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

F.No.195/118/WZ/2019-RA /1819

Date of Issue 29.03.2023

ORDER NO. 89 /2023-CX (WZ) /ASRA/MUMBAI DATED 29.03.2023 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. Amartara Private Limited,
Survey No. 215/3, Halol Godhra Road, Village Madhvas,
Tal.- Kalol, Dist Panchmahal,
Gujarat 389 330

Respondent: The Commissioner, CGST and Central Excise, Vadodara-II

Subject : Revision Application filed under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-003-APP-434-2018-19 dated 26.10.2018 passed by the Commissioner, GST & Central Excise(Appeals), Vadodara

ORDER

The Revision Application has been filed by M/s.Amartara Private Limited, Survey No.215/ 3, Halol Godhra Road, Village Madhvas, Tal.- Kalol, Dist Panchmahal, Gujarat 389 330 hereinafter referred to as the 'Applicant') against the Order-in-Appeal No. VAD-EXCUS-003-APP-434-2018-19 dated 26.10.2018 passed by the Commissioner, GST & Central Excise(Appeals), Vadodara.

2.1 The facts of the case briefly stated are that the Applicant, manufacturers of excisable goods falling under Chapter 39 of the CETA, 1985, had filed two rebate claims for Rs. 5,61,075/- for duty paid on export of PVDC Coated film under Advance Licence and claim of rebate. The details of the rebate claim are as under

Sr No	ARE-1 No and date	S/B No and date	LEO date	B/L date	Amount of rebate	Date of filing rebate claim
1	PE059/H-2016-17 dated 13.07.2016	8845693/14.07.2016	16.07.2016	23.07.2016	225649	06.09.2017
2	PE060/H-2016-17 dated 13.09.2016	8842201/14.07.2016	16.07.2016	24.07.2016	335426	06.09.2016

2.2. On scrutiny of the rebate claims, it was noticed that the said rebate claims were filed after expiry of prescribed limit of one year from the relevant date as stipulated under Section 11 B of the Central Excise Act, 1944. Therefore, show cause notice dated 09.11.2017 was issued to the Applicant for rejection of the rebate claims on the ground of limitation. Following the due process of law, the Original Adjudicating Authority vide Order-in-Original No. DIV/HLL-III/REB/149-150/17-18 dated 29.12.2017 rejected the rebate claims as time barred.

3. Being aggrieved with the impugned Order-in-Original, the Applicant filed an appeal before the Commissioner, GST & Central Excise(Appeals), Vadodara. The Appellate Authority vide impugned Order-in-Appeal No. VAD-EXCUS-003-APP-434-2018-19 dated 26.10.2018 rejected the appeals filed by the Applicants.

4. Being aggrieved by the Order-in-Appeal, the Applicant has filed the instant Revision Application on the following grounds:

4.1. That there is no dispute that the goods have actually been exported and the exported goods were duty paid and the delay of 54 days in filing rebate claim is to be considered as procedural lapse, as they could not procure the relevant papers from the CHA for filing the rebate, and no substantial benefits which were otherwise admissible can be denied due to procedural lapses;

4.2. That rebate on exports is an incentive scheme of Government and the same cannot be denied, on the grounds that there was delay in filing the papers if the goods are actually exported and duty is actually paid;

4.3. That the AA has given no contrary findings on Applicant's submissions in respect of M/s Madhave Steel Vs. Union of India, wherein it is held that "Technicalities attendant upon a statutory procedure should not be cut down especially where such technicalities are not essential for the fulfillment of the legislative purpose. And benefit should not be denied on technical grounds."

4.4. That in the case of CCE, Ahmedabad Vs. M/s Dishan Pharmaceuticals & Chemicals Ltd., it is held that "Denial of the refund on the technical grounds is not justified".

