

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. 198/36/WZ/17-RA / 3442 Date of Issue: 01.05.2023

ORDER NO. 244/2023-CX(WZ)/ASRA/MUMBAI DATED 27.4.23 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 : Pr. Commissioner of CGST, Mumbai East.

Respondent : M/s. Associates Engineers,
7C, Hitex (Vardhaman) Indl. Estate,
S.V.Road, Dahisar (E),
Mumbai - 400 068.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Order-in-Appeal No. SK/41/M-IV/2016
Dated 20-12-2016 passed by the Commissioner (Appeals), Central
Excise, Mumbai Zone-I.

ORDER

The revision application has been filed by Pr. Commissioner of CGST, Mumbai East (herein after to be referred as "Applicant"), against Order-in-Appeal No. SK/41/M-IV/2016 Dated 20-12-2016 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. The respondent had filed rebate claims amounting to Rs. 82,659/- under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002 read with Section 11B of the Central Excise Act, 1944 for the goods cleared from the factory for export under ARE-1's. The concerned Deputy Commissioner, Central Excise, after following the due process of Law rejected the said rebate claim vide his Order-In-Original No. 81/R/20/DC/BVL/2015 dated 24.06.2015 being inadmissible under Section 11B of the CEA, 1944 as the rebate claim had been filed beyond the stipulated time limit of one year from the relevant date.

3. Aggrieved by the Order-in-Original dated 24.06.2015, the respondent filed appeal before the Commissioner(Appeals). The appellate authority after following due process of law set aside the Order-in-Original and allowed the appeal vide his Order-in-Appeal No. SK/41/M-IV/2016 Dated 20-12-2016.

4. Aggrieved by the OIA dated 20-12-2016, the applicant department filed revision application on the following grounds:

4.1 The time limit for filing the Rebate claim was always there in Section 11B of Central Excise Act, 1944. Explanation (A) to Section 11B specifically provides that the expression '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. Explanation (B) defines the expression 'relevant date. Since the statutory provisions for

refund in Section 11B brings within its purview, rebate of excise duty on goods exported out of India or materials used in the manufacture of such goods, Rule 18 cannot be read independent of the requirement limitation prescribed in Section 11B.

4.2 The observation of the Commissioner (Appeals) in his O.I.A dated 19.01.2017, that, the omission of time limit of one year prescribed under Section 11B of the Act, read with Notfn. 41/94-CE (NT) dated 22.09.1994, in the subsequent Notfn. No. 19/2004-CE(NT) dated 06.09.2004, was a conscious decision of the Central Government is incorrect. The time limit clause has now been inserted in Notfn. No. 19/2004-CE(NT) vide Notification No. 18/2016 CE(NT) dated 01.03.2016.

4.3 Though no time limit was prescribed, during relevant period in Rule 18 and in Notification No. 19/2004 CE (NT) issued under Rule 18 of Central Excise rules, 2002, as per Section 11B, the Rebate claim was to be filed within time limit as provided for in Section 11B of the Central Excise Act, 1944.

4.4 Further, the ratio of judgment of Hon'ble Bombay High Court, in the case of M/s. Everest Flavours Ltd. V/s. Union of India, 2012 (282) ELT 481 (Bom) is squarely applicable in the instant case. In the case of M/s. Everest Flavours Ltd. the Hon'ble High court held that, the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on the date which was beyond the period of one year from the date being the relevant date on which goods were exported. Where the statute provides a period of limitation, in Section 11B for a claim for rebate, the provision has to be complied with as mandatory requirement of law

In view of the above, the Order-in-Appeal No.: SK/41/M-IV/2016 dated 20.12.2016 is not correct, legal and proper and therefore may be set aside.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. However, the Respondent failed to make any submissions.

6. A Personal hearing was fixed on 06.10.2022, 19.10.2022, 08.12.2022 & 22.12.2022. Neither the applicant Department nor the respondent appeared for personal hearing or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

7. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA. The issue for decision in the present case is the admissibility of rebate claim filed by the respondent beyond one year of the date of export of goods.

8.1 Before delving into the issue, it would be apposite to examine the statutory provisions regulating the grant of rebate. Rule 18 of the CER, 2002 has been instituted by the Central Government in exercise of the powers vested in it 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 covers the entire Rule 18 within its encompass. Likewise, the third proviso to Section 11A(1) 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. The relevant text is reproduced below.

