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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.195/228/WZ/2018-RA / 406

Date of Issue: 10.03.2023

ORDER NO. 217 /2023-CX (WZ) /ASRA/MUMBAI DATED 31.03.2023
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. Unichem Laboratories Ltd
Plot No. 17,17A and 18,
Pilerne Industrial Estate,
Pilerne, Bardez, Goa 403 511

Respondent: The Commissioner of Customs and Central Excise, Goa

Subject : Revision Application filed under Section 35EE of Central Excise
Act, 1944 against the Order-in-Appeal No. GOA-EXCUS-000-
APP-049-2018-19 dated 07.09.2018 [Date of issue 18.09.2018]
passed by the Commissioner (Appeals), Goa

ORDER

The Revision Application has been filed by M/s. Unichem Laboratories Ltd, Plot No 17, 17A & 18, Pilerne Industrial Estate, Pilerne, Bardez , Goa 403 511 (hereinafter referred to as the 'Applicant') against the Order-in-Appeal No. GOA-EXCUS-000-APP-049-2018-19 dated 07.09.2018 [Date of issue: 18.09.2018] passed by the Commissioner, (Appeals), Goa.

2.1 The facts of the case briefly stated are that the Applicant, is a manufacturer exporter and filed a rebate claim for Rs. 3,83,375/-, of excise duty paid on goods cleared under ARE-1 No. 2016120419 dated 05.08.2016. On scrutiny of the claim it was noticed that the date of export of the said goods was, 09.08.2016 and the rebate claim was filed on 24.10.2017 i.e one year from the date of export. As the rebate claim was not filed before the expiry of one year from the date of export as required under Section 11B of the Central Excise Act, 1944, after following the process of law, the Original Adjudicating Authority vide Order-in-Original No. R/403/17-18CX Div I dated 23.04.2018, rejected the rebate claim filed by the Applicant.

3. Being aggrieved with the impugned Order-in-Original, the Applicant filed an appeal before the Commissioner, (Appeals), Goa. The Appellate Authority vide impugned Order-in-Appeal No. GOA-EXCUS-000-APP-049-2018-19 dated 07.09.2018 [Date of issue: 18.09.2018] 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 the export of goods and payment of duty cannot be disputed as they have produced shipping bill copy to establish export of goods and ARE-1 to establish payment of duty on the goods exported;

4.2. That the department was not disputing the availment of credit and utilization of the same for the payment of duty on the goods exported and as the claim was rejected on the grounds of limitation, there was no duty on export of goods, secondly the duty was paid to claim as refund and thirdly since the rebate claim was rejected the duty so paid had to be allowed by way of credit of has to be treated as deposit with the Government on their own volition;

4.3 Reliance has been placed on the following judgements:

- (i) Duke Consumer India Ltd [2012(285) E.L.T. 475(GOI)]
- (ii) Commissioner vs. Suncity Alloys Pvt Ltd [2007(218) E.L.T 174(Raj)]
- (iii) Nahar Industries Enterprises Ltd vs. UOI [2009(235) E.L.T 22(P & H)]

4.4. That since the order is passed in April 2018 and GST provisions have been made applicable from 01.07.2017 it is neither possible to take re-credit nor it is possible for them to transfer the credit in the GST regime and the amount has to be considered as deposit and has to be refunded to us under the provisions of the Section 142(3) of the CGST Act, 2017;

4.5. That the provisions of the Section 11B cannot be made applicable and hence the denial of rebate claim on the ground that the claim is barred by limitation is not sustainable. The Applicant has relied on the case of DC, Central Excise, Chennai vs. Dorcas Market Movers Pvt Ltd [2015(321) E.L.T. 45 (Mad)] and [2015(325) E.L.T. A 104(SC)]

Under the circumstances the Applicant prayed that the rejected rebate claim be allowed.

5. Personal hearing in the case was scheduled on 09.11.2022, 22.11.2022, 08.12.2022 or 22.12.2022, 12.01.2023 or 23.01.2023. Shri Rajiva Srivastava, Advocate appeared online for the hearing on 12.01.2023 on behalf of the Applicant. He submitted that though their claim was filed

beyond one year, they should be allowed re-credit of duty paid. He submitted additional written submissions and requested to allow the application.

