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. 195/562/11-RA /5492 Date of Issue: 24.09.2021

ORDER NO. 323 /2021-CX(SZ)/ASRA/MUMBAI DATED 20.09.2021 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.

Subject : Remand proceedings in respect of Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 31/2011(P) dated 18.03.2011 passed by Commissioner(Appeals), Central Excise, Chennai in terms of Order dated 09.10.2020 passed by the Hon'ble Madras High Court in W.P. No. 21906 of 2013 and M.P. No. 1 of 2013.

Applicant : M/s Larsen & Toubro Ltd.
ECC Division, TLT Works,
Mylam Road, Sedarpet,
Puducherry

Respondent : The Commissioner of CGST & Central Excise, Puducherry.

ORDER

This revision application had been filed by M/s Larsen & Toubro Ltd., Puducherry(hereinafter referred to as "the applicant") against the Order-in-Appeal No. 31/2011(P) dated 18.03.2011 passed by Commissioner of Customs & Central Excise (Appeals), Chennai with respect to Order-in-Original No. 01/2009 dated 09.04.2009 passed by the Assistant Commissioner of Central Excise, Puducherry III Division, Puducherry Commissionerate.

2. Brief facts of the case are that the Applicants are engaged in manufacture of Galvanized Transmission Line Towers and parts' of prefabricated steel structure falling under Tariff item No. 73082011 of the. First Schedule to CETA 1985. They have manufactured and exported 'Galvanized Transmission Line Towers and parts of prefabricated steel structure' under ARE-1 on payment of duty by making debit entry in their CENVAT Credit Account under Central Excise supervision and sealing and filed a rebate claim under Section 11B(1) of the Central Excise Act, 1944 on 05.02.2009 for Rs. 2,24,89,015/- towards duty paid on their finished goods (Transmission Line Tower and parts) exported out of India vide ARE-1 during Sept. 2007, Oct. 2007, Nov. 2007 and Dec. 2007. The applicant while filing the rebate claim on 05.02.2009 had stated that as renovation work has taken place in their office they were not able to locate the original ARE-1's and hence they could file the original rebate claims only on 05.02.2009. Further, the applicant vide their letter dated 03.04.2009 had also submitted that in case the rebate claims are not sanctioned for any reason, a speaking order may be passed directly to them without issue of Show Cause Notice and personal hearing. As the applicant had filed the rebate claim beyond the relevant date contravening the provisions of Section 11B(1) of the Central Excise Act, 1944 the lower adjudicating authority vide impugned Order-in-Original had rejected the rebate claim for Rs. 2,24,89,015/- as hit by time bar.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before the Commissioner(Appeals), who upheld the impugned Order-in-Original and rejected the appeal filed by the applicant vide OIA No. 31/2011(P) dated 18.03.2011.

4. The applicant was aggrieved by the OIA No. 31/2011(P) dated 18.03.2011 has filed this revision application under Section 35 EE of Central Excise Act, 1944 before the Central Government on the following grounds:

(i) The lower appellate authority ought to have taken into consideration the unassailable facts of the applicant's case namely that they have been in receipt of such rebates on a regular basis and that only in respect of the impugned exports they could not file their rebate claims in time on account of the extraneous situation in which they were placed preventing them from making their claims which is due to factors beyond their control on account of the non-availability of the original documents without which there was absolutely no scope to be admitted and sanctioned in the interest of justice.

(ii) The lower appellate authority also ought to have considered that when the provisions of law or the procedures contemplated do not provide them with any alternative mechanism to seek their legitimate claim in time in cases where the original documents were misplaced or lost which position was also confirmed to them by the officers concerned, he ought to have considered the said facts judiciously and sympathetically and allowed their legitimate claims to be entertained as a special case.

(iii) The lower appellate authority also ought to have taken note of the fact that all their statutory documents such as ARE-1 or the Shipping Bill etc., having subscribed to the fact that the exports are being made under claim for rebate, and accordingly ought to have held that in the light of the fact of the applicant having made known his intention to claim the rebate the non-filing of the procedural form C cannot stand in the way of their obtaining their legitimate rebate.

