

REGISTERED SPEED POST AD



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. 195/895-901/2010-RA

/ 954

Date of Issue:

07.03.2022

ORDER NO. ²²³⁻²²⁹ /2022-CX (SZ)/ASRA/MUMBAI DATED 03.03.2022
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 Hatsun Agro Products Ltd.
Attur Main Road, Karumapuram,
Salem - 636 106

Respondent : Commissioner of CGST & Central Excise, Salem

Subject : Remand proceedings in terms of Order of the Hon'ble High Court of Madras in Writ Petition No. 27392 of 2012 in Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. 54/2010-(CE)SLM dated 23.09.2010 and Orders-in-Appeal No. 55-60/2010-(CE)SLM dated 27.09.2010 passed by the Commissioner of Central Excise(Appeals), Salem.

ORDER

These revision applications had been filed by M/s Hatsun Agro Products Ltd., Attur Main Road, Karumapuram, Salem - 636 106(hereinafter referred to as "the applicant") against Order-in-Appeal No. 54/2010-(CE)SLM dated 23.09.2010 and Orders-in-Appeal No. 55-60/2010-(CE)SLM dated 27.09.2010 passed by the Commissioner of Central Excise(Appeals), Salem. The revision applications had been rejected by the Revisionary Authority vide Order No. 725-731/2012-CX dated 29.06.2012. Aggrieved by the rejection of the revision applications, the applicant had filed Writ Petition No. 27392 of 2012 before the Hon'ble High Court of Madras.

2. The main ground in the petition was that Order No. 725-731/2012-CX dated 29.06.2012 had been passed by the Joint Secretary(Revision Application), Government of India who was also in the rank of Commissioner of Central Excise & Customs who had passed the Order-in-Appeal which had been challenged before him which was impermissible in law. Reliance was placed upon the Order dated 24.01.2017 of the same court in the case of S. Moinuddin vs. Joint Secretary, Government of India, Ministry of Finance, New Delhi in Writ Petition No. 16682 of 2016. The court had directed in that order that the matter be taken up by an authority after taking corrective measures in this regard. The Ld. Senior Panel Counsel appearing for the Department had stated that the Revisional Authority had been reconstituted after taking note of the anomaly pointed by the Hon'ble Madras High Court. The Hon'ble Court therefore quashed the impugned order and remitted the matter back to the present Revisional Authority for fresh consideration of the matter after according full opportunity of hearing to the petitioner(applicant) after dealing with each of the contentions raised and pass reasonable orders on merits in accordance with law, uninhibited and uninfluenced by the orders impugned before the court which had been set aside and communicate the decision taken to the petitioner(applicant).

3.1 The facts of the case are briefly stated. The applicant is a manufacturer of skimmed milk powder, butter oil, anhydrous milk fat, Delta 101 Annato suspension and confectionary fat etc. falling under chapter heading 0402 and 0405 of the CETA, 1985. The applicant clears their goods for home consumption as well as for export. They use duty paid inputs/packaging materials/consumables in the manufacture of their final product which are also cleared for export. The applicant had therefore filed several rebate claims. On examination of the claims, the jurisdictional Assistant Commissioner found that rebate claims in six cases had been filed beyond the stipulated period of one year. In the remaining one claim, it was again found that the applicant had filed part of the rebate claim beyond the stipulated period of one year. After following due process of law, the jurisdictional Assistant Commissioner rejected these claims as time barred under seven separate orders-in-original.

3.2 The applicant being aggrieved by these orders-in-original filed appeals before the Commissioner(Appeals). The Commissioner(Appeals) upheld the orders of the original authorities and rejected the appeals filed by the applicant.

3.3 The applicant then filed revision applications before the Joint Secretary(Revision Application). The Joint Secretary(Revision Application) after hearing the applicant passed Order No. 725-731/2012-Cx dated 29.06.2012 holding that the rebate claims had been filed after the stipulated time limit of one year and therefore the rebate claims being time barred in terms of Section 11B of the CEA, 1944, their appeals had correctly been rejected by the Commissioner(Appeals).

4. The Writ Petition No. 27392 of 2012 filed by the applicant against the Order No. 725-731/2012-Cx dated 29.06.2012 has now been decided by the Hon'ble Madras High Court by quashing the said order, remitting the matter back to the present Revisional Authority for fresh consideration and passing reasoned order on merits.

