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. 195/23/WZ/2020 /6434 Date of Issue: 04.09.2023

ORDER NO. 348 /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. Salvi Chemicals Industries Ltd.
214, Rose Industrial Estate,
Western Express Highway,
Borivali (East), Mumbai 400066.

M/s. Salvi Chemicals Industries Ltd.
Plot No. E-90/93/94/95, MIDC,
Tarapur, Dist. Palghar, Maharashtra-401506.

Respondent : Pr. Commissioner of CGST Palghar.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. NA/GST A-III/MUM/268/18-19 Dated 12-11-2018 passed by the Commissioner GST & CX (Appeals -III), Mumbai.

ORDER

The revision application has been filed by M/s. Salvi Chemicals Industries Ltd. 214, Rose Industrial Estate, Western Express Highway, Borivali (East), Mumbai 400066. (herein after to be referred as "Applicant"), against Order-in-Appeal No. NA/GST A-III/MUM/268/18-19 Dated 12-11-2018 passed by the Commissioner GST & CX (Appeals -III), Mumbai.

2. The applicant had filed three rebate claims totally amounting to Rs. 6,30,000/- 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-781 to 783/2017-18 dated 31.05.2017 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 31.05.2017, 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. NA/GST A-III/MUM/268/18-19 Dated 12-11-2018 passed by the Commissioner GST & CX (Appeals -III), Mumbai.

4. Aggrieved by the OIA dated 12-11-2018, the applicant filed revision application on the following grounds:

4.1. The Commissioner(Appeals) has grossly erred in not taking into consideration the judgement of the Hon'ble Punjab & Haryana High Court in the case of JSL Lifestyle Ltd. v/s UOI 2015 (10) TMI-1106, which is a good Law and after the judgement of the Mumbai High Court judgement. The above judgement also finds mention of below noted case laws on the subject

matter (i) C.Ex. & Customs, Surat-I vs. Swagat Synthetics, 2008 (232) E.L.T. 413 (Guj.), (ii) STI India Ltd. vs. Commissioner of Cus. & C. Ex., Indore, 2010(19) S.T.R. 614 (M.P.), (iii) Commissioner of Central Excise, Coimbatore vs. GTN Engineering (I) Ltd., 2012(281) E.L.T. 185 (Mad.) and (iv) Dorcas Market Makers Pvt. Ltd. vs. Commissioner of Central Excise, 2012 (281) E.L.T. 227 (Mad.) (v) Supreme Court in Collector of Central Excise v. Raghuvar (India) Ltd. [2000] 5 SCC 299. The Learned Commissioner(Appeals) has brushed this aside with a remark, that since he is in Mumbai, he would not take into account the judgement as passed by the Punjab & Haryana High Court. This action is clearly bad in Law.

4.2. The Applicants humbly bring to Notice that there is no dispute (i) about the export of the goods in question (ii) about the payment of Central Excise duty while clearing the goods under cover of Central Excise Invoice from the Applicant's premises (iii) about the fact that the Rebate claims are filed in terms of Rule 18 of Central Excise Rules, 2002 (iv) about the fact that all procedures as prescribed under Rule 18 of CER have been followed by the Applicants.

4.3. The Learned Commissioner(Appeals) has crossly erred in not taking into consideration the judgement of the Hon'ble Supreme Court in the matter of CCE, Jaipur v/s Raghuir (India) Ltd. [2000] 5 SCC 299.; without assigning any reason, the Learned Commissioner(Appeals) has just made a passing comment that the said judgement. does not help the Applicants in any way. This judgement is on the very issue of whether Section 11B would apply when Central Excise Rules lay down clear procedure in terms of notification; this judgment clearly ordered that Central Excise Rule would prevail where no limitation is provided whether it be for SECTION 11A and/or 11B. The Applicant submits that this Judgement covers the present issue and same / similar relief needs to be given to the Applicants.

4.4. The Applicants submit that the impugned OIO is bad in Law and needs to be set aside and rebate claims as filed by the Applicant need to be allowed without invoking Section 11B of CEA, 1944.

4.5. The Applicant humbly prays that the delay in filing Appeal before this Honourable Forum may kindly be condoned due to the fact that under a bonafied belief the Appeal against impugned Order was filed before the Honourable CESTAT, Mumbai Bench, which after hearing the matter on 09/03/2020 dismissed the same as having been filed in wrong forum. Separate application for condonation of delay is filed.

5. The applicant was thereafter granted opportunity of personal hearing on 16.05.2023. Shri M.H.Sukheja, Advocate and Shri T.R. Patel, Auth. Representative, appeared on behalf of the applicant. They reiterated their earlier submissions. They submitted an additional written submission. They further submitted that export of duty paid goods is not in dispute. They requested to allow their claim based on judgements mentioned by them.

6. They submitted an additional written submission dated 16.05.2023 wherein they stated that –

6.1 The goods have been exported in terms of Rule 18 of the Central Excise Rules, 2002 therein detailed procedure is prescribed for preparation of documents, the number of sets of the said documents, the stage wise scrutiny and also the method of claiming rebate of duty upon physical export of the said goods. This is vide notification 19/2004 dated 06-09-2004; this notification does not prescribe any time limit for claiming the rebate of duty paid.

