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. 195/71/SZ/2017-RA/2595 Date of Issue: 21.06.2022

ORDER NO. 634 /2022-CX(SZ)/ASRA/MUMBAI DATED 09.6. 2022 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 Getech Equipment International Pvt. Ltd.
Plot No. 194/3 & 4,
IDA, Cherlapally,
Hyderabad 500 040

Respondent : Commissioner of CGST & Central Excise, Secunderabad

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. HYD-EXCUS-SC-AP2-002-17-18 dated 10.08.2017 passed by the Commissioner(Appeals-II), CGST & Central Excise, Hyderabad.

ORDER

The revision application has been filed by M/s Getech Equipment International Pvt. Ltd., Plot No. 194/3 & 4, IDA, Cherlapally, Hyderabad 500 040(hereinafter referred to as "the applicant") against Order-in-Appeal No. HYD-EXCUS-SC-AP2-002-17-18 dated 10.08.2017 passed by the Commissioner(Appeals-II), CGST & Central Excise, Hyderabad.

2.1 The applicant is engaged in the manufacture of drilling rigs mounted on motor vehicle chassis and earth borings falling under chapter sub heading 84304110 and 82071900 of the CETA, 1985. They were clearing the goods into the domestic market and also clearing the goods for export on payment of duty under claim for rebate under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The applicant had filed rebate claim no. AAECG1167FEM001_2016_028_RF_RR dated 23.07.2016 through ACES with the Assistant Commissioner of Central Excise, Cherlapally Division claiming rebate of central excise duty amounting to Rs. 50,17,082/- paid on "drilling rigs, components & accessories" cleared for export under Rule 18 of the CER, 2002, the details of which are given below : -

Sr. No.	ARE-1 No./Date	SB No./Date	FOB value declared in SB (Rs.)	ARE-1 value (Rs.)	Rebatable value (Rs.)	Duty paid as per ARE-1 (Rs.)	Eligible amount of rebate (Rs.)
1	22/13.02.15	8929409/10.04.15	684902	6766813	6766813	836378	836378
2	23/17.03.15	8423072/17.03.15	3531870	3531870	3531870	441484	441484
3	02/11.05.15	98480326/09.05.15	11387670	11387670	11387670	1423459	1423459
4	03/12.05.15	9566988/14.05.15	18720972	18720975	18720975	2340122	2340122
Total			40489914	40407328	40407328	5041443	5041443

2.2 The Assistant Commissioner issued show cause notice dated 08.08.2016 calling upon the applicant to show cause as to why the rebate claim for the amount of Rs. 50,17,082/- filed online through ACES should not be rejected as time barred under the provisions of Section 11B of the CEA, 1944. After following the due process, the Assistant Commissioner found that the rebate claim had been filed beyond the relevant date. He further observed that the argument of the applicant that there is no time limit under Notification No. 19/2004-CE(NT) dated

06.09.2004 was factually incorrect because the said notification had been amended by Notification No. 18/2016-CE(NT) dated 01.03.2016 to the effect that time limit prescribed under Section 11B of the CEA, 1944 has been included in para 3(b)(i) of the said notification. The Assistant Commissioner therefore rejected the rebate claim as time barred vide his OIO No. 16/2016 dated 30.09.2016.

3. . Aggrieved by the OIO dated 30.09.2016, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) examined Section 11B of the CEA, 1944, the submissions made by the applicant and the case laws relied upon by the applicant. He observed that that the argument of the applicant that the amendment to Notification No. 19/2004-CE(NT) dated 06.09.2004 was applicable only to exports made after 01.03.2016 was an attempt to misinterpret the notification. He further held that the rebate claim filed on 23.07.2016 was beyond the period of one year for the exported goods in view of the dates authenticated on the shipping bills. The Commissioner(Appeals) therefore upheld the OIO dated 30.09.2016 and rejected the appeal vide his OIA No. HYD-EXCUS-SC-AP2-002-17-18 dated 10.08.2017.

4. The applicant has filed revision application against the OIA No. HYD-EXCUS-SC-AP2-002-17-18 dated 10.08.2017 on the following grounds :

(i) The Commissioner(Appeals) had failed to note that during the period of export i.e. February 2015 to May 2015 to 01.03.2016; i.e. the date on which the Notification No. 19/2004-CE(NT) dated 06.09.2004 was amended by Notification No. 18/2016-CE(NT) dated 01.03.2016. there was no time limit either under Rule 18 of the CER, 2002 which provides rebate of duty paid on the exported goods or under Notification No. 19/2004-CE(NT) dated 06.09.2004 which provides the procedure and conditions for claiming rebate.

(ii) The appellate authority has also failed to consider that there is no mention of observance of provisions of Section 11B of the CEA, 1944 in Rule 18 of the CER, 2002 or in Notification No. 19/2004-CE(NT) dated 06.09.2004 till 01.03.2016.