5.1 In keeping with the directions of the Hon'ble High Court, Government now proceeds to take up afresh the revision application filed by the applicant for a decision on merits. The applicant was granted an opportunity for personal hearing. Shri Manoj Niranjana, C.A. appeared online on 09.12.2021 on behalf of the applicant. He informed that he would be filing written submissions in the matter and requested that the rebate claims be sanctioned.

5.2 The applicant filed written submissions vide letter dated 09.12.2021 and stated that the issue regarding availability of rebate was being agitated before the Department in F. No. 195/269/07-RA-CX. The issue involved therein was whether inputs such as furnace oil would be eligible for rebate. The applicant argued that as the matter was pending before the Joint Secretary and had been escalated to such a level, there ought not to be any question of bar of limitation in the present claims. This matter was decided by the Joint Secretary(Revision Application) vide Order No. 357/10-CX dated 05.03.2010. The applicant drew attention to para 14 of the Order dated 05.03.2010 to contend that for export oriented schemes like rebate, an unduly restricted and technical interpretation of procedure is to be avoided so as not to defeat the purpose of such schemes, that such schemes serve as export incentives to boost exports and earn foreign exchange. The para 14 further sets out that the core aspect or fundamental requirement for rebate is manufacture of goods and subsequent export and that if these requirements are met other procedural deviations can be condoned.

5.3 The applicant referred the decision of Hon'ble Bombay High Court in *Jam Shri Ranjitsinghji SPG & WVG Mills Co. Ltd. vs. UOI*[2007(218)ELT 516(Bom)] wherein it was held that once the dispute has been escalated to High Court level, the provisionality of assessment would continue for the subsequent period. It was pointed out that this decision had been upheld by the Hon'ble Supreme Court in [2010(254)ELT A96(SC)]. The applicant explained that the Hon'ble Bombay High Court had clearly held that when an issue in dispute is being heard by the High Court or any other appellate authority, the issue ought to be considered as provisional with reference to

the assessment. Therefore, since the assessment was provisional, the aspect of time bar would not be applicable. In view of this judgment and since the issue had already been decided by the Hon'ble Bombay High Court, regarding provisionality and erstwhile order of the Joint Secretary on the identical issue for earlier period, it was prayed that the order of the Commissioner(Appeals) be set aside and the rebate claims be sanctioned.

6. Shri R. Premkumar, Assistant Commissioner, Salem-I Division appeared online on behalf of the Department and submitted that the rebate claims had been filed after the stipulated period of one year and therefore are clearly time barred.

7. On going through the records, Government finds that the applicant had filed revision application on the following grounds:

- (a) The applicant averred that there was no doubt about the fact of export of goods or use of duty paid inputs and that the conditions for claiming rebate as per Section 11B of the CEA, 1944 had been fulfilled.
- (b) The applicant submitted that their earlier claim for rebate was pending before the Joint Secretary(Revision Application)[JS(RA)] in revision application filed vide F. No. 195/269/07-RA-CX on the date when these rebate claims had been filed. The issue involved therein was whether inputs such as furnace oil would be eligible for rebate was in dispute. The order deciding this matter was issued by the JS(RA) on 05.03.2010. It was argued that since the issue had been escalated to such a high level, bar of limitation under Section 11B would not be applicable especially because an identical issue for the same issue was pending before the Government of India.
- (c) The applicant contended that the judgment in the case of Jam Ranjitsinghji SPG & WVG Mills Co. Ltd. vs. UOI would be applicable to their case as the bench had ruled that once the dispute has been escalated upto the High Court, the provisionality of the assessment continued for the subsequent period. The

- Commissioner(Appeals) had wrongly held that the ratio of this case law is not applicable to the facts of the present case.
- (d) The applicant averred that even if it was assumed for a moment that the rebate claim had been filed beyond the period of limitation, it was a procedural lapse which must be seen in the light of substantial compliance made by them.
- (e) The applicant referred to the relevant portion of the decision of JS(RA) in F. No. 195/269/07-RA-CX dated 05.03.2010 and contended that it resolved the conflict as to whether the applicant is entitled to rebate with clarity and held in favour of the applicant.
- (f) Reliance was place upon the judgments in the case of Gypsy Exports vs. Commissioner[2001(128)ELT 97(Trb)], IFGL Refractories Ltd. vs. Joint Director General of Foreign Trade[2001(132)ELT 545(Cal)], Thermax (P) Ltd. vs. CCE[1992(61)ELT 352(SC)] and Associated Cement Co. Ltd. vs. CCE[1999(111)ELT 257] to contend that once substantive conditions are fulfilled, drawback, exemption and other benefits cannot be denied for non-observance of procedural conditions.
- (g) The applicant further referred the decision of the Tribunal in the case of Khabros Steel (I) Ltd. vs. CCE[2002(141)ELT 257] wherein the bench held that the Commissioner of Central Excise is empowered to allow rebate even if all or any of the conditions laid down under the notification issued with reference to rebate have not been complied with. The only requisite is that there should be proper evidence about the fact that goods have been exported.
- (h) With regard to the findings of Commissioner(Appeals) on the basis of CBEC Circular No. 234/68/96-CX. dated 26.07.1997 which stated that limitation period for filing rebate claim as prescribed under Section 11B of the CEA, 1944 was absolute and does not have any provision for relaxation, the applicant averred that the Commissioner(Appeals) had not taken into account the fact of pending claim before the Government of India. Therefore, the circular of CBEC is not relevant to the facts of the case.