4.5. That for carrying out the provisions of any Act, Rules are framed and the prescribed procedure is to be followed. Clarifications are also issued to clear the doubts in the procedural requirement. However, it is to be considered by the AA whether a procedural requirement is held to be mandatory or not with reference to decided case laws;

4.6. That is has been settled by a series of judgments of the Hon'ble Supreme Court that a purely procedural requirement cannot be held to be mandatory and are capable of substantive compliance and there is no requirement of insisting on strict compliance. The Applicant has relied upon the judgements in the following case in support of their contention:

- (i) Mangalore Chemicals & Fertilizers Limited vs. Deputy Commissioner
- (ii) Judgement dated 09.09.2012 of the Hon'ble Calcutta High Court in the in case of Kosmos Healthcare Pvt Ltd vs. AC.CEx Kolkata-I
- (iii) Judgement dated 04.08.2015 of the Punjab and Haryana High Court in the case of M/s JSL Lifestyle Limited vs. UOI
- (iv) GOI in the case of Barot Exports - Order No.- 435/2006 dated May 29, 2006

Under the circumstances the Applicant prayed that the Order-in-Appeal may be set aside and rebate claim by be sanctioned.

4.7. The Applicant vide letter dated 06.12.20233 filed additional written submissions wherein they reiterated the contents of the Revision Application

5. Personal hearing in the case was scheduled on 10.11.2022 or 23.11.2022,14.12.2022 or 03.01.2023, 11.01.2023 or 17.01.2023. Shri Prakash Mirchandani, Advocate appeared for the personal hearing on 17.01.2023 on behalf of the Applicant. He submitted that the rebate was

rejected on time bar. He further submitted that duty was paid and goods were exported and that time limit under Section 11B is procedural in nature and substantive benefit should not be denied.

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 relied on case laws to contend that filing the rebate claims beyond the limitation specified under Section 11B of the Central Excise Act, 1944 was a procedural lapse and denial of refund on technical and procedural grounds cannot be held to be mandatory grounds.

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 Government notes that the contention of the Applicant that non adherence to the time lines under Section 11B of the CEA, 1944 are procedural and technical shortcomings 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."

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

7.4. Government notes that The Hon'ble Madras 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)], which is exhaustive and contains a detailed discussion explaining the reasons for arriving at the conclusions therein.

7.5. Further, 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."

7.6. 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."

7.7. 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.

8. In the instant case, the Applicant has admittedly cleared the goods under ARE 1 No. PE059/H-2016-17 and PE060/H-2016-17 both dated 13.07.2017 under Shipping Bill Nos. 8845693 dated 14.07.2016 & 8842201

dated 14.07.2016. The Applicant has filed the rebate claims on 06.09.2017 before the sanctioning authority, which was beyond the period of one year from the 'Let Export' date, and was thus barred by limitation of time under Section 11B of the Central Excise Act, 1944.

9. 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. VAD-EXCUS-003-APP-434-2018-19 dated 26.10.2018 passed by the Commissioner, GST & Central Excise(Appeals), Vadodara and therefore, upholds the impugned Order-in-Appeal.

10. The Revision Application is dismissed as being devoid of merit.


(SHRAWAN KUMAR)

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

ORDER NO. 89 /2023-CX (WZ) /ASRA/MUMBAI DATED 24.03.2023

To,

M/s. Amartara Private Limited,
Survey No. 215/3, Halol Godhra Road, Village Madhvas,
Tal.- Kalol, Dist Panchmahal,
Gujarat 389 330

Copy to :

- 1) The Commissioner of CGST, Vadodara-II, GST Bhavan, Subhanpura, Vadodara 390 023.
- 2) The Commissioner of CGST, Appeals, Vadodara, Central Excise Building, 6th Floor, Race Course Circle, Vadodara 390 007.
- 3) Shri A.X.S Jiwan, Consultant, No.2, Dharti Complex, Opp Anand Hospital, Behind Mr. Puff-Gandhi Bakery, Bada Bazaar, Nizampura, Vadodara-390 002

- 4) Sr. PS to RA, Mumbai.
- 5) Guard File.
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