

REGISTERED SPEED POST



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. 195/19/2016-RA | 3674

Date of issue: 05.09.2022

ORDER NO. 780/2022-CX (WZ)/ASRA/MUMBAI DATED  
25.8.2022 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. PAB Organics Pvt. Ltd.

Respondent: Pr. Commissioner of Central Excise & Customs, Vadodara-I

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-001-APP-  
313-2015-16 dated 02.11.2015 passed by the Commissioner (Appeals-I),  
Central Excise, Customs & Service Tax, Vadodara.

## ORDER

This Revision Application has been filed by the M/s. PAB Organics Pvt. Ltd., 101-102, GIDC, Nandesari, Dist. Vadodara (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. VAD-EXCUS-001-APP-313-2015-16 dated 02.11.2015 passed by the Commissioner (Appeals-I), Central Excise, Customs & Service Tax, Vadodara.

2. Brief facts of the case are that the applicant had filed a rebate claim of Rs.70,771/- on 01.04.2015 in respect of ARE-1 No. 15 dated 27.03.2014 seeking rebate of duty paid on excisable goods exported by them under Rule 18 of the Central Excise Rules, 2002, but it was returned along with all original documents under query memo on 01.04.2015, as the claim was submitted after the prescribed time period i.e. one year from the date of export. However the applicant re-submitted the said claim on 15.06.2015 on the ground that the period mentioned in Section 11B of the Central Excise Act, 1944 is not applicable in case of rebate of goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CX (N.T.) dated 06.09.2004. The adjudicating authority rejected the claim on the ground of limitation vide Order-in-Original No. Reb/123/Pab/AC.Div - IV/JPM/15-16 dated 25.08.2015. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) Hon'ble Commissioner (Appeals-I), Vadodara, did not appreciate the fact that the applicant had specifically re-submitted the Rebate claim based on the decision of the Hon'ble Madras High Court in case of Dorcas Market Makers Pvt. Ltd. Vs. CCE, wherein Hon'ble High Court has specifically laid down that the Rebate claim filed under Rule 18 of the Central Excise Rules, 2002 is to be

construed independently and is not subject to the limitation as prescribed in Section 11B of the Central Excise Act, 1994.

Further, this judgement of the Hon'ble Madras High Court was again challenged by the Central Excise Dept. before the Double Member Bench of the Hon'ble Madras High Court by filing 2nd writ petition, however the Double Member Bench of the Hon'ble High Court again rejected the petition filed by the CEX Department.

The Central Excise Department had also filed Petition to obtain Special leave of the Hon'ble Supreme Court to file an Appeal before the Hon'ble Apex Court against the said decision of the Double Member Bench of the Hon'ble Madras High Court. This Petition of the CEX Department was dismissed by the Hon'ble Supreme Court and thus the decision of the Double Member Bench of the Hon'ble Madras High Court, has attained finality and the lower quasi judicial authorities are bound by the said decision

(b) It appears that the Hon'ble Commissioner (Appeals-I) was pre-determined to reject the Appeal, as can be seen from the O.I.A., where the Hon'ble Commissioner (Appeals-I) has not taken any efforts to discuss and distinguish the Hon'ble Madras High Court's Orders placed on record by the Appellants. This inspite of the fact that the Appellants have throughout been contending that the Rebate claims were re-submitted based on the Hon'ble Madras High Court's ruling in case of Dorcas Market Makers Pvt. Ltd. Vs. CCE, which was again upheld by the Double Member Bench of the same court in CCE, Chennai Vs. Dorcas Market Makers Pvt. Ltd.

(c) The Hon'ble Commissioner (Appeals-I), Vadodara failed to appreciate the fact that the judgements in case of Dorcas Market Makers Pvt. Ltd. have been rendered by Hon'ble Madras High Court, which is Higher Judicial Authority and the Hon'ble Commissioner

(Appeals) being a lower quasi judicial authority is bound by the Orders of the Higher Judicial Authority.

The applicant in this regards would like to rely on following judicial pronouncements regarding judicial discipline and binding nature of decisions of Higher judicial authorities -

- o 1991 (55) E.L.T. 433 (SC) - Union of India Vs. Kamalakshi Finance Corpn. Ltd.
- o 1981 (8) E.L.T. 531 (BOM - HC) - Wipro Products Ltd. vs. Union of India
- o 1985 (22) E.L.T. 144 (TRIBUNAL) - Indian Plywood Manufacturing Co. Ltd. vs. CCE, Bangalore
- o 2013 (294) E.L.T. 403 (CESTAT- LB) - CCE, Rajkot vs. Reliance Inds. Ltd.

