REGISTERED SPEED POST AD

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/18/WZ/2020-RA/7442 Date of Issue: 17.10.2023

ORDER NO. 375/2023-CX(WZ)/ASRA/MUMBAI DATED 09.10.23 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Nina Agrotech Pvt. Ltd.,
2021 C, Rajani Terrace,
Flat no.F-6. Rajampuri,
6th Lane, Kolhapur,
Mumbai-416008.

Respondent : The Commissioner of CGST Kolhapur.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PUN-EXCUS-001-APP-03/2020-21 Dated 29/06/2020 passed by the Commissioner (Appeals-I), Central Tax, Pune.

ORDER

The revision application has been filed by M/s. Nina Agrotech Pvt. Ltd., 2021 C, Rajani Terrace, Flat No. F-6. Rajampuri, 6th Lane, Kolhapur, Mumbai-416008 (herein after to be referred as "Applicant"), against Order-in-Appeal No. PUN-EXCUS-001-APP-03/2020-21 Dated 29/06/2020 passed by the Commissioner (Appeals-I), Central Tax, Pune.

2. The applicant, engaged in the manufacture of excisable goods. They had filed twelve rebate claims totally for Rs.4,51,225/- on 23.05.2016 for the period from October, 2015 to March, 2016, in respect of duty paid on the goods manufactured and cleared by them under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Act. The applicant had withdrawn the rebate claims on 09.08.2016 for the purpose of compliance of some documents. The rebate claims were subsequently submitted by the applicant on 29.08.2018. The claims were rejected by the respondent & returned to the applicant on the same day, on the grounds of limitation, in terms of section 11B(1) of the Act. Being aggrieved, the applicant had filed an appeal before the Commissioner (Appeals-I). The case was remanded back to the respondent by the first appellate authority, with directions to follow the principles of natural justice before deciding the rebate claims. The respondent, in compliance, of the said directions, has passed the impugned Order-in-Original No. RTN/09/Adj/2019-20 dated 26.07.2019 and rejected the rebate claims being inadmissible under Section 11B of the CEA, 1944 as the rebate claim had been filed beyond the stipulated time limit of one year from the relevant date.

3. Aggrieved by the Order-in-Original dated 26.7.2019, the applicant filed appeal before the Commissioner(Appeals). The appellate authority after following due process of law rejected the appeal and upheld the Order-in-Original vide his Order-in-Appeal No. PUN-EXCUS-001-APP-03/2020-21

Dated 29/06/2020 passed by the Commissioner (Appeals-I), Central Tax, Pune.

4. Aggrieved by the Order-in-Appeal dated 29/06/2020, the applicant filed revision application on the following grounds:

4.1 That the Rebate claims are filed within the specified time limit as per the erstwhile Central Excise Act and the Central Excise Rules and procedures. Applicants submit that all required and connecting documents evidencing the duty payment on the inputs used in manufacture of the goods which have been exported have been submitted. Also all and every export related documents evidencing exports of goods is furnished with the Rebate claims applications and that no other document is required nor asked for by the Department to decide the Rebate claims. All above documents were submitted on 23-05-2016.

4.2 That it is a well settled law that date of first submission is the date to be taken for rebate application; this is amply clear from the judgement of the Hon'ble High Court, Gujarat in the case of Apar Industries (Polymer Divison) v/s UOI 2016 (333) ELT 0426 (GUJ.); This judgement has attained finality in as much as the Department has accepted and not filed any appeal against the same; as per circular Number 1063/2/2018 CX Dated 16-02-2018. The Learned Respondent has cleared erred in not taking proper and legal interpretation of the circular in letter and spirit and held the second date of resubmissions of the documents as the date of submissions of the rebate claim; this is clearly bad in Law and needs to be held as such.

4.3 That Rule 18 of the Central Excise Rules, 2002, expressly provides that where any goods are exported the Central Government may by notification grant a rebate of the duty paid and that rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure as may be specified in the notification. Under rule 18, therefore, a party is entitled to the rebate subject to such conditions or limitations as may be specified in the

notification. In respect of grant of rebate, it is open to the Central Government to impose conditions or limitations including as to the period within which the rebate ought to be claimed. The rule is wide enough to authorise the Central Government to impose a condition or limitation stipulating the period within which the facility granted, namely, rebate is to be claimed. The language is wide enough in this regard. To cement our submissions as above, we seek to rely on the Judgement of the Hon'ble Punjab and Haryana High Court in M/S JSL Lifestyle Limited Versus Union of India and others-2015 (10) TMI 1106. The above judgment also dealt with in detail with the judgement of the Division Bench judgment of the Bombay High Court dated 29.03.2012 in Everest Flavours Ltd. v. Union of India Writ Petition No. 3262 of 2011, However the Hon'ble High Court distinguished the same with reasoning as follows, "The Division Bench of the Bombay High Court has not dealt with the observations of the Supreme Court in paragraphs 14 and 15 or with the line of reasoning therein. We are, therefore, with respect, unable to agree with the judgment of the Bombay High Court.". The above judgement also finds mention of below noted case laws on the subject matter (i) C.Ex. & Customs, Surat-1 vs. Swagat Synthetics, 2008 (232) ELT. 413 (Guj.), (ii) STI India Ltd. vs. Commissioner of Cus. & C. Ex., Indore, 2010(19) STR 614 (MP). (i) Commissioner of Central Excise, Coimbatore vs. 6TN Engineering (1) Ltd., 2012(281) ELT. 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.