(iv) The lower appellate authority also ought to have known that when goods are exported under bond there is no time limit for redeeming the bond and applying the same analogy ought to have accepted the plea of the applicant herein to treat the reversal made by them at the time of the export of their final products as a security towards fulfillment of the condition of exports and accordingly ought to have restored the credit to which they were fully entitled to on the authority being satisfied about the actual export of the goods, the failure of which had resulted in denial of justice to them.

(v) The lower appellate authority even if were to be of the view that the law does not permit the claim to be entertained beyond the period of limitation atleast ought to have passed orders ordering the re-credit of the duties so paid by them into their CENVAT account on being satisfied that the impugned goods were in fact exported, by

treating the payment of the duty on the said goods as equivalent to furnishing of a bond under Rule 19 of the Central Excise Rules, 2002.

(vi) The order of the lower appellate authority refusing to entertain the claim of the applicant is violative of Article 265 of the Constitution of India as he had otherwise confirmed the duty on exported goods which are otherwise leviable to duty of excise in terms of Section 3 of the CEA.

5. The Joint Secretary, Revision Application passed Order No. 12/13-Cx dated 04.01.2013 placing reliance upon the judgment of the Hon'ble Gujarat High Court in its judgment dated 15.12.2011 in IOC Ltd. vs. UOI(SCA No. 12074/2011) and the judgments in Precision Controls vs. CCE, Chennai[2004(176)ELT 147(Tri-Chen.)], Collector Land Acquisition Anantnag & Others vs. Ms. Katji & Others[1987(28(28)ELT 185(SC)], UOI vs. Kirloskar Pneumatics Company[1996(84)ELT 401(SC)] and Everest Flavours Ltd. vs. UOI[2012(282)ELT 481(Bom.)] and concluded that the rebate claims filed by the applicant were time barred in terms of Section 11B of the CEA, 1944 and had rightly been rejected.

6. Aggrieved by the order dated 04.01.2013, the applicant filed Writ Petition No. 21906 of 2013 and M.P. No. 1 of 2013 before the Hon'ble Madras High Court. In their petition, the applicant petitioner had contended that the Revisionary Authority who had passed the order dated 04.01.2013 was of the same rank as Commissioner of Central Excise and Customs who had passed the Order-in-Appeal which had been challenged before him in that revision application. The applicant had averred that this was impermissible in law and placed reliance upon the judgment dated 24.01.2017 in W.P. No. 16682 of 2016 of the same Court in Moinuddin vs. Joint Secretary, Government of India, Ministry of Finance, New Delhi. In that judgment, the Hon'ble High Court had observed that the order impugned therein was in respect of similarly placed persons and on that sole ground had directed that the matter be heard by an authority after taking corrective measures in this regard. The counsels of the Department had thereupon informed the court that the Revisional Authority had been reconstituted taking note of the anomaly pointed out by the court. In this view, the Hon'ble High Court quashed the order dated 04.01.2013 and remitted the matter back to the Revisional Authority for fresh consideration of the matter. Their Lordships further directed that the Revisional Authority is to afford full opportunity of hearing to

the applicant petitioner to deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law, uninhibited and uninfluenced by the order impugned before the Court which had been set aside and communicate the decision taken to the Petitioner by 31.03.2021 under written acknowledgment.

7.1 The applicant was granted a personal hearing on 26.02.2021. Shri N. Vishwanathan, Advocate appeared online for hearing and reiterated their earlier submissions. He further stated that the time limit under Section 11B of the CEA, 1944 would not apply to rebate cases. The applicant also filed written submissions dated 25.02.2021 through email.

