

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. 198/87/WZ/17-RA /1199

Date of Issue: 24.02.2023

ORDER NO. 71 /2023-CX(WZ)/ASRA/MUMBAI DATED 23.02.23 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 : Pr. Commissioner of CGST & Central Excise,
Palghar.

Respondent : M/s. Karamtara Engineering Pvt. Ltd.
Survey No 48, 53/58, Vill-Saravali,
MIDC Indl. Area, Boisar,
Dist-Palghar 401506.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Order-in-Appeal No. SK/128/TH-II/2017
Dated 31-03-2017 passed by the Commissioner of Central
Excise(Appeals), Mumbai-I.

ORDER

The revision application has been filed by Pr. Commissioner of CGST & Central Excise, Palghar (herein after to be referred as "Applicant"), against Order-in-Appeal No. SK/128/TH-II/2017 Dated 31-03-2017 passed by the Commissioner of Central Excise(Appeals), Mumbai-I.

2. The respondent had filed rebate claims amounting to Rs. 4,29,903/- 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. 03/16-17 dated 30.05.2016 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 30.05.2016, the respondent filed appeal before the Commissioner(Appeals). The appellate authority Commissioner of Central Excise (Appeals), Mumbai vide Order-in-Appeal No SK/128/Th-II/2017 dated 31.03.2017, set aside the Order in Original with consequential relief.

4. Aggrieved by the OIA dated 31.03.2017, the applicant filed revision application on the following grounds:

4.1 The Commissioner (Appeals) has observed that once goods are exported, the respondent is entitled to rebate of duty paid, that Limitation etc. come under procedural matter and should not come in the way of substantive claim unless it is an abuse of law. The Commissioner(Appeals) has observed that Rule 18 nowhere specify any time limit for filing of rebate claim in respect of Central Excise duty on goods exported. The only relevant criteria under the

said Rule for claiming rebate of Excise duty is that the excisable goods are exported out of India on payment of duty. There is no dispute that the goods were exported by the respondent out of India on payment of Central Excise duty. He has also observed that there is also a cogent reason for late filing of claim. In the absence of any limitation prescribed, the Commissioner (Appeals) has found that the impugned order of adjudicating authority rejecting respondent's application for rebate as time-barred is unjustified and not sustainable.

4.2 The learned Commissioner (Appeals) has failed to consider the judgment of Hon'ble Apex Court in the case of UOI V/s. Uttam Steel Ltd., [2015(319) ELT 598 SC] wherein by referring to an earlier decision of the Hon'ble Court in the case of Mafatlal Industries Ltd V/s. UOI [1997(89) ELT 247(SC)], the Hon'ble Court has come to the conclusion that all claims for rebate/refund have to be made only under Section 11B with one exception where a statute is struck down as unconstitutional and the limitation period has to be strictly applied. The Adjudicating authority has rejected the rebate claim by relying upon the aforesaid judgment of Hon'ble Apex Court, however the Commissioner (Appeals) has failed to acknowledge the same.

4.3 In view of the facts and circumstances enumerated above, the Order-in Appeal No. SK/128/Th-II/2017 dated 31 03 2017 passed by the Commissioner of Central Excise (Appeals), Mumbai-I is not proper and legal, hence required to be set aside.

5. The applicant was thereafter granted opportunity of personal hearing on 11.11.2022. Shri N.S.Patel, Advocate appeared online on behalf of the respondent and submitted that time limit of Section 11B is not applicable to rebate claims. He mentioned case of M/s. Dorcas Market Pvt. Ltd. He requested for one week's time for additional submissions. He requested to uphold Commissioner(Appeals) order.

6. The respondents filed their written submissions on 28.11.2022 wherein they stated that:

6.1 Respondent shipped the goods on 7.6.2014. Remittance received within prescribed period. The CHA failed to provide export documents. Respondent filed Rebate Claim on 12.2.2016 since circumstances were beyond his control. Adjudicating Authority appreciated Shipment, Remittance receipt. Failure of CHA to provide export documents etc.

6.2 The provision in Section 11B empowers rebate refund to be made in accordance with Rule and Notification.

The Rule 18 of the Central Excise Rules, 2002 reads as under:

"Rule 18. Rebate of duty. - Where any goods are exported, the Central Government may, by Notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture of processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."

6.3 The Scheme for Rebate under Rule 18 read with Notification No. 19 of 2004, dated 6-9-2004 is a Special Law granting rebate from excise duty to exporters. The scheme is a special beneficial scheme provided under Section 37 of the Act read with Rule 18 of the Rules and Notification No. 19 of 2004, dated 6-9-2004, to provide incentive to manufacturers to export their manufactured goods. It was a self contained scheme. The conditions, limitations and procedures for grant of such rebate were (under the scheme of the Act) governed especially by the procedures and conditions stipulated under the Notification dated 6-9-2004.

The Notification 19/2014 has no limitation period for rebate claim. The Notification 19/2014 was amended in 2016 on 1.3.2016 expressly stating period 1 year of Section 11B will apply for rebate claims.