4.4 That this very issue is no longer res-integra' and is settled by the judgement of the Honorable Gujarat High Court in the matter of Apar Industries (Polymer Division) v/s UIO Ref. 2016 (333)ELT 0246 (GUJ.); wherein interalia, it is held that the issue of Rebate claims would need to be decided on merits without reference to time bar' in terms of Section 11B. We humbly submit that the above judgement covers our instant issues on all its fours and relief as given therein is requested for. We also submit that conclusions as drawn in the above judgement has been accepted by the Department vide circular Number 1063/2/2018 CX Dated 16-02-2018.

5. The applicant was thereafter granted opportunity of personal hearing on 16.05.2023 Shri M.H. Sukheja, Advocate and Shri Santosh Panchal, Authorised person appeared on behalf of the applicant and submitted that first claim filed with the department was well within time. They further submitted that submission of second time alongwith detailed documents is not relevant date. They submitted a judgement of Apar Ins. 2015(12)LCX0049. They further submitted that export of duty paid goods is not in dispute therefore their application be allowed. They also submitted a short written submission on the matter.

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 withdrawn by the applicant and resubmitted 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 next issue that arises is whether submitting the claim within time limit and withdrawing the same would have the effect of postponing such "relevant date". Government infers that in the normal course any diligent applicant would typically make an effort to submit their rebate claim within the designated timeframe, and even if it were initially withdrawn, they would reapply within the specified time limit. Even if the claim was returned by the rebate sanctioning authority for deficiency in the documents submitted, the applicant could have established their entitlement to the rebate claimed as and when the proper documents were received. In such a case, their rebate

claim would be deemed to have been filed in time. Para 2.4 of Chapter 9 of the CBEC's Excise Manual of Supplementary Instructions, 2005 in very explicit terms provides for such exigencies. The text thereof is reproduced below.

> *"2.4 ..... Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo(depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period."*

8.2 The Order-In-Original dated 26.07.2019 indicates that the appellant voluntarily withdrew their refund claim on 09.08.2016. However, the appellant contends that this withdrawal was made under duress and due to incorrect advice. It's important to note that the appellant has alleged withdrawal under duress and therefore, the responsibility to prove this allegation with documentary evidence rests on them. The appellant has not provided any such evidence to support their claim. Additionally, it's worth noting that the rebate claims were not returned to the appellant by the department; rather, they were withdrawn by the appellant themselves. Consequently, once the appellant voluntarily withdrew the claims, it effectively brought an end to the claims that were initially filed on 23.05.2016. Therefore, the rebate claims should be considered as having been filed afresh only on 29.08.2018. Given this timeline, the rebate claims have clearly exceeded the applicable time limit and are considered time-barred.

8.3 The applicant has relied on the judgment of the Hon'ble High Court, Gujarat, in the case of Apar Industries (Polymer Division) v/s UOI 2016 (333) ELT 0426 (GUJ.) as a basis for their argument. However, this precedent is not applicable to the impugned case, because in the Apar Industries case, the

department had returned the application, whereas in the present case, the applicant voluntarily withdrew their application.

9.1 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.

9.2 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."*

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

"9. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, "refund" includes "rebate of duty" of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The "relevant date" is defined under Explanation (B) to Section 11B of the Act, which means in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of goods..... Thus, the "relevant date" is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the "relevant date" and in such form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004 issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.

10. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002

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

11. It is required to be noted that Rule 18 of the 2002 Rules has been enacted in exercise of rule making powers under Section 37(xvi) of the Act. Section 37(xxiii) of the Act also provides that the Central Government may make the rules specifying the form and manner in which application for refund shall be made under section 11B of the Act. In exercise of the aforesaid powers, Rule 18 has been made and notification dated 6.9.2004 has been issued. At this stage, it is required to be noted that as per Section 11B of the Act, an application has to be made in such form and manner as may be prescribed. Therefore, the application for rebate of duty has to be made in such form and manner as prescribed in notification dated 6.9.2004. However, that does not

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

.....

15. In view of the above and for the reasons stated above, it is observed and held that while making claim for rebate of duty under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable. In the present case, as the respective claims were beyond the period of limitation of one year from the relevant date, the same are rightly rejected by the appropriate authority and the same are rightly confirmed by the High Court. We see no reason to interfere with the impugned judgment and order passed by the High Court. Under the circumstances, the present appeal fails and deserves to be dismissed and is accordingly dismissed."

10. In the light of the foregoing facts and in keeping with the judicial principle of *contemporanea exposito est optima et 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.

11. The Order-in-Appeal No. PUN-EXCUS-001-APP-03/2020-21 Dated 29/06/2020 passed by the Commissioner(Appeals) is upheld. The revision application filed by the applicant is rejected as devoid of merits.

Shrawan 3/10/23

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

ORDER No. 375/2023-CX(WZ) /ASRA/Mumbai DATED 09.10.23

To,
M/s. Nina Agrotech Pvt. Ltd.,
2021 C, Rajani Terrace,
Flat no.F-6. Rajampuri,
6th Lane, Kolhapur,
Mumbai-416008.

Copy to:

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