7.2 In their reply submitted through email on 25.02.2021, the applicant made detailed submissions. The applicant submitted that it so happened that their staff dealing with excise matters met with a serious accident and the substitute posted in his place also left the job abruptly leading to misplacement of the papers which they could locate only when they renovated their office. It was stated that the fact of export of the goods was evidenced from the documents furnished by them and was not disputed by the authorities below and their legitimate claims were rejected by the Original authority, the first appellate authority and the revisionary authority on the only ground that their above claims are barred by limitation under Section 11B of the Act by rejecting their claim. It was pointed out that since the notification issued under Rule 18 of the Central Excise at the material time did not make the provisions of Section 11B of the Act applicable, the rejection of their legitimate claim on the ground of limitation was not proper and as an alternative they also requested for allowing atleast the recredit of the amount debited by them in their CENVAT account treating the said debits as a security for export by treating it on par with Rule 19 of the Central Excise Rules, 2002. The applicant claimed that since they were left with no other alternative, they had moved the Hon'ble High Court of Madras against the order of the revisionary authority.

7.3 The applicant submitted that the revisionary authority in his earlier order set aside by the High Court had relied upon certain judicial pronouncements which had already been negatived by the Hon'ble Division Bench of the Madras High Court in the case of Commissioner of Dy. Commissioner of Central Excise Chennai versus Dorcas Market Makers P. Ltd.[2015(321)ELT 45(MAD)] approving the order of the learned

Single Judge[2012(281)ELT 227(Mad.)]. It was further submitted that the challenge of the Department against the above judgment of the Hon'ble Division Bench of the Madras High Court before the Hon'ble Supreme Court was dismissed by the Supreme Court[2015(325) E L T A104(SC)]. The applicant thereafter relied upon the judgment of the Allahabad High Court in the case of Camphor & Allied Products Ltd. vs UOI[2019(368)ELT 865 (All)] which held the same view that in the absence of any limitation being prescribed under the impugned notification issued under rule 18 of the Central Excise Rules, the claims when export is established has to be sanctioned without resorting to rejection on ground of limitation.

7.4 The applicant averred that the judgments in the case of Dorcas Market Makers and Camphor & Allied Products had been delivered on the basis of the following factors:

(a) The time limit prescribed under the erstwhile notification no. 41/1994 CE (NT) dated 12.09.1994 prescribed the time limit for making the claim as at that material time there was only manual claiming of the rebate whereas when the superseding notification no. 19/2004 CE NT dated 06.09.2004 came into force there was provision for filing electronic declaration and consequently the said notification did not prescribe time limit as a condition for filing the claims.

(b) The grant of rebate under rule 18 is a special provision and therefore unless the time limitation is made specifically applicable to the said provision it is not permissible to enforce or read limitation into the said provision. In support of the said view the Courts also relied upon the judgment of the Hon'ble Supreme Court in the case of Raghuvar (India) Ltd., which was in fact cited by the revenue, holding that the provisions under the erstwhile rule 57I of the Central Excise Rules providing for demand of CENVAT credit taken by error or mistake is not couched by any period of limitation by the application of Section 11 A of the Act treating the CENVAT provisions as a special legislation. The Court also further recording the scheme covered by Sec. 11B of the Central Excise Act and citing the various notifications issued under the Central Excise & Customs mandated the time limit for grant of refund observed that the understanding of the Ministry of Finance itself was different from what the appellant revenue had contended.

(c) The applicant further averred that the court had also distinguished the four

judgments cited by the revenue in paras 17, 20, 21 and 22 of its judgment to uphold the order of the learned Single Judge.

(d) The Allahabad High Court in addition to these findings relied upon the 2016 amendment to the notification introducing the period of limitation(para 37 of the judgment) apart from relying on the judgement of the Hon'ble Bench of the Allahabad High Court in the case of Ram Swarup Electricals Ltd., adopting the ratio in Raghuvar (India) Ltd., (paras 25 & 38).

