

REGISTERED SPEED POST



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. 195/09/WZ/2018-RA 12088

Date of issue: 10.04.2023

ORDER NO. 203 /2023-CX (WZ)/ASRA/MUMBAI DATED 30.03.2023  
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. Par Drugs & Chemicals Private Limited

Respondent: Commissioner of CGST & CX, Vadodara-II

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-  
002-APP-385/2017-18 dated 04.09.2017 passed by the  
Commissioner(Appeals), GST & Central Excise Vadodara.

## ORDER

This Revision Application has been filed by M/s. Par Drugs & Chemicals Private Limited (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. VAD-EXCUS-002-APP-385/2017-18 dated 04.09.2017 passed by the Commissioner (Appeals), GST & Central Excise Vadodara.

2. Brief facts of the case are that the applicant is engaged in manufacturing of excisable goods falling under Ch.28 of Central Excise Tariff Act,1985. They had filed a rebate claim amounting to Rs.1,00,600/- on 20.02.2016 under Notification No.19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002, in respect of goods exported by them. However, the rebate sanctioning authority vide Order-in-Original No. ANK-II/AC/1627/Rebate/2016-17 dated 20.05.2016, rejected the rebate claim on the ground that the rebate claim had been filed beyond the period of one year from the date of export. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) no time limit had been prescribed under the provisions of the Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under the statutory provisions of Rule 18 of the Central Excise Rules, 2002. Only, the condition has been prescribed that the export should be made within six months from the date of clearance from the factory gate for export. In the present case, the Adjudicating Authority has not denied that the export has not been made within six months.

(b) Applicant relies upon following settled case laws:

- i. 2008 (232) E.L.T. 413 (Guj.), Commissioner of C.Ex & Customs, Surat-I Versus Swagat Synthetics;
- ii. 2000 (118) ELT 311 (SC)- Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd.

- iii. 2012 (281) ELT 227 (Mad) - M/S. Dorcas Market Makers Pvt. Ltd. v/s Commissioner of Central Excise
- iv. 2013 (291) ELT 189 (Mad)- M/s. Shasun Pharmaceuticals Ltd. v/s Joint Secretary, MF (D.R.), New Delhi
- v. Deputy Commissioner v. Dorcas Market Makers Pvt. Ltd. -2015 (325) ELT 0104 (S.C.)

(c) The Appellate Authority as well as Adjudicating Authority have failed to take on record the Notification No. 18/2016-CE (NT) dated 01.03.2016 (herein after referred to as Annexure-I). This Notification is pertaining to the amendment of Principle Notification No. 19/2004-CE (NT) dated 05.09.2004. Vide this Notification dated 01.03.2016, the Government has fixed the time limit of filing of Rebate Claim under Rule 18 of the Central Excise Rules, 2002 as:-

*"(2) under heading '(3) Procedures', in paragraph (b), in sub paragraph (i), after the words 'shall be lodged', the words, figures, letter and brackets 'before the expiry of the period specified in section 11B of Central Excise Act, 1944 (1 of 1944)' shall be inserted.*

As per the settled laws, the above Notification dated 01.03.2016 is effective from 01.03.2016 as no such provisions as "retrospective effect" have been made in the said Notification. The present Rebate Claim is pertaining to the export made under claim of rebate on 19.01.2015 vide ARE-I No. 01 dated 19.01.2015 read with Central Excise Invoice No. 01 dated 19.01.2015. These duty paid goods under reference have been cleared on 19.01.2015 for export from the factor premises. At the time of export the goods (i.e. the date of export from the factory gate was 19.01.2015), there was no such provisions as inserted vide the said amended Notification dated 01.03.2016. Therefore, it is clearly established that the Appellate Authority has clearly violated the statutory provisions of Notification dated 06.09.2004 prevailing at the material time of export. As well

as, the impugned order has been passed by violating the principle of judicial discipline with regard to the above cited case laws.

