

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. 195/23-26/2019-RA

12050

Date of issue: 12.04.2023

ORDER NO. <sup>222-</sup>225/2023-CX (WZ)/ASRA/MUMBAI DATED 05.4.2023  
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. Prima Chemicals (Unit-II)

Respondent: Commissioner of CGST, Ahmedabad South

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-  
001-APP-079 to 082-2018-19 dated 27.11.2018 passed by the  
Commissioner(Appeals), Central Tax, Ahmedabad.

## ORDER

These four Revision Applications have been filed by M/s. Prima Chemicals (Unit-II), Plot No. 1904, Phase-IV, GIDC, Vatva, Ahmedabad – 382 445 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal (OIA) No. AHM-EXCUS-001-APP-079 to 082-2018-19 dated 27.11.2018 passed by the Commissioner (Appeals), Central Tax, Ahmedabad.

2. Brief facts of the case are that the applicant had filed four separate rebate claims amounting to Rs. 2,52,000/-, Rs. 7,22,344/-, Rs. 1,47,520/- and Rs. 6,03,419/- under Rule 18 of Central Excise Rules, 2002 (CER) read with notification No. 19/2004-CE (NT) dated 06.09.2004. The rebate sanctioning authority noticed that the claims had been filed beyond the period of one year stipulated under Section 11B of the Central Excise Act, 1944 (CEA). Therefore, all the claims were rejected vide Orders-in-Original No. 11/AC/SKL/Reb/2018, 12/AC/SKL/Reb/2018, 13/AC/SKL/Reb/2018 and 14/AC/SKL/Reb/2018 all dated 16.07.2018. Aggrieved, the applicant filed appeals which were rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

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

(a) while rejecting the rebate claim learned Assistant Commissioner as well as Commissioner (Appeals) have conveniently ignored the applicant's submission of earlier filing the rebate claim with available documents. It is submitted that application of rebate claim is required to be presented with relevant documents with the jurisdictional Division office of Central excise for necessary verification. The rebate claim application is acknowledged only after necessary approval by the scrutiny officer. It would be vital to mention here that all rebate claim applications are subjected to scrutiny by Division office of central excise. The rebate claim application is not accepted by Inward Section without approval of the

scrutiny officer of the Division. The rebate application after due scrutiny and approval by the Division office is accepted by inward section and then acknowledged. In the backdrop of procedure set out for accepting the rebate claim, it is submitted that applicant had presented rebate application along with duplicate and triplicate copy of ARE-1, duplicate copy of invoice, self-attested copy of shipping bill and self-attested copy of bill of lading but without BRC before the rebate sanctioning officer. However, same was not acknowledged by inward section for want of BRC. As such without making any inquiry into the submissions of the applicant to the effect that rebate claim was earlier presented and Division office did not accept, the impugned order is not proper and legal. Therefore, the order of the learned Commissioner (Appeals) may please be quashed and set aside.

(b) The applicants in their reply to the show cause notice specifically submitted that rebate application was earlier presented on 18-1-2017 before the officer of central excise Division, however, same was not accepted as BRC was not accompanied with the rebate claim. It is submitted that learned Assistant Commissioner in his order nowhere refuted the prevailing practice of accepting rebate claim application at the Division office. Further, first appellate authority has also failed to consider the prevailing practice of accepting rebate claim at Division level. The learned Commissioner (Appeals) ought to have made inquiry in respect of the submission of the applicant to the effect that rebate applications are subject to scrutiny by Division office. As such the applicant's contention of their filing the rebate claim application with available documents ought to have been taken into consideration. However, neither adjudicating authority nor learned Commissioner (Appeals) has given any finding on the contention of the applicant nor refuted the contention. As such impugned order suffers from infirmity and needs to be quashed and set aside.

(c) In connection with the submission that applicants presented rebate claim on 18-1-2017 and that Mr. Pratap Barot of applicants' company visited Division office of central excise on 18-1-2017 for submitting rebate application in respect of goods exported under ARE-I No. 19 dated 25-07-2016. In light of the affidavit of Mr. Pratap Barot, it establishes that rebate application was present on 18-1-2017 in the Division office of central excise. Therefore, order of learned Commissioner (Appeals), rejecting rebate claim on the ground of limitation may please be quashed and set aside.