- (i) The applicant placed reliance upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of CCE vs. Hari Chand Sri Gopal[2010-TIOL-95-SC-CX-CB] holding that substantial compliance would suffice and procedural lapses would not preclude the benefit of exemption.
- (j) The applicant submitted that they have done all in their power to abide by the restrictions of law. The export of the final manufactured product was not in dispute and that is the substantial condition which the applicant was required to fulfill.

8.1 The applicant had thereafter filed written submissions at the time of personal hearing through Shri R. K. Sharma, Sr. Counsel. They stated that the first reason for not filing the rebate claim in time was that a similar case was pending consideration before the Revisionary Authority in F. No. 195/269/07-RA-CX. The second reason for not filing the rebate claims within the time limit was the prolonged sickness of the staff and the concerned documents being misplaced. The documents were found late and therefore the claims could only be filed after a delay of about eight months on 15.12.2009. An affidavit to that effect had been filed by the concerned employee of the applicant. They stated that the first reason for delay was mistaken interpretation of law and the second reason was beyond their control. The applicant again placed reliance upon the judgment of the Hon'ble Supreme Court in the case of CCE, New Delhi vs. Hari Chand Shri Gopal[2010(260)ELT 3(SC)]. They further averred that they have fulfilled the essence or substance of the requirements to achieve the object and purpose of the rule so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was instituted in as much as the final products have been exported and BRC to the effect that foreign exchange has been earned out of the said export had been produced by them.

8.2 The applicant claimed that they had filed the rebate claim late due to mistake of law and prolonged leave of the concerned employee due to illness. The applicant averred that this delayed filing of rebate claim was procedural in nature. They therefore requested that the lapse be condoned and rebate

be allowed. The applicant placed reliance upon the case laws in Shivnath Rai Harnarain (India) Ltd.[2008(230)ELT 243(Bom)], GOI Order No. 527-528/2005 dated 18.11.2005 In Re : Modern Process Printers Ltd.[2006(204)ELT 632(GOI)], Mangalore Chemicals and Fertilizers Ltd. vs. Dy. Commissioner[1991(55)ELT 437(SC)], Birla VXL[1998(99)ELT 387(Tri.)], Alfa Garments[1996(86)ELT 600(Tri.)]Alma Tube[1998(103)ELT 270(Tri.)], Creative Mobous[2003(58)RLT 111(GOI)], Ikea Trading India Ltd.[2003(157)ELT 359(GOI)], In Re : Murli Agro Products Ltd.[2006(200)ELT 0175(GOI)], In Re : Barot Exports[2006(203)ELT 321(GOI)], UOI vs. Suksha International[1989(39)ELT 503(SC)], UOI vs. A. V. Narasimhalu[1986(13)ELT 1534(SC)] and GOI Order No. 469-484/11 in the matter of Reliance Industries Ltd.

9. Government has carefully gone through the Order dated 04.08.2021 passed by the Hon'ble Madras High Court in W.P. No. 27392 of 2012, the revision application filed by the applicant, their written submissions, oral submissions at the time of personal hearings, the orders passed by the lower appellate authority and the original authority.

10.1 The present proceedings are in compliance of the Order dated 04.08.2021 passed by the Hon'ble Madras High Court and hence it would be apt to appreciate the terms on which the matter has been remitted back to the Government for decision. The text of the order of the Hon'ble Court is reproduced hereinafter.