(d) For the above contention, applicant would like to draw kind attention to Notification No. 102/2007-cus dated 14.09.2007 pertaining to the granting of Refund Claim of 4% SAD. In this Notification, no time limit had been prescribed in filing such Refund Claim. The Government had also clarified that the provisions of Section 27 of the Customs Act, 1962 were not applicable at the time of issuing the said Notification No. 102/2007-cus dated 14.09.2007. In the present case, the Notification No. 19/2004-CE (NT) dated 06.09.2007 is similar to the Notification No. 102/2007-Cus dated 14.09.2007 and amendment Notification No. 18/2016-CE (NT) dated 01.03.2016 is also similar to the Notification No. 83/2008Cus dated 01.08.2008 (amended to Notification No. 102/2007-Cus dated 14.09.2007 under which the time limit of filing of Refund of 4% SAD has been prescribed).

(e) In view of the above submissions, it is clearly established that the Adjudicating Authority as well as Appellate Authority have erred in holding that the Rebate Claim was time barred. Actually there was no time limit in filing the Rebate Claim till the issuance Notification No. 18/2016-CE (NT) dated 01.03.2016, effective from 01.03.2016 as no such clause as "retrospective effect" has been provided therein. Further, the Appellate Authority has also failed to consider the above mentioned case laws which shows that they have contravened the provisions of maintaining the judicial discipline

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal and grant consequential relief.

4. Several personal hearing opportunities were given to the applicant and the respondent viz. on 07.10.2022, 20.10.2022, 07.12.2022 and 21.12.2022. However, both of them did not attend on any date nor have they sent any written communication. Since sufficient opportunities have been

given, the matter is therefore taken up for decision based on available records.

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

6. Government observes that the main issue in the instant case is whether the rebate claims filed after one year are time barred, being hit by limitation in terms of section 11B of the Central Excise Act, 1944.

7.1 Government observes that the applicant, a manufacturer exporter, had exported goods, 'Zinc Sulphate Monohydrate', vide ARE1 No. 01/2014-15 dated 19.01.2015. Against this export, they filed a rebate claim on 26.02.2016 in the office of rebate sanctioning authority for an amount of Rs.1,00,600/-, being duty paid on the goods exported. After verification of documents submitted, the rebate sanctioning authority rejected the rebate claim on the grounds of being time barred in terms of section 11B of the Central Excise Act, 1944 as it was filed after the prescribed period of one year from the relevant date, viz. 31.01.2015 (the date of concerned Bill of Lading).

7.2 Government observes that the applicant has contended that the time limit prescribed by Section 11B of the Central Excise Act, 1944 (hereinafter referred to as CEA), is not applicable to rebate claims as the notification issued under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as CER) did not make the provisions of Section 11B applicable thereto. In this regard, Government observes that Rule 18 of the CER has been made by the Central Government in exercise of the powers vested in it under Section 37 of the CEA to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA. Moreover, Section 37 of the CEA by virtue of its sub-section (2)(xvi) through the CER 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 and Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of

the CER to set out the procedure to be followed for grant of rebate of duty on export of goods.

7.3 Government observes that the view that notifications for grant of rebate are not covered by the limitation prescribed by Section 11B of the CEA 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 till they were substituted in these notifications on 01.03.2016. The applicant's 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 Honorable Courts have categorically held that limitation under Section 11B of the CEA 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

7.4 Further, the observations of the Hon'ble High Court of Karnataka in the case of 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.”*

7.5 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 Møhit 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.”*

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 and the provisions of Section 11B of the CEA have expressly been made applicable to the refund of rebate and therefore the notification cannot exceed the scope of the statute.

7.6 Government also places reliance on the judgment of Hon'ble Supreme Court of India, in Civil Appeal No. 8717 of 2022, decided on 29.11.2022, in the case of M/s. Sansera Engineering Pvt. Ltd. wherein while upholding the

judgment dated 22.11.2019 of Hon'ble High Court of Karnataka [2020(371) ELT 29(Kar)], it is held that:

35. 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. However, there shall be no order as to costs.

8. In view of the findings recorded above, Government upholds the Order-in-Appeal No. VAD-EXCUS-002-APP-385/2017-18 dated 04.09.2017 passed by the Commissioner (Appeals), GST & Central Excise Vadodara and rejects the impugned Revision Application.

  
(SHRAWAN KUMAR)

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

ORDER No. 203 /2023-CX (WZ)/ASRA/Mumbai dated 30.03.23

To,  
M/s. Par Drugs & Chemicals Private Limited,  
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Copy to:

1. Commissioner of CGST & CX,  
Vadodara - II, GST Bhavan,  
Subhanpura, Vadodara - 390 023.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.