(d) It is submitted that rebate claim has been rejected solely on the ground of limitation without taking into consideration of presenting rebate claim without BRC at earlier date. It is submitted that applicant had in fact presented rebate claim with all the specified documents but without BRC in the Division office of central excise. However, as per the prevailing practice rebate claim was scrutinized by the concerned officer at Division office. Since BRC was not accompanied with rebate claim, the concerned officer did not accept the rebate claim and directed employee of the applicant to file rebate claim on receipt of BRC. Here it is imperative to mention that rebate claim with incomplete documents is not accepted by Division office. The procedure of lodging of rebate claim is to furnish rebate claim along with all the specified documents and other documents specified by the Division office of central excise. The rebate claim is subject to scrutiny by concerned officer of Division at central excise office. On satisfaction of the officer that all the relevant documents are accompanied with rebate claim, the application of rebate claim is acknowledged either by Division office or by inward section of the Division. However, rebate application with incomplete documents is not allowed to be submitted in the Division office. In the above backdrop of procedure of filing rebate claim at Division office, it is submitted that applicants had earlier presented rebate claim with all the specified documents except BRC, however, rebate claim was not

accepted and acknowledged for want of BRC. In the circumstances, filing of rebate claim with BRC to meet with the procedure of rebate sanctioning authority cannot be construed as filing the rebate claim after the expiry of one year from the relevant date. However, neither Assistant Commissioner nor learned Commissioner (Appeals) has discussed the above procedure and discarded the submission of applicants of submitting rebate claim earlier. In light of the above, impugned order may please be quashed and set aside.

(e) It is submitted that a man of ordinary prudence and diligence shall not prefer to prejudice his interest seeking remedy belatedly. While a vigilant only gets leniency for delay, an indolent fail to receive such consideration. Ordinarily an applicant does not stand to benefit by lodging an application late. Inasmuch as by lodging application belatedly not only the application may hit by time but the benefit accruing from the application is also delayed. It is in the interest of the exporter to file rebate claim at the earliest occasion, so that the duty paid by the exporter is refunded at the earliest. However, rebate claim is delayed for want of various documents. It could be delay of customs authorities or excise officer to provide triplicate copy of ARE-1 or the bank to issue BRC. In the present case applicant though presented rebate application within the stipulated period, the same was not acknowledged for want of BRC. When applicants furnished rebate application with all the required documents, the rebate application has been found barred by limitation. In light of the fact that applicants earlier presented rebate application without BRC within stipulated period and learned Commissioner (Appeals) has grossly failed to give finding on this vital submission, the order passed by him may please be quashed and set aside.

(f) The applicants in their reply to the show cause notice contended that limitation is to be considered in light of the availability of requisite documents. However, adjudicating authority as well as learned Commissioner (Appeals) has discarded the

submission and held that decision relied on by the applicants is not applicable as same deals with delay in providing document on the part of the department. With respect to such finding of learned Commissioner (Appeals), it is submitted that ratio of the decision squarely applies to the case of the applicant. In as much as the Honourable High Court in the case of Gravita India Ltd. V/s. UOI cited at 2016(334)ELT-321(Raj.) has held that *"any procedure prescribed by a subsidiary legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. The claimant cannot be asked to tender deficient claim within limitation period and claim cannot be simultaneously treated as not filed till documents furnished, if the manual of supplementary instruction indicating that refund or rebate claim deficient in any manner to be admitted when delay in providing document is attributable to the Department."* On perusal of the judgment of Honourable High Court it would be seen that department should not insist on procedural requirement in respect of admitting rebate claim. In the present case also the rebate application presented without BRC was not acknowledged and when applicants furnished rebate claim with all the required documents, same has been held time-barred. Further, Honourable High Court has held that if delay is caused in furnishing claim of refund for want of all the requisite documents, the limitation is to be considered in light of the availability of requisite documents. In the case before Honourable High Court the requisite document was not provided by customs department, whereas in the present case required document viz. BRC was not made available by the bank. Therefore, ratio of the judgment applies to the present case. Inasmuch as applicant was prevented from filing rebate claim in spite of satisfying all the conditions of rebate claim and more specifically vital condition viz. export of goods and payment of central excise duty. Therefore, order passed by the learned Commissioner (Appeals) may please be quashed and set aside.

