REGISTERED SPEED POST AD

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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. 195/204/WZ/2018-RA Date of Issue: .2023

ORDER NO. 347 /2023-CX(WZ)/ASRA/MUMBAI DATED 29.08.2023 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. Towell Engineering International LLP,
Plot No. A-27, Loni Devakar MIDC,
Tal. Indapur, Dist.,
Pune – 412 132.

Respondent : Pr. Commissioner of CGST & Central Excise, Pune-I.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PUN-CT-APPII-000-078-18-19 dated 31.07.2018 passed by the Commissioner(Appeals-II) Central Tax, Pune.

ORDER

The revision application has been filed by M/s. Towell Engineering International LLP, Plot No. A-27, Loni Devakar MIDC, Tal. Indapur, Dist., Pune-412 132 (herein after to be referred as "Applicant"), against Order-in-Appeal No. PUN-CT-APPII-000-078-18-19 dated 31.07.2018 passed by the Commissioner(Appeals-II) Central Tax, Pune.

2. The applicant had filed rebate claims amounting to Rs. 24,70,648/- 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 Assistant Commissioner, Central Excise after following the due process of Law rejected the said rebate claim vide his Order-In-Original No. R-04/CEX/2018-19 dated 13.04.2018 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 OIO dated 13.04.2018, the applicant filed appeal before the Commissioner(Appeals). The appellate authority after following due process of law rejected the appeal and upheld the OIO vide his Order-in-Appeal No. PUN-CT-APPII-000-078-18-19 dated 31.07.2018.

4. Aggrieved by the OIA dated 31.07.2018, the applicant filed revision application on the following grounds:

4.1 Applicant submitted that the provision related to Claim for refund including 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 is covered under Section 11B of the Act. The Scheme of Section 11B has to be seen in the context of :-

4.1.1 Sub-section (1) of Section 11B the enabling provision for filing an application for refund where a person claiming refund of any duty of Excise may make an application for refund before the expiry of one year from the relevant date.

4.1.2. Sub-section (2) of Section 118 the power conferred upon the Assistant Commissioner to order refund which outlines the power of the Assistant Commissioner to pass an order, determining the amount to be refunded and further directing that the amount so determined shall be credited to the Fund and

4.1.3. Sub-section (3) of Section 11B non-obstante Clause only with reference to sub-section (2) which declares that notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of the Act or the Rules or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

4.2. The Applicant submitted that that the power of the Assistant Commissioner under sub-section (2) to order refund, is protected by a non-obstante clause contained in sub-section (3) which excludes any judgment, decree or order of any Court or Tribunal. Sub-section (2) does not specifically empower the Assistant Commissioner to reject an application summarily on the ground that it was not in accordance with mandate contained in sub-section (1).

4.3. The Applicant submitted that that Sub-section (5) of Section 11B speaks about the power of the Central Government to rescind or modify any notification. In the Explanation to sub-section (5) of Section 11B, the expression "refund" and "relevant date" are defined. It is by virtue of the definition of the expression "refund' appearing in Clause (A) of the Explanation under sub-section (5) that even a rebate of duty is included within the meaning of the expression "refund". Similarly, the starting point

for the period of limitation as prescribed in sub-section (1) is indicated in the definition of the expression "relevant date" in Clause (B) in the Explanation under sub-section (5) of Section 11B.

4.4. The Applicant submitted that sub-section (3) of Section 11B contains a non-obstante Clause which excludes any judgment, decree or order of any Court or Tribunal and 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 judgment, decree or order, in cases where the duty becomes refundable as a consequence of any judgment, decree or order. This is because 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 made applicable to sub-section (1) of Section 11B which stipulates the period of one year for filing a claim. In this regard, reliance is place of the following judicial precedents:

- Emcure Pharmaceuticals Ltd. v Commissioner of C.Ex., Pune [2008 (225) E.L.T. 513 (Tri. - Mumbai)]
- Union of India (UOI) and Anr. V G.M. Kokil and Ors. AIR1984SC1022

In light of the aforesaid judicial precedents, the use of the word 'notwithstanding at the beginning of sub-section (3) protect the power of the Assistant Commissioner under sub-section (2) to order refund, which excludes any judgment, decree or order of any Court or Tribunal.

