



**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, Cuff Parade,
Mumbai- 400 005

F NO. 198/53/13-RA

Date of Issue: 16.11.2021

ORDER NO. 519 /2021-CX (WZ) /ASRA/MUMBAI DATED 12/11/21
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 : Commissioner of Customs & Central Excise, Rajkot.

Respondent : DCM Bearing Pvt. Ltd.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.50/2013/CE/
AK/COMMR(A)AHD dated 27.02.2013 passed by the
Commissioner (Appeals), Customs & Central Excise, Rajkot.

ORDER

This Revision Application is filed by Commissioner of Customs & Central Excise, Rajkot (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 50/2013/CE/AK/Commr(A)/AHD passed by the Commissioner (Appeals), Central Excise & Customs, Rajkot.

2. The brief facts of the case are that M/S DCM Bearings Pvt Ltd. (hereinafter referred to as "respondent"), Survey No. 166, Plot No. 18, Shantidham Main Road, Veraval (Shapar), District Rajkot-360024, is engaged in the manufacture of excisable goods and is registered with Central Excise Department. The said respondent filed rebate claim of Rs. 1,20,384/- on 27.02.2012 before the adjudicating authority for refund of duty paid on goods exported vide ARE-1 No. 50/2010-11 dated 17.12.2010, under rule 18 of the Central Excise Rules, 2002. As per the endorsement made by the Customs authority on Part B of the said ARE-1, the goods were exported on 30.01.2011. It appeared that the rebate claim was filed beyond one year from the date of export and hence the same was hit by limitation prescribed under Section 11B of the Central Excise Act, 1944. The adjudicating authority vide letter No. V/18 362/Ref/2012 dated 30.03.2012 returned the rebate claim being inadmissible.

2. Being aggrieved, the respondent preferred an appeal before the Appellate Authority who vide his impugned order allowed the appeal. The Appellate Authority held that,

- (1) Limitation prescribed under Section 11B cannot always be made applicable when the claim is filed under notification No. 19/2004-CE;
- (2) Relied upon the judgement dated 23.12.2011 of the Hon'ble High Court of Madras passed in the case of Dorcas Market Makers Pvt Ltd, Chennai, reported in 2012 (281) ELT 227 (Mad-HC).

3. Aggrieved, the Applicant then filed the current Revision Application on the following grounds:

A) That the appellate authority erred in holding that limitation prescribed under Section 11B cannot be made applicable, when the claim is filed under notification No. 19/2004-CE.

B) It is pertinent to examine the provisions of Section 11B of the Act, which are reproduced as under:

"SECTION 11B Claim for refund of duty and interest, if any, paid on such duty.
- (1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person....

[Explanation. - For the purposes of this section,

(A) "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;

(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, -

(b) 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"

(C) The above provisions of Section 11B are very clear. It, inter alia, stipulates that any person claiming refund of any duty of excise may make an application for refund before the expiry of one year from the relevant date. Further, Explanation (A) to Section 11B specifically provides that the expression "refund" includes rebate of duty of excise on excisable goods exported out of India. Moreover, Explanation (B) ibid defines the expression "relevant date" as the date on which the ship or the aircraft in which export goods are loaded, leaves India.

(D) Thus, it is clear that the rebate claims are governed by Section 11B of the Central Excise Act, 1944 and the limitation prescribed therein also applies to the rebate claim. In the present case, the goods were exported on 30.01.2011 whereas the rebate claim was filed on 27.02.2012 i.e. beyond a period of one year from the date of export. The rebate claim was, thus, clearly hit by the limitation prescribed under Section 11B of the Act, and consequently not admissible, as rightly held by the adjudicating authority.

(E) Reliance is placed on the judgement dated 29.03.2012 passed by the Hon'ble High Court of Bombay in the case of Everest Flavours Ltd reported in

2012 (282) ELT 481 (Bom.), wherein the Hon'ble Court, at para 12 of the judgement, held as under:

"12. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. Where the statute provides a period of limitation in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law."

