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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 195/57/WZ/2018-RA / 2045

Date of Issue: ~~03.2023~~

12.04.2023

ORDER NO. 219 /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 Lanxess India Pvt Ltd,
LANXESS House, Plot No A-162-164,
Road No 27, MIDC, Wagle Estate,
Thane (West) 400 604

Respondent: Commissioner of Central Excise, Bharuch

Subject : Revision Application filed under Section 35EE of Central Excise
Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-002-
APP-361-2017-18 dated 30.08.2017 passed by the
Commissioner (Appeals), Central GST & Central Excise,
Vadodara

ORDER

The Revision Application has been filed by M/s Lanxess India Pvt Ltd, LANXESS House, Plot No A-162-164, Road No 27, MIDC, Wagle Estate, Thane (West) 400 604 (hereinafter referred to as the 'Applicant') on behalf of their manufacturing unit i.e M/s Lanxess India Pvt Ltd, Plot No 748/2/S, 748/4/B, GIDC, Ankleshwar, against the Order-in-Appeal No. VAD-EXCUS-002-APP-361-2017-18 dated 30.08.2017 passed by the Commissioner (Appeals), Central GST & Central Excise, Vadodara.

2.1. Brief facts of the case are that the Applicant on behalf of their manufacturing unit at Ankleshwar, Gujarat, filed three rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004, for the duty paid on goods exported. The details of the claims are as under:

Sr No	ARE-1 No and date	Date of receipt of the rebate claim	Date of shipment	Amount of rebate claimed
1	2272/14.10.2014	17.11.2015	20.10.2014	6,04,060
2	2258/09.10.2014	17.11.2015	18.10.2014	4,37,049
3	2185/15.09.2014	27.11.2015	28.09.2014	1,87,995

On scrutiny of the rebate claims it was noticed that the rebate claims were not filed before the expiry of one year from the relevant date.

2.2. As the rebate claims were 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 Orders-in-Original No. ANK-II/AC/4716 TO 4718/Rebate/ 2015-16 dated 29.02.2016 rejected the rebate claims filed by the Applicant.

3. Being aggrieved with the impugned Order-in-Original, the Applicant filed an appeal before the Appellate Authority i.e the Commissioner (Appeals), Central GST & Central Excise, Vadodara. The Appellate Authority vide impugned Order-in-Appeal No. VAD-EXCUS-002-APP-361-2017-18 dated 30.08.2017 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 AA has erred in rejecting the rebate claim without analysing the facts and data available on record and ignored legal provisions;

4.2. That the AA has denied the benefit related to export which was otherwise admissible to the Applicant, stating that the rebate claim was time barred even though the Applicant had fulfilled substantial condition by exporting the goods on payment of duty;

4.3. That the limitation period prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to the rebate claim filed under Rule 18 of the Central Excise Rules, 2002 read with Notification NO 19/2004-CE(NT) dated 06.09.2004;

4.4. That Notification No 19/2004 superseded Notification No. 41/94-CE (NT) dated 12.09.1994, which prescribed the time limit for filing rebate claim as per section 11B. However, there is no such condition under Notification No 19/2004 with respect to Rule 18 of CER, 2002;

4.5. That all the conditions mentioned under the said Notification have been fulfilled and hence they are eligible for rebate of the duty paid on the exported goods;

4.6. That vide Notification No 18/2016-CE (NT) dated 01.03.2016 amended Notification No 19/2004 CE(NT) to include limitation period as prescribed under Section 11B of the Central Excise Act, 1944 and before 01.03.2016 there was no time limit prescribed under the said notification which was introduced subsequently and hence such amendment is prospective in nature and cannot be applied prospectively. That in the absence of any prescription in the scheme of rebate regarding time limit rejection of application for rebate as time barred is unjustified. The Applicant has relied upon the case of DC. CEx. vs. Dorcas Market Movers Pvt Ltd [2015(321) E.L.T. 45(Mad)]

4.7 The Applicant has further relied upon the following case laws in support of their contention:

- (i) DC. CEx. vs. Dorcas Market Movers Pvt Ltd [2015(325) E.L.T. A104(SC)]
- (ii) JSL Lifestyle vs UOI

4.8. That the rebate claim cannot be rejected due to procedural lapses, as rebate/drawback are export oriented schemes and merely technical interpretations of procedure etc is to be avoided if the substantive fact of export having been made is not in doubt;

4.8. Rebate claim cannot be rejected merely due to minor procedural infraction when mandatory conditions are fulfilled. Reliance has been placed on the following case laws:

- (i) IN RE: Banaras Beads [2011(272) E.L.T 433(GOI)
- (ii) LGW Ltd vs. UOI [2017(346) E.L.T 103(Cal)

5. Personal hearing was scheduled in this case on 12.10.2022 or 02.11.2022 or 12.01.2023. Shri Arun Sawant, Advocate and Shri Sandip Deshmukh, Advocate appeared for the personal hearing on 12.01.2023, on behalf of the Applicant. In respect of the instant case, they requested to allow their claim as there is no doubt on export of duty paid goods and that there was a delay of filing the claims beyond one year which they requested to allow in view of the Dorcas Market Movers decision of the Madras High Court

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 as 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. The Hon'ble Supreme Court in the 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 Nos. 2272 dated 14.10.2014, 2258 dated 09.10.2014 and 2185 dated 15.09.2014 and exported under Shipping Bill No. 5542413 dated 16.10.2014, 5440890 dated 10.10.2014 and No. 5013549 dated 16.09.2014

respectively. The date of export of the said goods under the said Shipping Bills were 20.10.2014, 18.10.2014 and 28.09.2014 respectively. The Applicant has filed the rebate claims on 17.11.2015 in respect of ARE 1 No 2272 dated 14.10.2014 and ARE-1 No. 2258 dated 09.10.2014 and on 27.11.2015 in respect of ARE-1 No. 2185 dated 15.09.2014, which was beyond the period of one year from the date the goods were 'shipped on board' 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 claims 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 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. VAD-EXCUS-002-APP-361-2017-18 dated 30.08.2017 passed by the

Commissioner (Appeals), Central GST & Central Excise, Vadodara 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. 219/2023-CX (WZ) /ASRA/MUMBAI DATED 31.03.2023

To,

M/s Lanxess India Pvt Ltd,
LANXESS House, Plot No A-162-164,
Road No 27, MIDC, Wagle Estate,
Thane (West) 400 604

Copy to :

- 1) The Commissioner of CGST, Vadodara II, GST Bhavan, Race Course Circle, Vadodara 390 007
- 2) The Commissioner of CGST, Appeals, Vadodara, Central Excise Building, 6th Floor, Race Course Circle, Vadodara 390 007.
- 3) A.B. Nawal & Associates, Cost Accountants, S.No 74-75, 14-17, Suyash Commercial Mall, Above Union Bank, Baner, Pune-411 045.
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Notice Board.
- 5) Spare copy.