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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 195/26/WZ/2018-RA / 3475 Date of Issue: 02.05.23
-04.2023

ORDER NO. 255 /2023-CX (WZ) /ASRA/MUMBAI DATED 28.04.2023
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 Shubh Composites,
Anand Udyog Premises,
168, C.S.T.Road, Kalina,
Santacruz (East), Mumbai 400 098

Respondent: The Commissioner, CGST, Pune-I Commissionerate

Subject : Revision Application filed under Section 35EE of Central Excise
Act, 1944 against the Order-in-Appeal No.PUN-EXCUS-001-
APP-580-2017-18 dated 03.11.2017 passed by the
Commissioner of Central Tax, (Appeals-I), Pune

ORDER

The Revision Application have been filed by M/s Shubh Composites, Anand Udyog Premises, 168, C.S.T.Road, Kalina, Santacruz (East), Mumbai 400 098 (hereinafter referred to as the 'Applicant') against the Order-in-Appeal No.PUN-EXCUS-001-APP-580-2017-18 dated 03.11.2017 passed by the Commissioner of Central Tax, (Appeals-I), Pune

2.1. Brief facts of the case are that the Applicant had filed rebate claim for Rs. 16,88,105/- as per Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002, in respect of goods cleared for export on payment of duty from their factory at Shed No. 48/49, Lonavala Industrial Co-op Estate, Nagargaon, Lonavala 401 410, during the months of October 2015 to December 2015, which was received in the office of the jurisdictional authority on 17.01.2017. On scrutiny of the rebate claim it was noticed that the date of shipment was between 29.10.2015 and 11.12.2015 and the claim was filed on 17.01.2017 which was 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. PI/Talegaon Divn/Reb/07/17-18 dated 07.04.2017 rejected the rebate claims 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 of Central Tax, (Appeals-I), Pune. The Appellate Authority vide impugned Order-in-Appeal No. PUN-EXCUS-001-APP-580-2017-18 dated 03.11.2017 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 delay in filing the claim of rebate was due to the genuine reason that the person working left the job and the ill health of the working partner which were genuine reasons but the same were not considered by the Original Authority;

4.2. That the AA failed to consider that the export of the goods on payment of duty is undisputed and the policy of the government is, no excise duty is chargeable/ payable on the goods to be exported. In present case, the export of goods as well as payment of excise duty is not disputed

4.3. That late filing of Rebate claim was procedural lapse and denial would lead to heavy financial loss and un-bearable burden

4.4. That the AA failed to consider the case of Essel Propack Limited [(2014(312) ELT 946 (G.O.1.)], and the case law of Hon'ble High Court of Madras in case of Dorcas Market Makers P. Ltd., [2015 (321) ELT 45].

4.5. That the Claim of Rebate is rejected with sole ground of time limitation as specified under Section 11B of Central Excise Act 1944 but Section 11B is inapplicable in the present case as much as the rebate of duty is governed by Section 12 of the central Excise Act 1944.

4.6. That Rule 18 of Central Excise Rules 2002 does not provide the provision of limitation

4.7. That as per Clause 2(d) of the notification No 19/2004 dated 06.09.2004, the rebate claim may be allowed from such place of export and such date, as may be specified by the Board, by filing electronic declaration. Notification 19/2004 dated 06.09.2004 superseded the previous Notification bearing No. 41/1994, dated 12.9.1994. At the time when the 1994

notification was issued, the procedure for filing electronic declaration had not been made. Since everything was made manually at that time, the notification of the year 1994 prescribed a time-limit for filing claim. But, the 2004 notification did not contain the prescription regarding limitation.

4.8. The Applicant has relied upon the following case laws in support of their contentions

- (i) Jyot Urja International Vs. Commissioner of Service tax [2017-TIOL 1426-CESTAT-Mum]
- (ii) Decision of Hon'ble Madras High court and Hon'ble Supreme court in case of Dorcas Market Makers P. Ltd. [2015 (321) ELT 45 (Mad)]

Under the circumstances, the Applicant prayed to quash the Order-in-Original.

5. Personal hearing was scheduled in this case on 12.10.2022 or 02.11.2022, 07.12.2022 or 21.12.2022, 08.02.2023 or 15.02.2023, 22.02.2023. Shri Sadashiv S Hawaldar, Advocate appeared for the personal hearing on 22.02.2023 on behalf of the Applicant. He reiterated the earlier submissions and submitted that the rebate was rejected for being time barred. He further submitted that payment of duty and export of duty was not in doubt and requested to allow the application. He made additional written submissions.

5.1. In the additional written submissions, the advocate for the Applicant reiterated the contents of the revision application and further submitted that subsection (3) of Section 11B contains a *non obstante* clause, which excludes any judgement, 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 judgement, decree or order, in cases where the duty becomes refundable as consequence of any judgement, decree or order. It was further submitted that this was 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 applicable to sub-section (1) of Section 11B which stipulates the period of one year for filing a claim. Therefore, Rule 18 of the CER, 2002 has to be construed independently and the said Rule by itself does not stipulate a period of limitation.

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 the rebate claim 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 limits 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 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 (321) ELT 45 (Mad)], 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, 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 for export under various ARE-1's during October 2015 to December 2015, the date of shipments of which were between 29.10.2015 and 11.12.2015. The Applicant has filed the rebate claims on 17.01.2017 which is 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. PUN-EXCUS-001-APP-580-2017-18 dated 03.11.2017 passed by the

Commissioner of Central Tax, (Appeals-I), Pune 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. 255/2023-CX (WZ) /ASRA/MUMBAI DATED 28.04.2023

To,

M/s Shubh Composites,
Anand Udyog Premises,
68, C.S.T.Road, Kalina,
Santacruz (East), Mumbai 400 098

Copy to :

- 1) The Commissioner, CGST, Pune-I Commissionerate, GST Bhavan, ICE House, Opp Wadia House, Pune 411 001
- 2) Commissioner of Central Tax, (Appeals-I), Pune, GST Bhavan, F Wing, 3rd Floor, 41/A, Sassoon Road, Pune 411 001
- 3) Shri S.S. Hawaldar, Advocate, Plot No A-1, Aditya Housing Society, Bhangarwadi, Lonavala 410 401
- 4) Sr. P.S. to AS (RA), Mumbai
- 5) Notice Board.