(F) Reliance is also placed on the judgement dated 28.10.2009 passed by the Hon'ble High Court of Gujarat in the case of Ashwin Fasteners of Ashwin Panchal reported in 2010 (258) ELT 174 (Guj.), wherein the Hon'ble Court, at para 5 and 8 of the judgement, held as under:

"5. Section 11B of the Act empowers a person, inter alia, to claim refund of any duty of excise before the expiry of one year from the relevant date. The said section does not provide, either expressly or impliedly, that such application, in the given circumstances may be made after the period of one year from the relevant date. In other words, the respondent authority has no power or jurisdiction to entertain the claim for refund after expiry of the period of one year from the relevant date. Admittedly, the petitioner did not make such application within one year. In our opinion, the respondent has rightly rejected the applications for rebate made by the petitioner after expiry of period of one year from the relevant date....."

8. In the present case, it is not disputable that the petitioner did make claim for rebate within one year from the relevant date as under 11B of Act. In our view, the Assistant Commissioner was right in rejecting the claim of the petitioner as time barred."

(G) That Appellate authority placed reliance on judgement of Madras High Court rendered case of Dorcas Market Ltd, Chennai, reported 2012 (281) ELT (Mad-HC). It is submitted that, as already referred in para 5 above, a two member Bench the Bombay High Court in the case of Everest Flavours Ltd supra, disagreed with the said judgement passed by a single member judge in case of Dorcas Market Makers Ltd, Chennai. The Hon'ble Court at para 9 of judgement, held that,

"9. A judgement of the Madras High Court in Dorcas Market Makers Private Limited, Chennai 2012-TIOL-108-HC-MAD-CX (281) 227 (Mad.) was sought to be relied upon to submit that Section 11B of the Central Excise Act would not operate in respect of an application under Rule 18 of the Central Excise Act 2002. The learned Single Judge of the Madras High Court held that when a statutory Notification which was issued under Rule 18 does not prescribe any time-limit, Section 11B would not be attracted. With respect, the learned Judge of the Madras High Court has not had due regard specific provision of Explanation (A) to Section 11B of the Act under which the expression "refund" is defined to include rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture such goods. The judgment of Supreme Court in Raghuvar which has been relied upon by the learned Single Judge of Madras High Court has already been considered hereinabove."

(H) Thus it appears that the appellate authority has erred in relying upon the case law of Dorcas Market Makers Private Limited supra.

(I) It is submitted that when the statute has specifically brought within the sweep of Section 11B a claim of rebate, it cannot be postulated that Rule 18 of the Central Excise Rules, 2002 would operate independent of the provisions of Section 11B. Thus, the findings of the appellate authority that limitation prescribed under Section 11B cannot be made applicable when the claim is

filed under notification No. 19/2004-CE, is erroneous and contrary to the provisions of the Act. Moreover, notification being subordinate legislation, cannot prevail over the Act. The impugned order is, thus, liable to be set aside.

(J) The Applicant prayed that the Order-in-Appeal be set aside and the *rebate claimed by the Applicant be granted along with interest under Section 11BB and other consequential relief.*

4. A Personal hearing in this case was fixed on 23.05.2018, 10.10.2019, 20.11.2019 and 28.11.2019. The department vide their letter No. V/2-35/OIA/RRA/2013 dated 18-11-2019 informed that they do not require personal hearing and the submissions in the RA addresses the issues covered in the matter. In view of the change in Revisionary Authority, hearing was fixed again on 06.01.2021, 13.01.2021, 20.01.2021 and 12.02.2021. No one appeared for the hearing on behalf of the applicant and the respondent.

6. Government has carefully gone through the relevant case records available in case files and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the issue involved in the instant Revision Application is whether the Commissioner Appeal's contention that the limitation clause prescribed under Section 11B will not be applicable, when the claim is filed under notification No. 19/2004-CE is correct or otherwise.

