

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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 195/06/WZ/2020/7779

Date of Issue: 08.11.2023

ORDER NO. 380 /2023-CX(WZ)/ASRA/MUMBAI DATED 06.11.23 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. Faurecia India Private Limited.,  
Plot T-187, B.G. Block,  
Pimpri Industrial Area,  
Bhosari, Pune-411026.

Respondent : 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-EXCUS 001-  
APP-134/2018-19 dated 06.11.2019 passed by the  
Commissioner (Appeals), Central Tax, Pune.

**ORDER**

The revision application has been filed by M/s. Faurecia India Private Limited., Plot T-187, B.G. Block, Pimpri Industrial Area, Bhosari, Pune-411026 (herein after to be referred as "Applicant"), against Order-in-Appeal No. PUN-EXCUS 001-APP-134/2018-19 dated 06.11.2019 passed by the Commissioner (Appeals), Central Tax, Pune.

2. The applicant had filed rebate claim for Rs. 1,01,64,913/- 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-53/P.I/DnIII/AC/2018-19 dated 12.03.2019 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 12.03.2019, 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-EXCUS 001-APP-134/2018-19 dated 06.11.2019 passed by the Commissioner (Appeals), Central Tax, Pune.

4. Aggrieved by the OIA dated 06.11.2019, the applicant filed revision application on the following grounds:

4.1. That Section 11B of the Act does not have any applicability in the present case. The Applicant submits that Rule 18 of the Excise Rules provide for the rebate of duty. Rule 18 states that the Central Government, by notification, may grant rebate of duty subject to such conditions or limitations, if any, and on fulfilment of such procedures as may be specified in the Notification. That Rule 18 categorically provides that the rebate of duty would be only subject to the conditions and limitations prescribed, the

Act cannot be made artificially applicable to the rebate claims when the intention of the legislature was to only provide for conditions and procedures mentioned under the Notification. The Respondents have erroneously applied the time limitation under Section 11B of the Act in the present case whereas the same does not have any applicability. They relied on the following cases-

- Camphor and Allied Products Ltd. Vs. UOI 2019 (368) ELT 865 (All.)
- Dorcas Market Makers Pvt. Ltd. 2015 (321) E.L.T. 45 (Mad.) which was further maintained by the Hon'ble Supreme Court in the case of Deputy Commissioner v. Dorcas Market Makers Pvt. Ltd. - 2015 (325) E.L.T. A104 (S.C.).
- JSL Lifestyle Ltd. UOI 2015 (326) ELT 265 (P&H)
- CCE v. Raghuvar (India) Ltd., 2000 (118) E.L.T. 311 (S.C.)
- Everest Flavours Ltd. Vs. Union of India 2012 (282) E.L.T. 481 (Bom.)

4.2 That it has complied with all the substantive conditions of the rebate notification. Further, there is no dispute that goods cleared by the Applicant were actually exported out of India within the specified time limit and all necessary conditions for such export has been fulfilled by the Appellant. That the benefit of rebate on account of exports should not be denied to the Applicant merely on the ground that the rebate claim is time barred as per Section 11 of the Act. They relied on the following case law-

- Birla Tyres vs. Commissioner of Central Excise, Kolkata (2005 (179) E.L.T. 417 (Tri. Kolkata)).

4.3 That, they were unable to file the claim of rebate within the period of one year due to bonafide reasons. The person responsible for filing the claim (Assistant Manager, Indirect taxation) was in the organization for 9 years who left the organization in May 2017 due to better financial opportunities. During the same time, due to unforeseen medical reasons, the Finance Manager (to whom the Assistant Manager reported to) was on emergency medical leave of the period until the maternity leave from 5 January 2018 till 7 October 2018. The Applicant submitted that that it has been compliant in filing all its refund claims within time limit right from the beginning and it was merely on account of bonafide reason that the delay was caused in the given case. As the delay in the instant case was on account of bonafide

reason, the Applicant submitted that the rebate claim ought to be allowed setting aside the Impugned Order.

4.4 That mere non-compliance with a procedural requirement cannot stand in the way of denial of substantive benefit to an assessee. The substantive benefit available to him ought not be rejected due to non-compliance of procedural requirement. Moreover, the State cannot enrich itself by collection of taxes that do not have the authority of law. They relied on the following cases-

- M.K. Jokai Agri Plantations P. Ltd. Va. Commr. of C. Ex. & S.T., Dibrugarh 2018 (361) EL.T. 393 (Gau.)
- C.C.E. & C v. J.S. Gupta & Sons, 2015 (318) E.L.T. 63 (All.)
- MODERN PROCESS PRINTERS 2006 (204) E.L.T. 632 (G.O.I.)
- Formica India Division vs. Collector of Central Excise [1995 (77) E.L.T. 511 (S.C.)].
- A.G. Export Industries vs. Commissioner of C. Ex., Bangalore [2007 (212) E.L.T. 421 (Tri. Bang.)],

4.5 That, it has been the policy of the Government since inception that exports should be tax free. In other words, the object of the Government is to export only the goods and services and not the taxes. They relied on the following case-

- Repro India Limited [2009 (235) ELT 614 (Hom)].

4.6 That in case the rebate claim is not granted to the Appellant, the CENVAT credit used for making payment of duty on export of goods should be re-instated in its CENVAT Credit account. Merely because the rebate claim is time barred, the credit should not be lost. They relied on the following cases-

- JVS Exports [2014 (312) E.L.T. (G.O.I)].

4.7 That the input tax credit used for payment of duty on goods exported is a vested and a substantive right under the Excise law. It is as good as tax paid to the Government. They relied on the following case-

- Eicher Motors Ltd vs. Union of India [1999 (106) ELT 3 (SC)].

5. The applicant was thereafter granted opportunity of personal hearing on 13.07.2023. Shri Rajan Mishra, Advocate appeared on behalf of the applicant. They reiterated their earlier submissions. He further submitted that there being no dispute on export of duty paid goods, time limit of one year under Section 11B of the CEA should not be applied to rebate cases. He referred to case law of Dorcas Market Makers Pvt. Ltd. passed by the Hon'ble Madras High Court.

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-EXCUS 001-APP-134/2018-19 dated 06.11.2019 passed by the Commissioner(Appeals) is upheld. The revision application filed by the applicant is rejected as devoid of merits.

  
( SHRAWAN KUMAR )

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No.

380 /2023-CX(WZ) /ASRA/Mumbai DATED 06.11.23

To,

M/s. Faurecia India Private Limited.,  
Plot T-187, B.G. Block,

Pimpri Industrial Area,  
Bhosari, Pune-411026.

Copy to:

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