(e) The applicant further submitted that the provisions contained in Section 11B of the Central Excise Act cannot be pressed into service on any exports made under rule 18 of the Central Excise. Rules, 2002, that the provisions of Section 11B can be pressed into service when any person has paid any duty which was otherwise not required to be paid by him as per law or which he had paid in excess inadvertently or by mistake and the incidence of duty had not been passed on to any other person. It was further contended that for rebate, the above basic requirement involving cause of action does not arise as the duty paid by an assessee on the clearance of the goods for export is otherwise required to be paid by treating it on par with clearance for home consumption as per the provisions of law and therefore the claim for rebate or refund of the duty so paid cannot be brought within the ambit of Section 11B of the Act which can be put into service only when such duty has been paid which was otherwise not payable by an assessee. The intention of the legislature in equating rebate to a refund and providing for the relevant date for the claim and also to exclude the said amount being remitted to the consumer welfare fund as provided under sub-section (2) of Section 11B of the Act was that the above situation would arise only in a case where the applicant had paid any duty in excess of the duty required to be paid on the excisable goods exported out of India as what is contemplated under rule 18 of the rules is only the grant of the rebate of the duty liable to be paid on the goods as per law. Therefore, the application of limitation under Section 11B of the Central Excise Act may not be permissible to claims made under rule 18 of the Central Excise Rules, 2002.

7.5 The applicant further contended that the provisions contained in Section 11B of the Act had treated the rebate on par with a claim for refund and prescribes the relevant date only to ensure that the exporters other than manufacturers of such

excisable goods who have purchased the goods from such manufacturers on payment of the duty and exported them out of India comply with the said provisions and not for the manufacturer exporters who exported their own manufactured excisable goods on payment of duty instead of furnishing a bond under rule 19. In this regard, reliance was placed upon the judgment of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. which had dealt with the challenge to the amended Section 11B with regard to finalization of provisional assessment under Rule 9B of the CER, 1944. It was averred that this judgment clearly showed that the operation of Section 11B of the Act was not applicable to all kinds of refunds arising under the Act or the rules but was restricted to only refunds of excess duty paid. The applicant submitted that this position was reiterated in the judgments of the Hon'ble Supreme Court in CCE, Chennai vs. TVS Suzuki Ltd., Hosur and CCE, Mumbai vs. Allied Photographics India Ltd. which held that the provisions of Section 11B would be applicable to finalization of provisional assessments only after the amendment to Rule 9B(5) with effect from 25.06.1999 and not for the earlier period. On this basis, it was opined that the legal position approved by the Supreme Court was that every refund or rebate arising under the rules can be subjected to the provisions of Section 11B of the Act only if the respective rules make the said provisions of Section 11B applicable to the said rule and that this position was supported by the various notifications and rules notified under Customs and Central Excise law and as considered and approved by the Hon'ble Madras High Court in the judgment.

7.6 The levy of duty under Section 3, collection of duty upon removal is under Rule 4, the rate of duty and value fixed for the purpose of levy on the date of removal under Rule 5 and the manner of payment of duty provided under Rule 8 make it clear that levy of duty is on removal of excisable goods from the place where they are produced or manufactured or warehoused and such removals could also be permitted without payment of duty wherever statutorily provided. The Rule 19 of the CER, 2002 permits removal of excisable goods without payment of duty for export from a factory subject to observing of safeguards, conditions or procedures as may be notified by the Board. The applicant drew attention to the judgments in Hindustan Petroleum Corporation Ltd.[1995(77)ELT 256(SC)] wherein it was held that Rule 12 and Rule 13 have to be read as complementary to each other as otherwise it would result in inequality to

approve the ratio of the judgment delivered by the Hon'ble Delhi High Court in the case of Hindustan Petroleum Corporation Ltd.[1981(8)ELT 642(Del)] holding that the said reading is justified and unexceptional in as much as it avoids such inequitable result.