(iii) The applicant submitted that the appellate authority had failed to consider the case laws cited in the appeal and appreciate the ratio laid down therein. The rebate claims ought to have been allowed in the light of the judgments allowing rebate of duty under Rule 18 of the CER, 2002

though the rebate claims had been filed beyond one year of the date of export.

(iv) The applicant placed reliance upon the judgment of the Hon'ble High Court of Madras in the case of Dy. Commr. of C. Ex., Chennai vs. Dorcas Makers[2015(321)ELT 45(Mad.)]. The SLP filed against the said judgment has been dismissed by the Hon'ble Supreme Court on 28.09.2015 as reported at [2015(325)ELT A104(SC)]. The applicant also placed reliance upon the judgments in the case of JSL Lifestyle Ltd. vs. UOI[2015(326)ELT 265(P & H)] & Nav Maharashtra Chakan Oil Mills Ltd. vs. CCE, Pune-II[2016(341)ELT 444(Tri-Mum)].

(v) The applicant submitted that the Commissioner(Appeals) ought to have considered that the amendment to Notification No. 19/2004-CE(NT) dated 06.09.2004 was issued only on 01.03.2016 vide Notification No. 18/2016-CE(NT) dated 01.03.2016 prescribing time limit for filing rebate claim under Rule 18 of the CER, 2002 and that there was no time limit for filing rebate claim during the period prior to 01.0.2016. It was averred that the amending notification had been issued to prescribe time limit for rebate claims prospectively.

(vi) It was further opined that the appellate authority should have considered that at the time of export, there was no time limit under Rule 18 of the CER, 2002 under Notification No. 19/2004-CE(NT) dated 06.09.2004 and that the amending notification only had prospective effect and did not have retrospective effect. The applicant stated that the amendment could not abruptly take away the applicants right for rebate of duty paid on the exported goods.

(vii) The applicant further submitted that in the interest of justice, the Commissioner(Appeals) should have considered the one year time limit for filing refund claim imposed by the amendment as applicable only to exports made after 01.03.2016 and not retrospectively.

(viii) It was further submitted that the Commissioner(Appeals) should have considered that the one year limitation would be applicable from the date of such amendment and the rebate claim having been filed on 23.07.2016; i.e. within one year from the date of such amendment; i.e. 01.03.2016, the applicants were rightly eligible to refund and the claim was not hit by time bar.

(ix) The applicant stated that the new law of limitation cannot suddenly extinguish vested right of action by providing for a shorter period of limitation where a subsequent law curtails the period of limitation previously allowed and such law comes into force, it should not be allowed to have retrospective effect, which it would otherwise have, so as to destroy pre-existing vested right of suit, because giving of such retrospective effect amounts to not merely a change in procedure but a forfeiture of the very right to which the procedure relates.

(x) The applicant placed reliance upon the judgment in the case of Rajasthan Worsted Spinning Mills vs. CCE[1990(47)ELT 483(Trb.)]. In that case, it was held that where the right to claim refund arose before 06.08.1977 but the claim for refund was made after 06.08.1977 and the new Rule 11 did not provide for any saving clause or breathing time, the new law of limitation cannot suddenly extinguish vested right of action by providing for a shorter period of limitation. It was opined that where the subsequent law curtails the period of limitation previously allowed and such law comes into force, it should not be allowed to have retrospective effect which it would otherwise have, so as to destroy pre-existing vested right of suit because the giving of such retrospective effect amounts to not merely a change in procedure but a forfeiture of the very right to which the procedure relates. Therefore, the claim for refund lodged by the applicants was not time barred in view of the old Rule 11 which would apply in the instant case.

(xi) The applicant also relied upon the judgment of the Hon'ble Bombay High Court in the case of Electrofonts vs. UOI[2003(162)ELT 1182(Bom.)] wherein it was held that if later period is shorter than the earlier one, right to institute proceedings subsisting according to the earlier period when the later one comes into operation, will not be taken to be extinguished.

(xii) The applicant cited the judgment of the Hon'ble Supreme Court in the case of New India Insurance Co. Ltd. vs. Shanti Mishra[AIR 1976 SC 237] wherein it was held that generally the law of limitation which is in vogue on the date of commencement of action governs it, a new law of limitation providing a longer period cannot revive a dead remedy and similarly a new law of limitation providing for a shorter period cannot suddenly

extinguish a vested right of action by providing a shorter period of limitation.

5. The applicant was granted a personal hearing on 23.11.2021, Shri P. Rosi Reddy(IRS Retd.), Advocate and Tax Consultant appeared on their behalf and filed a written submission. He also submitted copy of a judgment of the Hon'ble High Court of Allahabad in the case of Camphor and Allied Products Ltd.[2019(368)ELT 865(All.)]. He submitted that prior to amendment of Notification No. 19/2004-CE(NT) dated 06.09.2004 on 01.03.2016, time limit under Section 11B is not applicable to rebate claims.