8. Commissioner Appeal in his impugned Order has held 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 relying on Judgement dated 23.12.2011 of the Hon'ble High Court of Madras in the case of Writ Petition No.26236/2010 of M/s Dorcas Market Makers Private Limited, Chennai Vs CCE (Appeals), Chennai and others 2012(281)ELT227(Mad-HC). 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 or 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.

8.2 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 and 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.

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 in as much as the applicability of Section 11B is only clarificatory".

8.5 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 there to 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.

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"

8.3 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. Commissioner Appeals observation at Para 7 of his order that *'the limitation aspect cannot always be made applicable when the claim is filed under Notification no. 19/2004-CE'* is not proper since limitation cannot be read into it by an executive implementing the said notification or even by a Court interpreting the same which is precarious as there are recent judgements where the Hon'ble Courts have categorically held that limitation under Section 11B of the CEA, 1944 would be applicable to the notification granting rebate. Commissioner Appeals has placed reliance upon the judgment of the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd., CCE(2012(281)ELT227(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.

8.4 Be that as it may, the observations of the Honorable 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

29. *In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), it has been held as follows:*

The 5. claim for refund made by the appellant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows:-

"(B) "relevant date" means, -

in the case of goods exported out of India where a (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 despatch of goods by the Post Office concerned to a place outside India;.....

8. *For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a*

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.

9. Government also relies on the judgment of the Hon'ble Supreme Court dated 09.02.2016 in the case of UOI Vs Concord Fortune Minerals (I) P. Ltd. [2017 (349) ELT 3 (S.C.)]

Writ jurisdiction not to be invoked to act contrary to law – Appeal against judgment of Single Judge disposed of by making stray observation relating to letter which was not on record before Division Bench – Neither merits of case gone into nor adjudication done on views of Single Judge – Also, liberty granted to writ-petitioner to prefer appeal and if within time as indicated, to be heard on merit – HELD : In respect of statutory provisions governing limitation, even while acting under Article 226 of Constitution of India High Court has to enforce rule of law and ensure that authorities/ organs of States act in accordance in accordance with law – Writ jurisdiction cannot be invoked for directing authorities to act contrary to law – Matter remanded to Division Bench for re-hearing appeal on merits [paras 3,4,5,6]

Appeals allowed.

9.2 The Government notes that the Hon'ble High Court Madras who while dismissing writ petition filed by Hyundai Motors India Ltd., [reported in 2017 (355) E.L.T. 342 (Mad.)] upheld the rejection of rebate claim filed beyond one year of export by citing the judgment of In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai reported in 2015 (324) E.L.T. 270 (Mad.) and held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder:-

period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

10. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is thus a mandatory provision. As per explanation (A) to Section 11B refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B of Central Excise Act, 1944. The explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. Government finds no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

11. Government finds in the impugned OIA, the reason given by the respondent for non-submission of rebate claims within time before the original authority was that the exports were done through the merchant exporters and

that the exporter gave the NOC only on 16.02.2021 and the export documents only on 24.02.2021 and hence there was delay in filing the rebate claim. 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 this. As such the rebate claim is clearly time-barred as it was filed after the time-limit specified under Section 11B of CEA.

12. Government notes that the statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim has to be treated as time barred.

13. In view of the above position, Government sets aside the Order-in-Appeal No. 50/2013/CE/AK/Commr(A)/AHD passed by the Commissioner (Appeals), Central Excise & Customs, Rajkot and holds that the rebate claim is time barred.

14. The Revision Application filed by the Applicant/Department is allowed.


22/11/21
(SHRAWAN KUMAR)

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

ORDER No. 519/2021-CX (WZ) /ASRA/Mumbai Dated 12/11/21

To,
The Commissioner of CGST & Central Excise,
Rajkot Commissionerate,
Central Excise Bhavan,
Race Course Ring Road,
Rajkot-360001

Copy to:

1. M/s DCM Bearings Pvt. Ltd. Plot No.18, Shantidham Main Road, Veraval (Shapar), Rajkot-360024
2. The Commissioner Rajkot (Appeals) unit, 2nd floor, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001
3. Jurisdictional AC/DC,CGST & Cex, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board.