“(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 dispatch of goods by the Post Office concerned to a place outside India;”

8.2 It would be apparent from the definition of relevant date in Section 11B of the CEA, 1944, that for cases of refund of excise duty paid on exported goods or on excisable materials used in exported goods, the date of export is the relevant date for commencement of time limit for filing rebate claim.

9.1 The Hon’ble Delhi High Court has in its judgment in the case of Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)] dealt with the issue involved in the present revision application. The text of the relevant judgment is reproduced below.

“16. We also record our respectful disagreement with the views expressed by the High Court of Gujarat in Cosmonaut Chemicals[2009(233)ELT 46(Guj.)] and the High Court of Rajasthan in Gravita India Ltd.[2016(334)ELT 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.”

The judgment of the Hon'ble Delhi High Court has very unambiguously held that the period of one year must be reckoned from the date of export and not from the date when the copy of shipping bills is received.

9.2 The Hon'ble Supreme Court has in its judgment in the case of Sansera Engineering Limited V/s. Deputy Commissioner, Large Tax Payer Unit, Bengaluru [(2022) 1 Centax 6 (S.C.)] held that:

“9. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, “refund” includes “rebate of duty” of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The “relevant date” is defined under Explanation (B) to Section 11B of the Act, which means 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 goods..... Thus, the “relevant date” is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the “relevant date” and in such form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004

issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.

10. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002 Rules and notification dated 6.9.2004 can be said to be a subordinate legislation. The subordinate legislation cannot override the parent statute. Subordinate legislation can always be in aid of the parent statute. At the cost of repetition, it is observed that subordinate legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory. If the submission on behalf of the appellant that as there is no mention/reference to Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 and therefore the period of limitation prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate of duty is accepted, in that case, the substantive provision – Section 11B of the Act would become otiose, redundant and/or nugatory. If the submission on behalf of the appellant is accepted, in that case, there shall not be any period of limitation for making an application for rebate of duty. Even the submission on behalf of the appellant that in such a case the claim has to be made within a reasonable time cannot be accepted. When the statute specifically prescribes the period of limitation, it has to be adhered to.

11. It is required to be noted that Rule 18 of the 2002 Rules has been enacted in exercise of rule making powers under Section 37(xvi) of the Act. Section 37(xxiii) of the Act also provides that the Central Government may make the rules specifying the form and manner in which application for refund shall be made under section 11B of the Act. In exercise of the aforesaid powers, Rule 18 has been made and notification dated 6.9.2004 has been issued. At this stage, it is required to be noted that as per Section 11B of the Act, an application has to be made in such form and manner as may be prescribed.

Therefore, the application for rebate of duty has to be made in such form and manner as prescribed in notification dated 6.9.2004. However, that does not mean that period of limitation prescribed under Section 11B of the Act shall not be applicable at all as contended on behalf of the appellant. Merely because there is no reference of Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 on the applicability of Section 11B of the Act, it cannot be said that the parent statute – Section 11B of the Act shall not be applicable at all, which otherwise as observed hereinabove shall be applicable with respect to rebate of duty claim.

.....

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."

10. In the light of the foregoing facts and in keeping with the judicial principle of *contemporanea exposito est optima et fortissima in lege* (contemporaneous exposition is the best and strongest in law), Government respectfully follows the ratio of the above judgment of the Hon'ble Supreme Court. The criteria for the commencement of time limit for filing rebate claim under the Central Excise law has been specified as the date of export of goods and applicability of Section 11B for rebate has been settled conclusively and cannot be varied by any exercise of discretion. Therefore, the rebate claims filed by the respondent have correctly been held to be hit by bar of limitation by the Adjudicating Authority.

11. The Order-in-Appeal No. SK/41/M-IV/2016 Dated 20-12-2016 passed by the Commissioner (Appeals), is set aside as devoid of merits. The revision application filed by the applicant department is allowed.

Shrawan
27/4/23
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. *244/2023-CX(WZ) /ASRA/Mumbai* DATED *27.4.23*

To,

Pr. Commissioner of CGST,
Mumbai East.
9th Floor, Lotus Infocentre,
Parel, Mumbai - 400 012.

Copy to:

- 1) M/s. Associates Engineers, 7C, Hitex (Vardhaman) Incl. Estate, S.V.Road, Dahisar (E), Mumbai - 400 068.
- 2) Commissioner (Appeals), Central Excise, Mumbai Zone-I.
- 3) Sr. P.S. to AS (RA), Mumbai.
- 4) Guard file.