6.1 In the written submissions filed by the applicant, they stated that it was a practice throughout the world that export goods and not the taxes thereon should be exported. It was further stated that every country in the world repays taxes suffered on export goods. The applicant opined that rebate was a beneficial legislation which enhances the exports which ultimately benefit the economy of the country by earning foreign exchange and provide employment since the goods produced have an international market. It was further averred that the primary reason for grant of rebate to the exporter was to encourage them for generation of foreign exchange for the country and that procedural requirements should not act as a stumbling block. The applicant stated that the scheme for rebate of excise duty was a special beneficial scheme provided under Section 37 of the CEA, 1944 read with Rule 18 of the CER, 2002 and Notification No. 19/2004-CE(NT) dated 06.09.2004 to provide incentive to the manufacturers to export their manufactured goods. It was stated that the scheme for rebate was a self-contained scheme. It was opined that the Central Government had while issuing the notification, acted in its wisdom and provided only for such conditions and limitations as were considered fit and necessary for the purpose of granting rebate.

6.2 The applicant further submitted that during the period of export, Notification No. 19/2004-CE(NT) dated 06.09.2004 was effective till it was amended by Notification No. 18/2016-CE(NT) dated 01.03.2016 prescribing one year period, that there was no time limit at the time of export either under Rule 18 of the CER, 2002 which provides rebate of duty paid on exported goods or under Notification No. 19/2004-CE(NT) dated 06.09.2004 which prescribes procedure and conditions to claim such rebate and that the amendment to notification is prospective and not retrospective and that there was no time limit for filing rebate claim during the

period prior to 01.03.2016. The applicant stated that there was no mention of observance of provisions of Section 11B of the CEA, 1944 in Rule 18 of the CER, 2002 or in Notification No. 19/2004-CE(NT) dated 06.09.2004 till 01.03.2016. The applicant placed reliance upon the judgment in the case of Dy. Commissioner of C. Ex., Chennai vs. Dorcas Makers[2015(321)ELT 45(Mad.)] and the dismissal of the SLP filed against that judgment by the Hon'ble Supreme Court as reported in [2015(325)ELT A104(SC)]. Reliance was also placed upon the judgments in the case of JSL Lifestyle Ltd. vs. UOI[2015(326)ELT 265(P & H)] and Camphor and Allied Products Ltd. vs. UOI[2019(368)ELT 865(All.)] & Commissioner of Income Tax vs. Vegetable Products Ltd.[(1973)88 ITR 192(SC)]. The applicant submitted that in terms of the ratio of these judgments, the taxing provisions are to be interpreted in favour of the assessee and hence requested to allow the refund in the interest of justice.

6.3 The applicant reiterated that the one year time limit prescribed for filing refund claim imposed by the amendment was applicable to exports made after 01.03.2016 and not retrospectively and that a new law of limitation cannot suddenly extinguish vested right of action by providing for a shorter period of limitation where a subsequent law curtails the period of limitation previously allowed. Such law should not be allowed to have retrospective effect as it would destroy pre-existing vested right of suit because the giving of such retrospective effect amounts to not merely a change in procedure but a forfeiture of the very right to which the procedure relates. The applicant further submitted that if there is a contradiction between the section, rule and notification issued under the rule, the assessee is entitled to avail the beneficial section, rule or notification, since all notifications are issued by the sovereign Government.

7. Government has carefully gone through the impugned OIA, the OIO, the revision application, the written submissions filed by the applicant and their oral submissions at the time of personal hearing. The issue involved in the present case is whether the rebate claim filed by the applicant after a period of one year from the date of export of the goods can be considered as filed within the mandatory time limit. The applicants case is based on the assertion that the amendment of Notification No. 19/2004-CE(NT) dated 06.09.2004 by Notification No. 18/2016-CE(NT) dated 01.03.2016 specifically mentioning the time limit under Section 11B of the CEA, 1944 as applicable to rebate claims filed under its auspices is

prospective in effect. The applicant has also placed reliance on certain judgments to fortify their arguments.

8.1 On going through the facts of the case, it is observed that it is an admitted fact that the applicant has filed the rebate claim on a date beyond the period of one year from the date of export of the goods. The main submission of the applicant is 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. 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.

8.2 It would be apparent from these facts that Section 11B of the CEA, 1944 is purposed to cover refund of 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 superfluous these references to rebate in Section 11B. 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, 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.