7.7 The applicant has contended that as per the judgment of the Hon'ble Supreme Court, excise duty is not leviable on excisable goods exported in terms of Rule 19 and this rule has to be read as complementary to Rule 18 which when read would deter the government from collecting excise duty on excisable goods shown to have been exported from the place where it is manufactured or produced or warehoused to the extent Rule 18 permits the rebate. In the respectful submission of the applicant, the conditions of limitation or other safeguards imposed under Rule 18 could at best be made applicable to those exporters who purchase excisable goods from a registered manufacturer of such goods on payment of duty and subsequently export the same following the conditions, safeguards and procedures as contemplated under notification issued under Rule 18 to earn the rebate as provided therein. It was averred that applying the said conditions, safeguards and procedures to a manufacturer exporter of excisable goods under Rule 18 while at the same time permitting them to export goods without payment of duty under Rule 19 would result in total discrimination and inequality which is not desirable. It is further submitted that when on reading the provisions of Section 3 along with rule 19 of the rules, it shows that the levy of excise duty is not enforced against manufacturers of such excisable goods which are exported out of India and not consumed within India, subjecting the manufacturer of such goods who otherwise had exported the goods on payment of the duty, to the stringent conditions of limitation, does not appear to be proper or justified and in fact it results in discrimination and inequality and also amounted to levy and collection of excise duty without the authority of law. Just because some procedural conditions are violated while the substantive requirement of export of the excisable goods had been met, the Government cannot resort to retaining the duty paid by such manufacturers which is not legitimately due to the government and such an action results in violation to Art. 265 of the Constitution also. Therefore, it is the duty of the revenue to grant the rebate the duty paid immediately on allowing the goods to be exported out of India accepting the electronic declaration instead of

subjecting the manufacturer/exporter to the hassle of making the necessary application to seek the rebate of the duty paid by them and that too within a specific time and to reject their claim for duty which is otherwise not due to the government, on the ground of delay. The applicant submitted an alternative plea that since the duty had been paid by them from their CENVAT account, the duty paid should atleast be restored back into their input tax credit account by treating the payment of duty by them as security towards export of goods so that there is parity between rule 18 and 19 of the Central Excise Rules, 2002.

7.8 The judgment of the Hon'ble Madras High Court in the case of Hyundai Motor India Ltd., versus Dept of Revenue, Ministry of Finance[2017(355)ELT 342(Mad.)] which had occasion to consider the judgment of the other Bench in the case of Deputy Commissioner versus Dorcas Market Makers P. Ltd.[2015 (321) E LT 45 (Mad)] and the dismissal of the appeal of the revenue by the Hon'ble Supreme Court but chose to hold that the time limit under Section 11B operate to the case of rebate by following the judgment of the Hon'ble Supreme Court in the case of UOI versus Uttam Steel Ltd.[2015 (319) EL T 598 (SC)]. The applicant submitted that the same bench of the Hon'ble Madras High Court delivered another judgment on the same day in the case of CCE & ST, Chennai vs. Ford India P. Ltd.[2017(353)ELT 385(Mad.)] wherein it held a diametrically opposite view that notification issued under Section 5A of the CEA, 1944 granting exemption is special law and therefore the time limit of six months prescribed under the said notification had to be applied and not the one year prescribed under Section 11B of the CEA, 1944 and accordingly reversing the decision of the Appellate Tribunal.

7.9 The applicant made certain submissions distinguishing the judgments delivered by the Hon'ble Madras High Court. It was opined that the Bench in Hyundai Motors had not recorded any finding to hold that the decision rendered in Dorcas Market Makers was not good law whereas it was held in para 19 of the judgment that since the Uttam Steel judgment had been delivered by the Hon'ble Supreme Court without taking note of its earlier judgment in Raghuvar India Ltd., the earlier judgment would be per incuriam and the later judgment of the Hon'ble Supreme Court would prevail over the earlier judgment of the Hon'ble Supreme Court. Inspite of this finding, the court in case of Ford India P. Ltd. answered question no. 2 raised by revenue in the

CMA relying upon Raghuvar India Ltd. in favour of the revenue; viz. that notification granting refund is a special law and therefore the time limit prescribed would govern the refund and not Section 11B of the Act which itself makes it clear that the judgment in the case of Hyundai Motor India Ltd. does not lay down the law and must be treated as a judgment delivered per incuriam.