4.5. The Applicant submitted that the rebate of duty under Rule 18 of Central Excise Rules, 2002 should be as per the notification issued by the Central Government. The Notification bearing No. 19/2004-CE (NT) dated 6.9.2004 prescribes the conditions, limitations and procedures for considering the claim for refund. The Notification No.19/2004-CE dated 6.9.2004 which supersedes the previous Notification No.41/94 C.E. did not contain the prescription regarding time limitation. The omission of the time limit is clearly a conscious omission inasmuch as all the other conditions

prescribed in the Notification No.41/94-CE (NT) are retained in the Notification No.19/2004 CE (NT).

4.6. The Applicant submitted that neither Notification No. 19/2004 CE (NT) nor Rule 18 has a condition with regard to limitation of time. Even prior to Notification No.41/94 CE, the time limit for filing rebate claim was mandatory in terms of Notification No.27/89-CE (NT) dated 9.6.1989 which amended the Notification 197/62-CE (NT), which has been omitted now as per Notification No.19/2004-CE (NT). In the absence of any prescription in the scheme, the rejection of application for refund as time barred is unjustified.

4.7. The Applicant submitted that Notification No.19/2004-C.E.(NT) is a beneficial notification and its aim is to encourage exports. In support of this contention, reliance is placed on the decision rendered in the case of Kosmos Health Care vs. Assistant Commissioner, Central Excise, Kolkata [2013-297-ELT-45]. This view is supported by the decision given by Hon'ble Madras High Court in the following case, which was upheld by the Hon'ble Supreme Court in the judgment reported in 2015 (325) E.L.T A104 (S.C.). Dorcas Market Makers Private Limited Vs CCE, Chennai [2012-TIOL. 108-HC-MAD-CX]

4.8. The Applicant respectfully submitted that Hon'ble High Court of Punjab and Haryana at Chandigarh in case of M/s. JSL Lifestyle Ltd vs. Union Of India & Anr [2015 (326) ELT (265) (P&H)] inter alia held that the time limit of 1 year under Section 11B of Central Excise Act, 1944 is not applicable to rebate claims.

4.9. The Applicant submitted that a rebate claim, being a beneficial scheme, cannot be denied on mere technicalities and the rebate claims filed in respect of the exports cannot be hit by limitation, even if certain documents are found to be incomplete and when the rebate claims had been

returned. Technical deviation or procedural lapses ought to be condoned if there is sufficient proof of export of duty paid goods.

4.10. The Applicant respectfully submits that in absence of mandatory documents like Duplicate Copy of ARE-1 No. 003/2016-17 dated 12-08-2016, bill of Lading against ARE-1 No. 001/2016-17 dated 03-08-2016 and Copy of CENVAT Account Register debit particulars in respect of payment of duty, the rebate claim cannot be denied. This view is supported by the decision given by a Division Bench of Hon'ble High Court of Madras in Ford India Pvt. Ltd. Vs. Assistant Commissioner of Central Excise, Chennai, 2011 (272) E.L.T. 353 (Mad.).

5. A Personal hearing was fixed on 09.11.2022, 22.11.2022, 13.12.2022, 10.01.2023, 08.02.2023 & 15.02.2023. 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.

6. 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 applicant beyond one year of the date of export of goods.

7.1 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;"

7.2 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.

8.1 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.

8.2 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."*

8.3 Be that as it may, 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."

8.4 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.

8.5 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."

9. In the light of the foregoing facts and in keeping with the judicial principle of *contemporanea exposito est optima et fortissinia 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 applicant have correctly been held to be hit by bar of limitation by the Commissioner(Appeals) in the impugned order.

10. The Order-in-Appeal No. PUN-CT-APPII-000-078-18-19 dated 31.07.2018 passed by the Commissioner(Appeals) is upheld. The revision application filed by the applicant is rejected as devoid of merits.

Shrawan 29/8/23

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

ORDER No. 347 /2023-CX(WZ) /ASRA/Mumbai DATED 29.08.2023

To,

M/s. Towell Engineering International LLP
Plot No. A-27, Loni Devakar MIDC,
Tal. Indapur, Dist.,
Pune-412132.

Copy to:

1) Pr. Commissioner of CGST & Central Excise, Pune-I.
2) Commissioner(Appeals-II) Central Tax, Pune.
3) Sr. P.S. to AS (RA), Mumbai.
4) Spare Copy.