(g) The learned Commissioner (Appeals) in para 9 of OIA relied on GOI's order in the case of Vee Excel Drugs & Pharma Pvt. Ltd. cited at 2012(283)ELT-305 wherein the judgment of Honourable Supreme Court in the case of IJOI V/s. Kirloskar Pneumatic Company cited at 1996(84)ELT401(SC) has been referred to the effect that customs authorities cannot be directed to ignore or act contrary to Section 27 of Customs Act. Meaning thereby authorities cannot condone the delay in filing the refunds. The decision of GOI is distinguishable as in the present case applicant has not sought condonation for delay in filing the rebate claim. Inasmuch as applicant had already furnished rebate claim before the authority viz. jurisdictional Division office, however, same was not accepted and acknowledged for want of BRC. Since applicant was prevented from filing rebate claim inspite of satisfying all the conditions of rebate claim and more specifically vital conditions viz. export of goods and clearance of goods on payment of duty, the ratio of judgment of Honourable High Court in the case of Gravita India Ltd. V/s. UOI cited at 2016(334)ELT-321(Raj.) applies to the facts of the present case. As such order of GOI in the case of M/s. Vee Excel Drugs and Pharma Pvt. Ltd., referred to by the Commissioner (Appeals) is not applicable in the facts of the present case. Therefore, order passed by the learned Commissioner (Appeals) may please be quashed and set aside.

(h) Further, learned Commissioner (Appeals) in para 9 of OIA relied on the decision of Honourable Gujarat High Court in the case of Pacific Exports V/s. UOI cited at 2017(346)ELT-240(Guj.). With respect to decision of Honourable High Court in the case of Pacific Exports, it is pointed out that the petitioner failed to offer any reason causing delay in filing rebate claim. However, in the present case applicants specifically claimed that delay in filing rebate claim was due to non-availability of BRC and accordingly, applicants in reply to the show cause notice took the ground that rebate claim was not submitted within stipulated period for want of BRC. As such

judgment of Honourable High Court in the Pacific Exports, relied on by the learned Commissioner (Appeals) is distinguishable. Therefore, order impugned may please be quashed and set aside.

(i) It is submitted that rebate claim has been rejected on the ground of limitation provided under Section 11B of CEA. With respect to limitation stipulated under Section 11B of CEA, the Honourable Supreme Court in the case of Dy. Commissioner of CE, Chennai V/s. Dorcas Market Makers Pvt. Ltd. cited at 2015(321)ELT-45(Mad.) has held that:

*Therefore, we are of the considered opinion that the view taken by the learned Judge that Rule 18 is to be construed independently, cannot be said to be wrong.....*

In light of the above judgment of Honourable Supreme Court, the order passed by learned Commissioner (Appeals) may please be quashed and set aside.

(j) The Honourable Supreme Court in the case of Dy. CCE, Chennai V/s. Dorcas Market Makers Pvt. Ltd. cited at 2015(321)ELT-45(Mad.) while examining the provisions of Section 11B of CEA in respect of limitation in para 14 of their judgment has held as under:

*14. There is yet another paradox. As we have pointed out earlier, sub-section (3) of Section 11B contains a non obstante clause which excludes any judgment, decree or order of any Court or Tribunal. But, the definition of the expression "relevant date" under Clause (B)(ec) of the explanation under sub-section (5) of Section 11B includes within its purview the date of judgment, decree or order, in cases where the duty becomes refundable as a consequence of any judgment, decree or order. This is perhaps the reason why the non obstante clause contained in sub-section (3) is specifically made applicable only to the power of the Assistant Commissioner to order refund under sub-section (2). It is not made applicable to sub-section (1) of Section 11B which stipulates the period of one year for filing a claim.*

In light of the above judgment of Honourable Supreme Court, it is revealed that rebate claim under the provisions of Section IIB(I) of CEA cannot be rejected on the ground of limitation. Here it may be submitted that neither adjudicating authority nor learned



Commissioner (Appeals) has disputed rebate claim under the provisions of Rule 18 of CER. Therefore, order passed by learned Commissioner (Appeals) may please be quashed and set aside.

(k) Further, as per Clause (3)(c) of notification No.19/2004-CE(NT) an exporter may file rebate claim electronically. Since there is no time limit of filing claim of rebate by electronic declaration, order passed by learned Commissioner (Appeals), rejecting rebate claim on the ground of limitation is not proper and just.