6.2 The Learned Commissioner(Appeals) has erred in brushing aside the S.C. judgment in the matter of M/s. Raghuveer (India), Supra as not applicable; this judgment is vital to the facts of the issue at hand. This S.C.

clearly lays down that limitation under Section 11A of the CEA, 1944 is not applicable in case of recovery of duty' wherein it follows as a corollary to this that Section 11B of CEA would not be applicable in matter of refund: this judgment has been mentioned and followed in the matter of JSL Lifestyle Limited Judgment of the Punjab & Haryana High Court; the Learned Commissioner(Appeals) has erred in not taking this judgment into consideration and has passed it on by a very casual remark, that since he is based in Mumbai, he would not take cognizance of a judgment as passed by the Hon'ble Punjab & Haryana High Court." This is preposterous and legally wrong an unsustainable. As a quasi Judicial Authority he is duty bound to take cognizance of the judgments as passed by any Indian High Court This judgment has discussed and distinguished the judgment of the Bombay High Court, which the Learned Commissioner(Appeals) has made a reference of and followed. The Punjab & Haryana Court judgment is a good law and the order has come after the Mumbai High Court judgment and has a clear resonance with the facts and circumstances of the matter at hand.

6.3 They further contended that the above Judgement sum and substance is based upon a very clear understanding of the intent of the legislature in matters connected to export of goods and services wherein it has recognized the important role played by exporters in sustaining the Country's export efforts so as to earn precious foreign exchange to pay for the huge import bills for vital imports like oil and other essential items not available in the country; it is laid down that what ever is available as a matter of Govt. Policy needs to be given to the exporters without taking the limitation clause in contention, which is basically for refund of duty and not rebate benefit for exports; thus the time limit would not be applicable in matter of rebate which is governed by the procedure under Rule 18 of Central Excise Rules; Your Honor may kindly note that the Applicants have fulfilled all the procedural requirements under Rule 18 and are morally and legally entitled to receive the promised export incentives as laid down by Law.

6.4 The Applicants submitted that delay in filing the Appeal before Your Honor's office may kindly be condoned and matter decided on merits being a small exporter and not having received correct guidance while filing the appeal with wrong forum as under a bonafide belief that the matter pertains to refund and also the fact that at the initial stage of filing the registrar of the forum did not inform that the matter would be filed at Revisionary Authority and not the CESTAT forum; the period as exhausted at CESTAT may kindly be condoned due to bonafide understanding about the forum of Appeal.

6.5 Applicants say and submit that they are basically a small export market for their produce and any cost escalation for whatever reasons grossly affects working of their unit, export rebate constitutes a very important benefit/component of their final selling prices and any deviation and non receipt of legally available benefit leads to cost escalation and possible cancellations of export orders. Since time immemorial it is the consistent policy of the Govt. of India that goods are to be exported and not the duties and taxes; any duties/taxes suffered on export goods needs to be refunded/rebated to the exporters in whatever form or procedures.

6.6 The Applicants humbly submit that the OIA is bad In Law and we humbly pray to Your Honor to set right the wrongs done to us small exporter working under fierce global competition from big Multinationals. Without prejudice, the Applicants submits that it is in the interest of the exporter to submit the rebate claims as soon as possible since then the sooner the applications are submitted the sooner they would get the same processed and get the benefit. Any delay is not affecting the Govt.

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

8. Government observes that the applicant initially filed appeal against the impugned Order before Tribunal, Mumbai. Tribunal refrained from passing any order as Tribunal does not have any jurisdiction to pass any order in respect of rebate claims filed by the applicant on export of goods. On receipt of the said CESTAT order, applicant filed the instant Revision Application and pleaded for condonation of delay.

9. Government first proceeds to discuss issue of delay in filing Revision Application. The CESTAT vide Final Order No. A/85509/2020 dated 05.03.2020 dismissed the appeal for lack of jurisdiction. Applicant has accordingly filed a Revision Application in respect of Order-in-Appeal No. NA/GST A-III/MUM/268/18-19 Dated 12-11-2018 passed by the Commissioner GST & CX (Appeals -III), Mumbai. The chronological history of events is as under:-

Sl. No.	Particulars	Order-in-Appeal No. NA/GST A-III/MUM/268/18-19 Dated 12-11-2018
1.	Date of Receipt of Order in Appeal by the Applicant	04.12.2018
2.	Date of filing of appeal before Tribunal	01.03.2019
3.	Time taken in filing appeal before Tribunal	2 months 26 days
4.	Date of receipt of Tribunal order Final Order No. A/85509/2020 dated 05.03.2020	03.09.2020
5.	Date of filing of Revision application	30.09.2020
6.	Time taken between date of receipt of Tribunal order to date of filing of Revision application	27 days

As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are good reasons to explain such delay.

10. Government notes that Hon'ble High Court of Gujarat in the case of M/s. Choice Laboratory [2015 (315) E.L.T. 197 (Guj.)] , Hon'ble High Court of Delhi in the case of M/s. High Polymers Ltd. [2016 (344) E.L.T. 127 (Del.)]

and Hon'ble High Court of Bombay in the case of M/s. EPCOS India Pvt. Ltd. in [2013 (290) E.L.T. 364 (Bom.)] have held that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. The ratio of above said judgements is squarely applicable to these cases. Government therefore keeping in view the above cited judgments holds that revision application No. F. No. 195/23/WZ/2020 -R.A. is condonable. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up these Revision Application for decision on merit.

11.1 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;"

11.2 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.

12.1 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.

12.2 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."*

12.3 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."*

12.4 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.

12.5 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."

13. 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.

14. The Order-in-Appeal No. NA/GST A-III/MUM/268/18-19 Dated 21-11-2018 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. 348 /2023-CX(WZ) /ASRA/Mumbai DATED 29.08.2023

To,
M/s. Salvi Chemicals Industries Ltd.
214, Rose Industrial Estate,
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M/s. Salvi Chemicals Industries Ltd.
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Copy to:

1) The Commissioner of CGST Palghar.
2) The Commissioner GST & CX (Appeals -III), Mumbai.
3) Sr. P.S. to AS (RA), Mumbai.
4) Spare Copy.