Commissioner appeared on behalf of the respondents. Shri Akbar submitted that time limit of one year would not apply to rebate and that in one ARE 1, their claim is within one year and that in case rebate is not sanctioned, the credit should be restored. Shri Meena submitted that the Order-in-Appeal passed by the Appellate Authority should be upheld as the same is legal and proper.

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. The revision application has been filed because the Original Authority and the Appellate Authority have rejected rebate claims filed by the applicant on the ground that the rebate claims are time barred as they have been filed after one year of issue of LEO (Let Export Order) date for those exports. While doing so, the lower authorities have relied upon the provisions of the time limit prescribed under the Central Excise Act, 1944.

6.1 The applicant has stated that Notification No. 19/2004-CE (NT) dated 06.09.2004 does not have reference to Section 11B of CEA, 1944 and does not prescribe any time limit, to contend that limitation specified under

Section 11B of the CEA, 1944 would not be applicable to Rule 18 of the CER, 2002. The applicant has also cited an analogy of sections of the Customs Act, 1962 and notifications issued thereunder applying the same to the buttress their contention that the time limit of one year would not apply to rebate claim filed under Rule 18 of the Central Excise Rules.

7. 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:

*“(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;”*

7.1 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.

7.2 Therefore, to hold that date of LEO would be the relevant date is insupportable. As such the documentation required for export by sea begins with the filing of shipping bill and ends with the issue of bill of lading/mate receipt. Post filing of the shipping bill, when the goods are received in the docks, the customs officer examines the goods and makes an order permitting clearance and loading of the goods for exportation in terms of the provisions of Section 51 of the Customs Act, 1962. Thereafter, the goods are loaded on the vessel and the possession of the goods passes into the hands of the master of the vessel. The bill of lading records the vessel name and date on which the goods have been loaded. The master of the vessel issues a Mate Receipt to acknowledge receipt of the goods on board the vessel. Thereafter, the vessel sails out to its destination. In the case of exports by air also the filing of the shipping bill and the date of the 'let export order' precedes the date actual date on which the aircraft leaves the country with the export goods.

7.3 In the case of export through ICD, the LEO is issued after the goods are deposited in the ICD. After that the goods are transported to the nearest port and kept in the docks and subsequently loaded on the ship for export. It is only after these processes that the goods actually leave the country on board the vessel. There is a substantial time gap between the time when the LEO is issued at the ICD and the actual date when the goods are loaded on the vessel and the goods leave India. Adopting the date of LEO as the relevant date puts the exporter at a distinct disadvantage and reduces the period of limitation for filing rebate claim.

7.4 In this view, the date of LEO cannot be considered as the date when the aircraft/ship loaded with the goods leaves India.

7.5 Government notes that on the basis of documents submitted before it, the rebate claim filed in respect of ARE 1 No 206/12-13 dated 23.08.2012 has been filed before the relevant date as the certification of the customs officer Part B of the ARE 1 shows that the consignment left on 27.08.2012 and the rebate claim has been filed by the applicant on 26.08.2013.

7.6 Government notes that the contention of the applicant that Notification No 19/2004-CE (NT) dated 06.09.2004 does not have reference to Section 11B of CEA, 1944 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 sacrosanct 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."*

7.7 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. As regards the averments of the applicant that from the definition of the "relevant date", the date to be considered for limitation is the date of ship or aircraft leaving India and not the 'Let export' order date, Government observes that the contention of the applicant is correct and holds that the date on which the ship or the aircraft in which such goods are loaded, leaves India should be the relevant date.

10. The applicant has made some submissions to contend that even if their rebate claims are hit by limitation, the duties paid by them on the exported goods must be recredited as such amounts are to be treated as deposits and that the Government cannot retain such amounts. In this regard, Government observes that all excisable goods are leviable to central excise duty when they are cleared from the factory. Although the

Government policy is to zero rate exports, the exporter is required to follow the procedures prescribed under Section 11B of the CEA, 1944 and notifications issued to be eligible for rebate of such duties paid. The rebate admissible in terms of the notifications issued are subject to the specified conditions and limitations. Upon following the conditions and limitations for grant of rebate, the applicant is entitled to refund of the duties paid. As such, the levy of central excise duties remains attached to the manufactured goods.

10.1 The duty suffered on the goods can be refunded only when the procedures for grant of rebate and the conditions and limitations in the relevant notification are followed. In other words, save and except for a situation where the applicant chooses to follow the procedures for grant of rebate, the charge of central excise duty remains attached to the goods. cleared from the factory and subsequently exported. If the original authority finds that the rebate claims have not been filed within the time limit for filing rebate claims as per Explanation (B) to Section 11B(5) of the CEA, 1944, the rebate claims will not be admissible. Needless to say, where the rebate claims are time barred the duties cannot be allowed as recredit as the levy thereof is not in doubt. As such, there is no exemption available for export of goods and therefore the duties paid by the applicant are leviable and cannot be treated as deposit. Allowing recredit of duties paid on the export goods inspite of the rebate claims being time barred would render the provisions of Section 11B of the CEA, 1944 redundant. Therefore, the contention of the applicant for allowing the duties paid by them as recredit cannot be sustained.

11. Government therefore directs the original authority to re-examine the rebate claims rejected on grounds of time bar by identifying the date when the ship/aircraft in which the goods are loaded has left India. The applicant is directed to cooperate by furnishing the relevant bills of lading/mate receipts/airway bills/documents showing the flight date and time pertaining to the subject exports, before the original authority. If the rebate claims have been filed within one year from the relevant date, the rebate claims may be

considered for sanction. This exercise may be completed within a period of eight weeks from the date of receipt of this order.

12. The revision applications filed by the applicant are disposed off on the above terms.

*Shrawan*  
*10/2/22*  
(SHRAWAN KUMAR)

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

ORDER NO. 176/2022-CX (SZ) /ASRA/MUMBAI DATED 10.02.2022

To,

M/s.Gaviranga Enterprises (Electronic Division),  
C-9, Industrial Estate,  
Tumkur 572103

Copy to :

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- 2) The Commissioner of CGST, Bengaluru Appeals-II), Traffic and Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Dommaluru, Bengaluru 560 071

3) ~~Guard File.~~

4) Spare copy.