7.10 The applicant stated that the case involved in the Hyundai Motor judgment was that the appellant in that case had failed to pay certain additional excise duties at the time of export but later paid the same voluntarily and thereafter made a claim for rebate of such additional payments after a lapse of one year from the date of export of goods contending that the dates of payment of additional excise duties were to be reckoned as the relevant date. However, the appellant in that case also relied upon the judgment in Dorcas Market Makers. It was pointed out that Hyundai Motor had already obtained rebate in respect of duties paid by them at the time of export of cars and the dispute was confined to the differential additional excise duties paid by them subsequently. The Hon'ble Court had in para 20 had after considering the facts and also relying upon the judgment in the case of Delphi TVS Diesel Systems Ltd. held that a subordinate legislation cannot prescribe a higher time limit or a different date of commencement than the parent enactment and another judgment holding that the notification prescribing the time limit will warrant the application of relevant date prescribed under Section 11B of the Act. By relying upon the judgment of the Hon'ble Supreme Court in the case of Uttam Steels Ltd., the bench proceeded to dismiss the appeal of the company without anywhere holding that the law laid down by the other bench in Dorcas Market Makers on which appeal had been preferred by the revenue was dismissed by the Hon'ble Supreme Court is not good law.

7.11 The applicant submitted that the Hon'ble Supreme Court in the Uttam Steel case was considering two propositions of law namely 1) whether the assessee is entitled to the benefit of the higher time limit made applicable by virtue of an amendment made to Section 11 B of the Act making the period of limitation from six months to one year even when the six months period had already expired on the date of amendment to hold that in such cases benefit of the amendment will not be available to such an assessee. The second proposition of law considered was whether the notification issued under the then Rule 12 of the Central Excise Rules, 1944

providing for the application of the provisions of Section 11B could be condoned by virtue of the notification providing for the discretionary power on the Commissioner to condone all or any of the conditions incorporated in the said notification treating the said time limit as only directory and not mandatory to answer the said question against the said proposition. In the present case, the notification in question never contained any such provision for application of Section 11B of the Act or power upon the authority concerned to relax any such condition making the said judgment squarely distinguishable on facts and law involved in the case of the applicant.

8. In the light of these submissions and the judicial pronouncements cited by them, the applicant prayed to allow their revision application following the ratio of the decision of the Hon'ble Madras High Court in the case of Dorcas Market Makers so that the applicant is not discriminated against or in the alternative allow re-credit of duty paid by them from their CENVAT account into their electronic credit ledger maintained under the CGST Act.

9. Government has carefully gone through the relevant case records available in case files, perused the order-in-original and the impugned Order-in-Appeal, the Order of the Revisionary Authority and the Order dated 09.10.2020 passed by the Hon'ble High Court of Madras, the oral and written submissions filed by the applicant during the present proceedings. The present proceedings have arisen as a consequence of the Order dated 04.01.2013 passed by the Revisionary Authority being quashed and the matter being remitted back to the Revisionary Authority by the Hon'ble High Court. In the first round of proceedings under Section 35EE of the CEA, 1944 the revision application filed by the applicant had been dealt with by the Delhi Unit of Revision Application Unit. The original case records of the revision application could not be traced out. Hence, the records of the case have been reconstructed.

10. Government respectfully takes up the revision application for decision in terms of the directions of the Hon'ble High Court. It is observed that the only ground which has been argued by the applicant before the Hon'ble High Court was that the order passed by Commissioner(Appeals) had been challenged before the Joint Secretary(Revision Application), Government of India who was also in the rank of

Commissioner of Central Excise. It was therefore contended that this was impermissible in law. However, this anomaly has since been remedied by reconstituting an Additional Secretary to the Government of India as Revisionary Authority. The matter has therefore been remitted back for fresh consideration. Thereafter, the applicant has filed written submissions in the remand proceedings.

11. On going through the submissions filed by the applicant, it is observed that the reason given by the applicant for non-submission of rebate claims within time before the original authority and the appellate authority was that the original ARE-1's and other connected documents concerning the rebate claim had been misplaced due to renovation work being carried out in their office and hence they could file their rebate claims only on 05.02.2009. However, the applicant has now come up with a different explanation for the delayed filing of rebate claims. In the submission sent by email on 25.02.2021, the applicant has stated that it so happened that the staff dealing with the excise matters met with a serious accident and the substitute posted in his place abruptly left the job leading to misplacement of the papers which they could locate only when they renovated their office. It is peculiar that the renovation work which was supposedly the cause for the documents being misplaced has now become the causal factor for locating the misplaced documents. Section 11B does not provide for relaxing of time limit on sufficient cause being shown for delay. Therefore, irrespective of merits of the reasons of delay, Government is in no position to consider these reasons.