"3. The learned counsel for the petitioner has brought to notice of this Court that the impugned order has been passed by the Joint Secretary (Revision Application), Government of India, who was also in the same rank of Commissioner of Central Excise and Customs, who had passed the Order-in-Appeal which had been challenged before him in that revision application, which is impermissible in law. He has also placed reliance on the decision of this Court in S Moinuddin -vs- Joint Secretary, Government of India, Ministry of Finance, New Delhi (dated 24.01.2017 in W.P. No. 16682 of 2016), where this Court has interfered with the order that had been impugned therein in respect of similarly placed persons on that sole ground and had directed the matter to be heard by an authority after taking corrective measures

in that regard. The learned Senior Panel Counsel appearing for respondents 2 & 3, on instructions, states that subsequently, the Revisional Authority has been re-constituted, taking note of the anomaly pointed out by this Court.

4. Having regard to the aforesaid submissions made, the impugned order is quashed and the matter is remitted to the present Revisional Authority under Section 129DD of the Act for fresh consideration of the matter. It shall be incumbent upon the Revisional Authority, after affording full opportunity of hearing to the petitioner, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law, uninhibited and uninfluenced by the impugned order which has been set aside and communicate the decision taken to the petitioner.

5. In fine, the Writ Petition is ordered on the aforesaid terms. No costs."

10.2 On going through the order, it is apparent that the Hon'ble Court has remitted the matter back to the Revisionary Authority for the sole reason that the Order No. 725-731/2012-Cx dated 29.06.2012 was passed by a Joint Secretary level officer who was in the same rank as the Commissioner(Appeals) who had passed the order impugned before him. Government observes that the anomaly of officer in equal rank as Commissioner(Appeals) deciding the revision application has been rectified by appointing an officer of the rank of Additional Secretary to the Government of India as Revisionary Authority. Therefore, this issue has now been resolved. While taking up the revision application for decision, Government notes that the Hon'ble Madras High Court has not gone into the merits of the case or recorded any observations about the merits. The directions of the Hon'ble High Court is that the matter be considered afresh by affording full opportunity of hearing, by dealing with each of the contentions raised, uninhibited and uninfluenced by the Order dated 29.06.2012 and pass reasoned orders on merits in accordance with law.

10.3 Respectfully following the order of the Hon'ble High Court, Government takes up the revision application for decision on merits. It is observed that the rebate claims filed by the applicant had been rejected by the original authority on the single ground that they were time barred; in that the rebate claims had been filed beyond a period of one year from the

date of export. The appellate authority has upheld the orders of the original authority. The grounds for revision filed by the applicant are based on the contention that the late filing of rebate claim beyond the time limit of one year is a procedural lapse and not substantive in nature. The applicant has placed reliance on various case laws to bolster this contention. The applicant has also averred that the revision application filed by them which was pending at that time before the Revisionary Authority would mean that the bar of limitation would not apply to the subsequent rebate claims.

10.4 In the light of the contentions raised by the applicant in the revision application, it would be imperative to first examine whether the requirement of filing rebate claim within the stipulated time limit of one year is procedural in nature. Government observes that Rule 18 of the CER, 2002 has been conceived in exercise of the powers vested under Section 37 of the CEA, 1944 to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA, 1944. Moreover, the Explanation (A) to Section 11B explicitly sets out that for the purposes of the section "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. The duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India is covered by Rule 18. Likewise, the third proviso to Section 11B(2) of the CEA, 1944 identifies "rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India" as the first category of refunds which is payable to the applicant instead of being credited to the Fund. Finally yet importantly, the Explanation (B) of "relevant date" in clause (a) specifies the date from which limitation would commence for filing refund claim for excise duty paid on the excisable goods and the excisable goods used in the manufacture of such goods. It would be apparent from these facts that Section 11B of the CEA, 1944 covers refund of rebate within its ambit. If the contention of the applicant that time limit under Section

11B is not relevant for processing rebate claims is accepted, it would render these references to rebate in Section 11B superfluous.

10.5 It can be seen from the Act that Section 37 of the CEA, 1944 by virtue of sub-section (2)(xvi) through the CER, 2002 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, Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the CER, 2002 to set out the procedure to be followed for grant of rebate of duty on export of goods.

10.6 The statute is sacrosanct and is the edifice on which the rules and other delegated legislations like notifications are based. An argument which suggests that a delegated legislation can allow greater liberties for refund of rebate than the statute itself 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."

10.7 The inference that follows from the judgment of the Hon'ble High Court is that, 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. 21/2004-CE dated 06.09.2004 has been validly issued under Rule 18 of the CER, 2002 and the provisions of Section 11B of the CEA, 1944 have expressly been made applicable to the refund of rebate and therefore there is no question of the notification exceeding the

scope of the statute. The applicant was therefore duty bound to file rebate claim within the stipulated time limit of one year. In simple words, the time limit of one year stipulated by Section 11B of the CEA, 1944 for filing rebate claims is a statutory requirement and not a procedural requirement as contended by the applicant.