6. In the additional written submissions, the advocate for the Applicant reiterated their request for re-credit of the rejected rebate claim stating that it is projected by Section 142(3) and Section 174(2) of the CGST Act, 2017 and that transitional credit being a vested right, it cannot be taken away on procedural or technical grounds. The Applicant submitted the following case laws in support of their contention:

- (i) Rakon India Pvt Ltd [2021(54) G.S.T.L. 183(Tri Bang)]
- (ii) Circor Flow Technologies Pvt Ltd [2022(59)G.S.T.L. 63(Tri.Chennai)]
- (iii) OSI Systems Pvt Ltd –Appeal No 30086 of 2022 (Tri Hyd)
- (iv) Monochem Graphics Pvt Ltd- Tri Delhi
- (v) Bannari Aman Sugars-Final Order No 20714/2019(Tri-bang)
- (vi) NRK Homes Pvt Ltd [2020(4)TMI 344-CESTAT New Delhi]
- (vii) Terex India Pvt Ltd –Final Order No 42366/2021(Tri.Chennai)
- (viii) Adfert Technologies Pvt Ltd vs UOI [2020(32) G.S.T.L 726(P& H)]
- (ix) Tara Exports vs UOI [2019(20) G.S.T.L. 321(Mad)]
- (x) Leo Prime Comp Pvt Ltd vs.DC. C.Ex Puducherry [2020(373) E.L.T. 820(Mad)]

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 Adjudicating 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 the date of export. 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, relying on the ruling of the Hon'ble Madras High Court in the matter of M/s Dorcas Market Makers Pvt Ltd has stated that Section 11B of CEA, 1944 cannot be made applicable to Notification No. 19/2004-

CE (NT) dated 06.09.2004 and contended that limitation specified under Section 11B of the CEA, 1944 would not be applicable to Rule 18 of the CER, 2002. Further, the Applicant has also submitted that as the claim has been rejected the duty paid by them has to be allowed by way of either re-credit or has to be treated as deposit made with the Government.

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 Section 11B of the CEA, 1944 cannot be made applicable to rebate claims under Notification No 19/2004-CE (NT) dated 06.09.2004 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."

7.3 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 claim.

8.4. Further, The Hon'ble Supreme Court in its judgement on 29.11.2022, in the case of Sansera Engineering Ltd vs. DC, LTU, Bengaluru [2022(382) E.L.T 721(SC)] in Civil Appeal No 8717 of 2022, while considering 'whether the claim for rebate of duty provided under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall be applicable or not?', has discussed the issue threadbare and at length. After discussing various judgements delivered on the issue by Madras High Court, Allahabad High Court, Punjab & Haryana High Court, Rajasthan High Court and Bombay High Court, the Hon'ble Apex court has agreed with the view taken by the Bombay High Court in the case of Everest Flavours Ltd vs. UOI [2012(282) E.L.T 481(Bombay)]. The Hon'ble Apex Court has concluded as under:

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

9. In the instant case, the Applicant has admittedly cleared the goods under ARE-1 No. 2016120419 dated 05.08.2016 and as per the Shipping Bill No 9290092, the date of export of the said goods was 09.08.2016. The Applicant has filed the rebate claims on 24.10.2017 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.

10. The Applicant has also submitted that as the claim has been rejected the duty paid by them has to be allowed by way of either re-credit or has to be treated as deposit made with the Government. Government observes that the one of the mandatory conditions for being eligible for rebate is that the applicable duty has to be paid at the time of export. The duty paid by the Applicant is on account of the procedure prescribed under Rule 18 of the Central Excise Rules, 2002 and the relevant Notification. However, the rejection of the rebate claim is not on account of excess payment of duty but on account of the rebate claim not having been filed within the time frame prescribed under Section 11B of the Central Excise Act, 1944. Government opines that the issue of the correctness of the duty payment and other aspects related to the sanction of the rebate claim and re-credit comes into play after the rebate claim is filed within the time limit prescribed under Section 11B of the Central Excise Act, 1944. In the instant case, the rebate claim being time barred, the OAA or the AA has no powers to delve into the aspect of the eligibility of the rebate claim in terms of conditions prescribed in the Notification, once the claim is held to be barred by limitation of time. In view of the same, the Applicants prayer for recredit or treating the duty paid as deposit with the Government is flawed and deserves to be rejected.

11. 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. GOA-EXCUS-000-APP-049-2018-19 dated 07.09.2018 [Date of issue: 18.09.2018]

passed by the Commissioner, (Appeals), Goa and therefore, upholds the impugned Order-in-Appeal.

12. The Revision Application is dismissed as being devoid of merits.


31/3/23
(SHRAWAN KUMAR)

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

ORDER NO. 217/2023-CX (WZ) /ASRA/MUMBAI DATED 31.03.2023

To,

M/s. Unichem Laboratories Ltd
Plot No. 17,17A and 18,
Pilerne Industrial Estate,
Pilerne, Bardez, Goa 403 511

Copy to :

- 1) The Commissioner of CGST, 4th Floor, GST Bhavan, EDC Complex, Plot No. 6, Patta Panaji-Goa 403 001
- 2) The Commissioner of CGST, Appeals, Goa, 4th Floor, GST Bhavan, EDC Complex, Plot No. 6, Patta Panaji-Goa 403 001
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