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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 195/262/WZ/2019-RA

3419

Date of Issue: ~~04.2023~~

01.05.2023

ORDER NO. 241 /2023-CX (WZ) /ASRA/MUMBAI DATED 27.04.2023
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 Jindal Poly Films Ltd,
28th KM Stone, Nashik-Igatpuri Road,
NH-3, Village Mundhegaon, Tal: Igatpuri
District Nashik-422 403

Respondent: The Commissioner, GST and Central Excise, Nashik

Subject : Revision Application filed under Section 35EE of Central Excise
Act, 1944 against the Order-in-Appeal No. NSK-EXCUS-000-
APPL-64-19-20 dated 13.06.2019 [Date of issue: 18.06.2019]
passed by the Commissioner (Appeals), Central GST & Central
Excise, Nashik

ORDER

The Revision Applications have been filed by M/s Jindal Poly Films Ltd, situated at 28th KM Stone, Nashik-Igatpuri Road, NH-3, Village Mundhegaon, Tal: Igatpuri, District Nashik-422 403 (hereinafter referred to as the 'Applicant') against the Orders-in-Appeal Nos. NSK-EXCUS-000-APPL-64-19-20 dated 13.06.2019 [Date of issue: 18.06.2019] passed by the Commissioner (Appeals), Central GST & Central Excise, Nashik.

2.1. Brief facts of the case are that the Applicant had filed rebate claims for Rs. 1,39,095/- in terms of Section 11B of the Central Excise Act, 1944 in respect of duty paid on goods exported in terms of Rule 18 of the Central Excise Act, 2002. The details of the rebate claim is as under:

Sr No	Name of the Applicant	ARE-1 No and date	Duty paid	Shipping bill No and date	Date of filing rebate claim
1	M/s Jindal Poly Films Ltd	628/13.05.2017 700/18.05.2017	1,08,222/- 30,873/-	6062022/15.05.2017 6153577/18.05.2017	10.09.2018

On scrutiny of the rebate claim it was noticed that the rebate claim had been filed after more than one year from the date of shipment of goods out of India.

2.2. As the rebate claims were not filed before the expiry of one year from the relevant date as prescribed under Section 11B of the Central Excise Act, 1944, after following the process of law, the Original Adjudicating Authority vide Order-in-Original No. 03/NSK-II/R/2019-20 dated 01.04.2019 rejected the rebate claim filed by the Applicant as being barred by limitation of time.

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, Nashik. The Appellate Authority vide impugned Order-in-Appeal Nos. NSK-EXCUS-000-APPL-64-19-20 dated

13.06.2019 [Date of issue: 18.06.2019] rejected the appeal filed by the Applicant.

4. Being aggrieved by the Order-in-Appeal, the Applicant has filed the instant Revision Application on the following grounds:

4.1. That the impugned Order-In-Appeal have been passed without appreciating the factual and legal position as submitted by the Applicant and is liable to be set aside;

4.2. That the Appellate Authority have failed to appreciate that the claim had been filed in a bonafide manner against export of goods in terms of provisions contained under Rule 18 of the Central Excise Rules, 2002 for exports in the month of May 2017;

4.1. That the Appellate Authority have erred in rejecting the rebate claim without analysing the facts and data available on record and ignored legal provisions;

4.2. That the Appellate Authority have 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 there was no dispute relating to the said shipment for export and payment of duty on the goods exported by the Applicant;

4.4. That the Applicant was otherwise entitled for sanction of the amount of duty paid on the said shipment of export which could have been otherwise made without payment of Central Excise duty;

4.5. That the ground taken up for denial of the claim is based on period of limitation laid down under Section 11B of the Central Excise Act, 1944;

4.6. That as regards applicability of time bar, the Applicant relies on the decision of the Hon'ble Punjab & Haryana High Court in the case of *M.s JSL Lifestyle Ltd vs. Union of India* [2015(326) E.L.T 265 P & H]

Under the circumstances, the Applicant prayed for sanction of the rebate alongwith interest and/or to pass such order as deemed proper in the facts and circumstances of the case.

5. Personal hearing was scheduled in this case on 10.11.2022 or 23.11.2022, 14.12.2022 or 11.01.2023, 09.02.2023 or 16.02.2023. Shri Jhamman Singh, Advocate appeared for the personal hearing on 09.02.2023, on behalf of the Applicant. He reiterated the earlier submissions and contended that time limit provided under Section 11B of the Central Excise Act, is not applicable for rebate and requested to allow the application.

6. Government have 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 claim was time barred as it was 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 has relied on case laws to contend that filing the rebate claims beyond the limitation specified under Section 11B of the Central Excise Act, 1944 was a procedural lapse and denial of refund on technical and procedural grounds cannot be held to be mandatory grounds.

7.1 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;”*

7.2 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.

7.3. 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 have 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."

7.4 Any delegated legislation which derives its existence from the statute cannot stand by itself, much less override the statute.

7.5. Government notes that The Hon'ble Madras High Court have 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)], which 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. 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, have 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?', have 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 have 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 have 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. 628 dated 13.05.2017 and No. 700 dated 18.05.2017 which were exported under Shipping Bill Nos. 6062022 dated 15.05.2017 and 6153577 dated 18.05.2017 respectively. The Applicant has filed the rebate claims on 10.09.2018 in respect of ARE-1 No. 628 dated 13.05.2017 and No. 700 dated 18.05.2017, which are 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. 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. NSK-EXCUS-000-APPL-64-19-20 dated 13.06.2019 [Date of issue: 18.06.2019]

passed by the Commissioner (Appeals), Central GST & Central Excise, Nashik. and therefore, upholds the impugned Order-in-Appeal.

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


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER NO. 241/2023-CX (WZ) /ASRA/MUMBAI DATED 27.04.2023

To,

- 1) M/s Jindal Poly Films Ltd, 28th KM Stone, Nashik-Igatpuri Road, NH-3, Village Mundhegaon, Tal: Igatpuri, District Nashik-422 403.

Copy to :

- 1) The Commissioner, GST & Central Excise, Nashik, Plot No. 155, Sector-34, NH Jaistha-Vaishakh, CIDCO, Nashik 422 008
- 2) The Commissioner of GST & Central Excise, Nashik Appeals, Plot No. 155, Sector-34, NH Jaistha-Vaishakh, CIDCO, Nashik 422 008
- 3) Shri Jhamman Singh, Advocate, 602, A-Wing, Gurudristi Co-op Housing Society, S.V.P. Nagar, MHADA layout, Four Bungalows, Andheri (West), Mumbai 400 053
- 4) Sr. P.S. to AS (RA), Mumbai
- 5) Notice Board.