12.1 The first submission of the applicant is that time limit prescribed by Section 11B of the CEA, 1944 is not applicable to rebate claims as the notification issued under Rule 18 of the CER, 2002 did not make the provisions of Section 11B applicable thereto. In this regard, Government observes that Rule 18 of the CER, 2002 has been made 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 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 is purposed to cover refund of rebate within its ambit. If the contention of the applicant that Section 11B is not relevant for processing rebate claims is accepted, it would render these references to rebate in Section 11B superfluous.

12.2 Moreover, 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. The applicants contention that the time limit has been done away as provision for filing of electronic declaration in Notification .No 19/2004-CE dated 06.09.2004 does not stand to reason because the provisions of Section 11B making reference to rebate have not been done away with and continue to subsist.

12.3 Government observes that the view that notifications for grant of rebate are not covered by the limitation prescribed by Section 11B of the CEA, 1944 has been agitated before the courts on several occasions. Both Notification No. 19/2004-CE(NT) dated 06.09.2004 for rebate of duty paid on excisable goods exported and Notification No. 21/2004-CE(NT) dated 06.09.2004 for rebate of duty paid on excisable goods used in the manufacture of export goods did not contain any reference to Section 11B of the CEA, 1944 till they were substituted in these notifications on 01.03.2016. The applicants contention that when the relevant notification does not prescribe any time limit, limitation cannot be read into it by an executive implementing the said notification or even by a court interpreting the same is precarious as there are recent

judgments where the Honourable Courts have categorically held that limitation under Section 11B of the CEA, 1944 would be applicable to notifications granting rebate. The applicant has placed reliance upon the judgment of the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. vs. CCE[2012(281)ELT 227(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.

12.4 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."*

12.5 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.*
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> *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.

12.6 In so far as the judgment dated 03.07.2019 rendered by the Hon'ble High Court of Allahabad in the case of Camphor and Allied Products Ltd. vs. UOI[2019(368)ELT 865(All.)] relied upon by the applicant is concerned, 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.

13. With due respect to the judgments relied upon by the applicant, it is observed that these judgments have been delivered in exercise of the powers vested in these courts in terms of Article 226/Article 227 of the Constitution of India. Needless to say, no statute passed by Parliament or State Legislative Assembly or any existing law can abridge the powers vested in the High Courts which is known as writ jurisdiction of the High Court under Article 226 of the Constitution of India. However, the irrefutable fact in the present case is that the Central Excise Act, 1944 provides for a period of limitation 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. Thus, there is a great difference in the degree of powers exercisable by the High Courts and creatures of statute.

14. In sum and substance, the submissions of the applicant imply that a notification which is a delegated legislation issued under Rule 18 of the CER, 2002, which again is a delegated legislation issued under Section 37 of the CEA, 1944 can allow refund of rebate which can be refunded only in terms of statutory provisions under Section 11B of the CEA, 1944 to be claimed indefinitely. 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.

15.1 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."*

15.2 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, 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.

16. The applicant has also contended that Section 11B of the Act has been made applicable for relevant date only to ensure that exporters other than manufacturers of such excisable goods who have purchased the goods from manufacturers on payment of duty and exported them out of India comply with the said provisions and not to manufacturer exporters who export their own manufactured goods on payment of duty. In this connection, Government finds that the Notification No. 19/2004-CE(NT) dated 06.09.2004 covers both manufacturer exporters and merchant exporters. The procedure set out therein does not differentiate between rebate as an incentive granted to manufacturer exporters and to merchant exporters. The procedure does not allow any separate limitation for rebate claims by manufacturer exporters to exempt them

from the rigours of Section 11B of the CEA, 1944. The rebate claim filed by both a manufacturer exporter and the merchant exporter remain rebate claims within the scope of "rebate" for grant of refund under Section 11B of the CEA, 1944. Therefore, no such interpretation can be countenanced.