(l) It is submitted that applicant in reply to the show cause notice submitted that quadruplicate copy of ARE-I may be treated as application of rebate claim, inasmuch as in paragraph 1 of form ARE-I application, particulars of Assistant Commissioner/Deputy Commissioner of Central Excise from whom rebate shall be claimed are mentioned. However, neither Assistant Commissioner nor Commissioner (Appeals) has given any finding on the above contention of the applicant. As such order of the learned Commissioner (Appeals) may please be quashed and set aside.

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

4. Personal hearing in the case was fixed for 11.01.2023. Shri Varis Isani, Advocate attended the hearing and submitted that instant claims got delayed as BRC was not available. He submitted that since export of duty paid goods was not in doubt, time limit of Section 11B of Central Excise Act, 1944 should not apply as Rule 18 is a self contained rule. He requested to provide one week time to submit addition submissions.

4.1 In their additional submission, the applicant submitted a Declaration cum Affidavit dated 20.01.2023 executed by Shri Kamleshbhai Ramakantbhai Modi, Partner of M/s. Prima Chemicals, wherein he has inter alia repeated the sequence of events in the instant matter alongwith supporting documents.

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 filed following rebate claims under Rule 18 of Central Excise Rules, 2002:

ARE-1 No./ Date	Date of export	Date of filing rebate claim	Amount of Rebate claimed (in Rs.)
19/25.07.2016	27.07.2016	27.03.2018	6,03,419/-
49/29.12.2016	31.12.2016	16.04.2018	7,22,344/-
50/29.12.2016	30.12.2016	25.04.2018	2,52,000/-
19.01.2017	20.01.2017	27.03.2018	1,47,250/-

After verification of documents submitted, the rebate sanctioning authority rejected the rebate claims, vide 4 separate OIOs, on the grounds of being time barred in terms of section 11B of the Central Excise Act, 1944 as they were filed after the prescribed period of one year from the relevant date.

7.2 Government observes that the applicant has contended that rebate application was earlier presented before the officer of central excise Division, however, same was not accepted as BRC was not accompanied with the rebate claim. In this connection the applicant has submitted affidavit of Mr. Pratap Barot, an employee of the applicant, who had visited Division office of Central Excise for submitting rebate application. However, Government finds that in the laid down procedure for filing rebate, viz. Chapter 8 of Central Excise Manual, there is no provision for filing Affidavit and hence Government consents with the conclusion by the lower authorities that no documentary evidence had been submitted by the applicant to prove their point that the rebate claims were presented within the stipulated period.

7.3 Government observes that the applicant has relied upon the case law of M/s. Gravita India Ltd. However, Government observes this case law has been distinguished by Hon'ble Delhi High Court in the case of M/s. Orient Micro Abrasives Ltd. [2020 (371) E.L.T. 380 (Del.) [27-11-2019]]. The relevant para from this judgment is reproduced hereunder:

*16. We also record our respectful disagreement with the views expressed by the High Court of Gujarat in Cosmonaut Chemicals [2009 (233) E.L.T. 46 (Guj.)] and the High Court of Rajasthan in Gravita India Ltd. [2016 (334) E.L.T. 321 (Raj.)], to the effect that, where there was a delay in obtaining the EP copy of the Shipping Bill, the period of one year, stipulated in Section 11B of the Act should be reckoned from the date when the EP copy of the Shipping Bill became available. This, in our view, amounts to rewriting of Explanation (B) to Section 11B of the Act, which, in our view, is not permissible.*

Further, Government observes in the case of M/s. Gravita India Ltd, the Hon'ble Court had referred to case law of Dorcas Market Makers Pvt. Ltd. The applicant has also relied upon this case law. However, Government observes that 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)]. 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 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.”*

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. AHM-EXCUS-001-APP-079 to 082-2018-19 dated 27.11.2018 passed by the Commissioner (Appeals), Central Tax, Ahmedabad and rejects the impugned Revision Applications.

  
(SHRAWAN KUMAR)

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

ORDER No. ~~222-225~~/2023-CX (WZ)/ASRA/Mumbai dated 05.11.2023

To,  
M/s. Prima Chemicals (Unit-II),  
Plot No. 1904, Phase-IV,  
GIDC Estate, Vatva,  
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Copy to:

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2. Adv. Varis V. Isani,  
103 to 106, 203, Ellisbridge Shopping Centre,  
Opp. Town Hall, Ellisbridge, Ahmedabad - 380 006.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.