11.1 At this juncture, it would be apposite to refer to the judgments of the Hon'ble Courts on the issue. The judgment of the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. vs. CCE[2012(281)ELT 227(Mad.)] had negated the applicability of Section 11B to rebate claims. However, 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.

11.2 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."

11.3 Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UOI[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.”

In such manner, the Hon'ble High Courts of Karnataka and Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it.

12.1 The applicant has put forth two different reasons to explain the delay in filing rebate claim. The first reason put forth is that a similar case was pending before the Revisionary Authority in F. No. 195/269/07-RA-CX and since the issue had been escalated to such a high level, the bar of limitation would not be applicable. There is clearly no provision which filing of rebate claim without bar of limitation when a similar case is being agitated before a higher forum. The only exception under Section 11B of the CEA, 1944 from the bar of limitation is for cases where duty has been paid under protest. This defence of the applicant is clearly a contrived argument. Moreover, if the applicant truly believed in this stand, they would have waited for the revision application involved under F. No. 195/269/07-RA-CX to be decided before filing the rebate claims. However, they have filed rebate claims on 15.12.2009 whereas the revision application involved under F. No. 195/269/07-RA-CX was decided vide Order No. 357/10-CX dated 05.03.2010. This fact exposes the hollowness of the reasoning put forth for

delayed filing of rebate claims.

12.2 The second reason put forth by the applicant for delayed filing of rebate claim was the prolonged illness of the staff member. The applicant submission contains an affidavit filed by Shri K. Ravi, an employee wherein he has stated that he had met with a road accident and was bed ridden from February 2009 for eight months thereafter. The fact that the work of a large concern would have been kept waiting for eight months due to the absence of one employee is very unprofessional and grave laxity on the part of the applicant. As has been held by the Hon'ble Gujarat High Court in its judgment in *Nice Construction vs. UOI*[2017(5)GSTL 361(Guj.)], *surely, the law does not come to the aid of indolent, tardy or lethargic litigant*. Hence, this submission cannot be sustained.

12.3 The applicant was required to continue filing rebate claims within the stipulated time limit which they have failed to do. Even if it is assumed for a while that there is substance in the submissions made by the applicant to explain the delay in filing rebate claims, the irrefutable fact in the present case is that the Central Excise Act, 1944 provides for a period of limitation for filing rebate claims in Section 11B of the CEA, 1944. The powers of revision vested in the Central Government under Section 35EE of the CEA, 1944 are required to be exercised within the scope of the CEA, 1944 which includes Section 11B of the CEA, 1944. In other words, notwithstanding the mitigating circumstances or compelling facts, there can be no exercise of powers in revision outside the scope of the Central Excise Act, 1944.

13. The applicant has cited various case laws and placed reliance upon their ratio to contend that the time limit under Section 11B of the CEA, 1944 is a procedural requirement and is not mandatory. As it were, the judgments/orders cited by the applicant are not squarely on this point and therefore would not be applicable to the facts of the case. However, Government is persuaded by the principle of contemporaneous exposition of law in the later judgments of *Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru*[2020(371)ELT 29(Kar.)] and *Orient Micro*

Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)] which very unequivocally hold that the time limit specified in Section 11B of the CEA, 1944 would be applicable to rebate claims. Moreover, the ratio of the judgment of the Hon'ble Supreme Court in the case of UOI vs. Uttam Steel Ltd.[2015(319)ELT 598(SC)] still holds the field and is a binding precedent. Government respectfully follows the ratio of these judgments of the Hon'ble High Courts and the Hon'ble Supreme Court.

14. In the result, the rebate claims having been filed by the applicant beyond the time limit of one year specified under Section 11B of the CEA, 1944 are time barred. Government therefore finds no reason to interfere with the impugned orders-in-appeal. The revision applications filed by the applicant are rejected as being devoid of merits.


(SHRAWAN KUMAR)

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

ORDER No. ²²³⁻²²⁹ /2022-CX (SZ) /ASRA/Mumbai DATED 03.03.2022

To,
M/s Hatsun Agro Products Ltd.
Attur Main Road, Karumapuram,
Salem - 636 106
Copy to:

- 1) The Commissioner of CGST & CX, Salem
- 2) The Commissioner of CGST & CX, Coimbatore(Appeals)
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file