17. The applicant has also made a fanciful submission contending that the purpose in equating rebate to refund was to exclude it from being credited into the Consumer Welfare Fund and to take care of situations where the exporter has paid duty in excess of duty of what is correctly to be paid on excisable goods exported out of India. One cannot lose sight of the fact that any amount paid in excess of duty payable would not qualify as "rebate". The Section 11B does not anywhere mention excess duty paid on exported goods. Such an interpretation does not emanate out of Section 11B of the CEA, 1944 as it expressly alludes to "rebate". The submission of the applicant that the provisions of Section 11B have been made applicable to rebate only for excess duty paid on exported goods is futile as Section 11B does not allow for any such interpretation to restrict it only to excess duty paid on exported goods.

18. An argument has been made out on the basis of the judgment in Hindustan Petroleum Corporation Ltd.[1995(77)ELT 256(SC)] to contend that since Rule 12 & Rule 13 have been held to be complementary to each other, subjecting the manufacturer operating under Rule 18 to stringent conditions where the levy of central excise duty is not being enforced against another manufacturer who is operating under Rule 19 is discriminatory. At the outset, it cannot be lost sight of that the judgment of the Apex Court was in respect of Rule 12 and Rule 13 of the CER, 1944 as it existed at that time and not in respect of Rule 18 and Rule 19 of the CER, 2002. In this regard, Government observes that the procedures for export under claim of rebate & export under bond are two complete codes with limitations, conditions and procedures. Merely because the objective of both these codes is to ensure that taxes are not exported would not allow for the whittling down of the limitations, conditions and procedures of one to maintain parity with the other. In the judgment of the Hon'ble Bombay High Court in Repro Ltd.[2009(235)ELT 614(Bom.)], their Lordships had held that the appellant could export goods under bond although the goods were chargeable to Nil rate of duty and not eligible for rebate. The schemes for rebate under

Rule 18 and export under bond under Rule 19 cannot always be harmonized. Therefore, this submission made out by the applicant is of no avail.

19. The facts in the case of CCE & ST, Chennai vs. Ford India P. Ltd.[2017(353)ELT 385(Mad.)] relied upon by the applicant are clearly distinguishable. The issue involved in the case before the Hon'ble Madras High Court was the availing of exemption under Notification No. 03/2001-CE dated 01.03.2001 on motor cars cleared on payment of duty at full rate but subsequently registered as taxis. The notification has been issued in public interest under Section 5A(1) of the CEA, 1944 to pass on the benefit of exemption for the benefit of persons engaged in taxi services whereby a portion of the excise duty paid is refunded subject to adherence to certain conditions; one of which is filing of refund claim for such duty exempted within six months from the date of payment of duty. Needless to say, there are a plethora of judgments holding that exemption notifications are to be construed strictly. Pertinently the facts of this judgment relied upon by the applicant does not involve rebate. The applicant has unnecessarily mixed two distinctly different issues to further their cause. Government therefore concludes that the ratio of the judgment of the Hon'ble Madras High Court in Ford India P. Ltd. is inapplicable in the facts of the present case.

20. Government holds that the rebate claims filed by the applicant are time barred as they had not been filed within the time limit stipulated under Section 11B of the CEA, 1944. The OIA No. 12/13-Cx dated 04.01.2013 is upheld and the revision application filed by the applicant is rejected as being devoid of merits.

20/9/21

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

ORDER No. 323 /2021-CX(SZ)/ASRA/Mumbai DATED 20.09.2021

To,

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1. The Commissioner of CGST & Central Excise, Puducherry Commissionerate.
2. The Commissioner(Appeals-I), Chennai,
3. The Deputy / Assistant Commissioner, Puducherry Division-III, CGST, Puducherry,
4. Sr. P.S. to AS (RA), Mumbai,
5. Guard file,
6. Spare Copy.