9.1 The applicant has cited various case laws and placed reliance upon their ratio to contend that the time limit under Section 11B of the CEA, 1944 is not applicable for the period prior to 01.03.2016. As it were, the judgments/orders cited by the applicant are not squarely on this point and therefore would not be applicable to the facts of the case. Government therefore refrains from discussing these case laws and proceeds to discuss only cases which have specifically dealt with the issue at hand. It is observed 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. The applicants contention that when the relevant notification does not prescribe any time limit, limitation cannot be read into it is precarious as there are recent judgments where the Honourable Courts have categorically held that limitation under Section 11B of the CEA, 1944 would be applicable to notifications granting rebate. 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 Be that as it may, 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 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 thereto 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."

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.

10.1 In so far as the judgment dated 03.07.2019 rendered by the Hon'ble High Court of Allahabad in the case of Camphor and Allied Products Ltd. vs. UOI[2019(368)ELT 865(All.)] & JSL Lifestyle Ltd. vs. UOI[2015(326)ELT 265(P & H)] relied upon by the applicant is concerned, Government is persuaded by the principle of contemporaneous exposition of law in the later judgments of Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru[2020(371)ELT 29(Kar.)] and Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)] which very unequivocally hold that the time limit specified in Section 11B of the CEA, 1944 would be applicable to rebate claims.

10.2 With due respect to the judgments relied upon by the applicant, it is observed that these judgments have been delivered in exercise of the powers vested in these courts in terms of Article 226/Article 227 of the Constitution of India. Needless to say, no statute passed by Parliament or State Legislative Assembly or

any existing law can abridge the powers vested in the High Courts which is known as writ jurisdiction of the High Court under Article 226 of the Constitution of India. However, the irrefutable fact in the present case is that the Central Excise Act, 1944 provides for a period of limitation in Section 11B of the CEA, 1944. The powers of revision vested in the Central Government under Section 35EE of the CEA, 1944 are required to be exercised within the scope of the CEA, 1944 which includes Section 11B of the CEA, 1944. In other words, notwithstanding the mitigating circumstances or compelling facts, there can be no exercise of powers in revision outside the scope of the Central Excise Act, 1944. Thus, there is a great difference in the degree of powers exercisable by the High Courts and creatures of statute.

11.1 In sum and substance, the implication of the submissions of the applicant are that a notification which is a delegated legislation issued under Rule 18 of the CER, 2002, which again is a delegated legislation issued under Section 37 of the CEA, 1944 can allow refund of rebate which can be refunded only in terms of statutory provisions under Section 11B of the CEA, 1944 to be claimed indefinitely. In the face of the repeated references to rebate in Section 11B and the period of limitation specified under Section 11B of the CEA, 1944, such an averment would be unreasonable.

11.2 The statute is sacrosanct and is the edifice on which the rules and other delegated legislations like notifications are based. An argument which suggests that a delegated legislation can allow greater liberties for refund of rebate than the statute itself cannot be endured. In a recent judgment in a matter relating to GST, the Hon'ble Gujarat High Court had occasion to deal with the powers that can be given effect through a delegated legislation in its judgment dated 23.01.2020 in the case of Mohit Minerals Pvt. Ltd. vs. UOI[2020(33)GSTL 321(Guj.)]. Para 151 of the said judgment is reproduced below.

> *"151. It is a settled principle of law that if a delegated legislation goes beyond the power conferred by the statute, such delegated legislation has to be declared ultra vires. The delegated legislation derives power from the parent statute and not without it. The delegated legislation is to supplant the statute and not to supplement it."*

11.3 The inference that follows from the judgment of the Hon'ble High Court is that if the view of the applicant is presumed to be tenable, a notification which goes beyond the power conferred by the statute would have to be declared ultra vires.

Any delegated legislation derives its power from the parent statute and cannot stand by itself. In the present case the Notification No. 19/2004-CE dated 06.09.2004 has been validly issued under Rule 18 of the CER, 2002 and the provisions of Section 11B of the CEA, 1944 have expressly been made applicable to the refund of rebate and therefore there is no question of the notification exceeding the scope of the statute. In the light of these discussions, the rebate claim filed by the applicant beyond the period of one year from the date of export of the excisable goods is clearly hit by limitation and has rightly been rejected as time barred.

12. In the result, the rebate claims having been filed by the applicant beyond the time limit of one year specified under Section 11B of the CEA, 1944 are time barred. Government therefore finds no reason to interfere with the impugned orders-in-appeal. The revision applications filed by the applicant are rejected as being devoid of merits.

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

ORDER No. 634/2022-CX(SZ) /ASRA/Mumbai DATED 09.6.2022

To,
M/s Getech Equipment International Pvt. Ltd.
Plot No. 194/3 & 4,
IDA, Cherlapally,
Hyderabad 500 040

Copy to:

1) The Commissioner of CGST & Central Excise, Secunderabad
2) The Commissioner(Appeals-II), CGST & Central Excise, Hyderabad
3) Sr. P.S. to AS (RA), Mumbai
4) Guard file