(d) the applicant in their written submission before the Hon'ble Assistant Commissioner during the personal hearing also sought to draw his attention to the Rule 5 of the CENVAT Credit Rules, 2004 and Notification No. 27/2012 - CE (NT) dated 18/06/2012 issued thereunder, wherein at para 3(b) of the said Notification, it is specifically mentioned that the Application in Form A should be filed on quarterly basis for claiming Refund, before the expiry of the period as specified in Section 11B of the CEX Act, 1944. The applicant brought to the notice of the Hon'ble Assistant Commissioner, that no such time limit is prescribed either in Rule 18 of the CEX Rules, 2002 (which governs the provisions regarding Export of goods under claim for Rebate) and nor in Notification No. 19/2004 - CE (NT) dated 06/09/2004 issued under Rule 18 of the said Rules of 2002. However the learned Adjudicating Authority neither discussed the said provisions, nor contested or challenged that the said analogy is not applicable to the impugned case.

(e) the applicant has all along pleaded that section 11B is not applicable at all in their case hence the question of claiming Interest under section 11BB of the CEX Act, 1944 does case, not arise. However since there is deliberate delay in sanction of the Rebate

claim, not only by the Adjudicating Authority but also by the 1st Appellate Authority, inspite of the aforementioned decisions of the Higher Judicial authorities, the applicant is entitled for Interest for delayed period as is held by the decisions of the Hon'ble High courts of Gujarat and Karnataka as follows.

- o 2013 (289) E.L.T. 429 (GUJ - HC) -Shri Jagdamba Polymers Ltd.
- o 2015-TIOL-1958-HC-KAR-CUS- Pfizer Products India Ltd.

On the above grounds the applicant prayed that the impugned O.I.A. dated 02/11/2015 be set aside and their application be allowed with consequential relief.

4.1 Personal hearing in the case was fixed for 24.06.2022. Shri Vivek Bapat, Advocate attended the online hearing and submitted that claim is not time barred as Section 11B was not applicable for rebate under Rule 18. He informed that a recent Gujarat High Court Order has allowed similar case. He promised to submit a copy of said judgment.

4.2 However, no further submissions have been done by the applicant.

5. Government has carefully gone through the relevant case records available in case files, oral and written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the main issue in the instant case is whether the rebate claims filed after one year are time barred, being hit by limitation in terms of section 11B of the Central Excise Act, 1944.

7.1 The applicant has contended that the time limit prescribed by Section 11B of the Central Excise Act, 1944 (hereinafter referred to as CEA), is not applicable to rebate claims as the notification issued under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as CER) did not make the provisions of Section 11B applicable thereto. In this regard, Government observes that Rule 18 of the CER has been made by the Central Government in exercise of the powers vested in it under Section 37 of the CEA to carry

into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA. Moreover, Section 37 of the CEA by virtue of its sub-section (2)(xvi) through the CER 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 to set out the procedure to be followed for grant of rebate of duty on export of goods. The applicants contention that the time limit has been done away as provision for filing of electronic declaration in Notification No. 19/2004-CE dated 06.09.2004 does not stand to reason because the provisions of Section 11B making reference to rebate have not been done away with and continue to subsist.

7.2 Government observes that the view that notifications for grant of rebate are not covered by the limitation prescribed by Section 11B of the CEA 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 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 Honorable Courts have categorically held that limitation under Section 11B of the CEA 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

7.3 Further, the observations of the Hon'ble High Court of Karnataka in the case of 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."*

7.4 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."*

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 and the provisions of Section 11B of the CEA have expressly been made applicable to the refund of rebate and therefore the notification cannot exceed the scope of the statute.

8. In view of the findings recorded above, Government upholds the Order-in-Appeal No. VAD-EXCUS-001-APP-313-2015-16 dated 02.11.2015 passed by the Commissioner (Appeals-I), Central Excise, Customs & Service Tax, Vadodara and rejects the impugned Revision Application.

  
(SHRAWAN KUMAR)

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

ORDER No.

780/2022-CX (WZ)/ASRA/Mumbai dated 25.8.22

To,  
M/s. PAB Organics Pvt. Ltd.,  
904-905, Atlantis Heights,  
Dr. Vikram Sarabhai Marg,  
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Copy to:

1. Pr. Commissioner of CGST,  
Vadodara-I Commissionerate,  
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2. Advocate Vivek Bapat,  
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Vadodara - 390 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Notice Board.