6.4 The Notification dated 6-9-2004 was amended by Notification dated 1-3-2016 which reads as follows:

In the said notification:-

(1)....

(2) under heading "(3) Procedures", in paragraph (b), in sub-paragraph (i) after the words "shall be lodged", the words, figures, letter and brackets "before the expiry of the period specified in section 11B of Central Excise Act, 1944 (1 of 1944)" shall be inserted."

This Notification is not retrospectively effective. Respondent had filed claim prior to 1.3.2016 despite failure of CHA to provide export documents.

6.5 Under Scheme of Act, Rebate provisions not provided for by any Act of principal legislation but only through delegated legislation - Even otherwise, scheme for rebate under Rule 18 of Central Excise Rules, 2002 read with said notification, special law granting rebate from excise duty to exporters - Conditions, limitations and procedures for grant of such rebate (under scheme of Act) governed especially by procedures and conditions stipulated under notification. None of conditions and limitations provided under notification such as may be read to contain stipulation of limitation of one year from relevant time or from date of shipment, etc., for purpose of making claim for rebate - Amendment in Clause 3(b), sub-paragraph (l), made prospectively from 1-3-2016 and there is no intendment either explicit or implied to make same retrospective Section 11B of Central Excise Act, 1944.

6.6 The issue has been decided by the High Court of Madras in M/s. Dorcas Market Makers Pvt. Ltd. V/s. CCE 2012 (281) E.L.T. 227 (Mad), Single Judge. Deptt Appeal dismissed by Division Bench reported in 2015 (321) E.L.T. 45. The Civil Appeal of Department dismissed by Hon'ble Supreme Court Deputy Commissioner V/s. Dorcas Market Pvt. Ltd. 2015(325) ELT A-104. The judgment of the Madras High Court merged with the judgment of the Supreme Court.

6.7 Respondent submits that the dismissal of Civil Appeal after granting Leave to SLP is a judgment, doctrine of merger applies and such SC judgment have binding force. The Larger Bench of the Hon'ble Supreme Court held this in Kunilayammed V/s. State Of Kerala 2001 (129) ELT 11 (S.C.).

6.8 The following judgments have decided with well reasoned judgment on the basis that rebate refund to be made in accordance with Rule and Notification.

- A. Camphor And Allied Products Ltd. v UOI 2019 (368) E.L.T. 865 (All.)
- B. JSL Lifestyle Ltd. V/s. Union Of India 2015 (326) ELT 265 (P&H.)
- C. Cosmonaut Chemicals V/s. Union Of India 2009 (233) ELT 46 (GUJ.)
- D. Sansera Engineering Ltd. V/s. Deputy Commissioner, Large Tax Payer Unit, Bengaluru 2021 (378) E.L.T. 747 (Kar.) This judgment dealt with Post 1.3.2016 amended 19/2016 Notification.

6.9 Respondent further submits that in reverse circumstances of Section 11A of CEA 1944 and Section 28 of CA 1962, Hon'ble SC has held in Collector of Central Excise, Jaipur V/s. Raghuvar (India) Ltd. 2000 (118) ELT 311 (S.C.) Limitation of Section 11A does not apply on special scheme of Modvat. The Modvat Rule has no restriction on Limitation in demand SCN. Similar view have been taken that Limitation of Section 28 of CA 1962 not applies on Drawback Rules, Drawback Rules have no restriction Limitation.

7. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA. The issue for decision in the present case is the admissibility of rebate claim filed by the respondent 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 respondent 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. The next issue that arises is whether the non-availability of documents would have the effect of postponing such "relevant date". Government infers that in the normal course any diligent respondent would try and ensure that their rebate claim would be lodged within time. Therefore, the respondent should have filed the rebate claim within one year of date of shipment of the goods with the available documents and photocopies of documents which had been submitted by them to the Customs Authorities. Such timely action on their part would have ensured that the rebate claim was not time barred. Even if the claim was returned by the rebate sanctioning authority for deficiency in the documents submitted, the respondent 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.

"2.4Even 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."

9.1 The respondent 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 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.”

9.4 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.

9.5 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.”

10. In the light of the foregoing facts and in keeping with the judicial principle of *contemporanea exposito est optima et fortissima 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 respondent are hit by bar of limitation.

11. The Order-in-Appeal No. SK/128/TH-II/2017 Dated 31-03-2017 passed by the Commissioner(Appeals) is set aside as devoid of merits. The revision application filed by the applicant is allowed.


23/2/23
(SHRAWAN KUMAR)

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

ORDER No. 71 /2023-CX(WZ) /ASRA/Mumbai Dated 23.02.23

To,
Pr. Commissioner of CGST & Central Excise,
Palghar.

Copy to:

- 1) M/s. Karamtara Engineering Pvt. Ltd. Survey No 48, 53/58, Vill-Saravali, MIDC Indl. Area, Boisar, Dist-Palghar 401506.
- 2) The Commissioner (Appeals), Central Excise, Mumbai-I.
- 3) Sr. P.S. to AS (RA), Mumbai.
- 4) ~~Guard file.~~
- 5) Spare Copy.