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**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.195/757(I to II)/13-RA/3639

Date of Issue: 25.08.2022

ORDER NO. 830-83/2022-CX (WZ) /ASRA/MUMBAI DATED 30.08.2022
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.Lensco Cosmetics,
1/42, GIDC, Balasinor, Kheda,
Gujarat 388 255

Respondent: The Commissioner of Central Excise, Ahmedabad-III

Subject : Revision Applications filed under Section 35EE of Central
Excise Act, 1944 against the Order-in-Appeal No. 61 to
62/2013 (Ahd-III)SKS/ Commr. (A)/Ahd dated 30.03.2013
passed by the Commissioner (Appeals -III) Central Excise,
Ahmedabad

ORDER

The Revision Applications have been filed by M/s Lensco Cosmetics, I/42, GIDC, Balasinor, Kheda, Gujarat 388 255 (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. 61 to 62/2013 (Ahd-III)SKS/ Commr. (A)/Ahd dated 30.03.2013 passed by the Commissioner (Appeals - III) Central Excise, Ahmedabad.

2. The facts of the case briefly stated are that the applicant had filed rebate claims on 07.05.2012 for Rs. 2,33,852/- & Rs.2,00,892/- in respect of exports made by merchant exporters namely Emami Ltd., Mumbai, under the provisions of Rule 18 of Central Excise Rules 2002, for the duty paid on the goods exported vide ARE 1 Nos. 37 & 38/2010-11 both dated 31.12.2011. The corresponding Shipping Bill Nos. 9231731 dated 07.01.2011 & 9274720 dated 20.01.2011 showed the date of 'Let Export' as 12.01.2011 & 03.02.2011, respectively. The applicant erroneously filed the rebate claims with office of the Maritime Commissioner, Central Excise Kolkata-I Commissionerate who returned the rebate claims in original on the grounds that claims could not be entertained since the goods had been exported from JNPT Sheva which did not fall under their jurisdiction. Subsequently, the applicant filed the rebate claims on 07.05.2012, with the Assistant Commissioner, Central Excise, Nadiad from where the goods were cleared for export. On scrutiny of the rebate claims, it was noticed that the said rebate claims were filed after expiry of prescribed limit of one year from the relevant date as stipulated under Section 11 B of the Central Excise Act, 1944 and ARE-1 No. 37 and 38/2010-11 dated 31.12.2010 did not indicate the adjudicating authority as sanctioning authority of rebate claim. Therefore, two show cause notices dated 28.05.2012 were issued to the applicant for rejection of the rebate claims on the ground of limitation. The adjudicating authority vide impugned order rejected both rebate claims as time barred.

3. Being aggrieved with the impugned Orders-in-Original, the applicant filed an appeal before the Commissioner (Appeals -III) Central Excise, Ahmedabad. The Appellate Authority vide impugned Orders-in-Appeal No.

61 to 62/2013 (Ahd-III)SKS/ Commr. (A)/Ahd dated 30.03.2013 rejected the appeals filed by the applicants.

4. Being aggrieved by the Orders-in-Appeal, the applicant has filed the instant revision application relying on the ruling of the Hon'ble High Court of Chennai in the matter of M/s Dorcas Market Makers Pvt Ltd submitting that in the said case, the Hon'ble High Court ruled that Section 11B of the Central Excise Act, 1944 cannot be applicable to rebate claims made under Notification No 19/2004-CE (NT) dated 06.09.2004, under Rule 18 of the Central Excise Rules, 2002 as the limitation aspect has been consciously omitted in the amendment to the earlier Notification No 41/1994.

5. Personal hearing in the case was scheduled on 11.06.2018, 22.08.2019, 01.10.2019, 09.02.2021, 23.02.2021, 23.07.2021, 29.07.2021, 01.09.2021 and 07.09.2021. However, no one appeared for the hearings on any of the scheduled dates. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the records available.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. The Revision application has been filed because the Original Authority and the Appellate Authority have rejected rebate claims filed by the applicant on the ground that the rebate claims are time barred as they have been filed after one year of issue of LEO (Let Export Order) date for those exports. While doing so, the lower authorities have relied upon the provisions of the time limit prescribed under the Central Excise Act, 1944.

6.1 The applicant, relying on the ruling of the Hon'ble Madras High Court in the matter of M/s Dorcas market Makers Pvt Ltd has stated that Section 11B of CEA, 1944 cannot be made applicable to Notification No. 19/2004-CE (NT) dated 06.09.2004 and contended that limitation specified under

Section 11B of the CEA, 1944 would not be applicable to Rule 18 of the CER, 2002.

7. Since the basic issue concerns the relevant date for filing rebate claim, resort must be had to Section 11B of the CEA, 1944. The relevant portion of Section 11B of the CEA, 1944 is reproduced as under:

“(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 despatch of goods by the Post Office concerned to a place outside India;”*

7.1 The text of the Explanation appended to Section 11B(5) of the CEA, 1944 states that the relevant date when limitation commences is the date on which the ship or aircraft in which such goods are loaded leaves India. Going further, it can be seen that for export by land, the date on which the goods pass the frontier is the relevant date. The bill of lading and mates receipt issued at the point in time when the goods are loaded on the vessel records the time when the goods have passed into the possession of the master of the vessel and are out of customs control. In the case of the exports by air, the airway bill and the documents showing the date and time of the departure of the aircraft would be the point where the goods are out of customs control and the point where the aircraft leaves the country. After this point when the bill of lading/airway bill is issued, the goods leave the port/airport and transit to the country of the buyer of the exported goods.

7.2 Government notes that the contention of the applicant that Section 11B of the CEA, 1944 cannot be made applicable to rebate claims under Notification No 19/2004-CE (NT) dated 06.09.2004 and does not prescribe any time limit is flawed. 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. The statute is sacrosanct and is the bedrock on which the rules and other delegated legislations like notifications, circulars, instructions are based. An argument which suggests that a notification/circular can reduce the time limit or does not prescribe a time limit for refund of rebate stipulated by Section 11B of the CEA, 1944 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."

7.3 Any delegated legislation which derives its existence from the statute cannot stand by itself, much less override the statute.

8 The applicant has placed reliance upon the judgment of the Hon'ble Madras High Court in the case of Deputy Commissioner of Central Excise vs Dorcas Market Makers Pvt. Ltd. (2015-TIOL-820-HC-MAD-CX), 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.

8.1 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."

8.2 Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UO1 [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."

8.3 The Hon'ble High Courts of Karnataka and Delhi have reiterated that limitation specified in Section 11B would be applicable to rebate claims.

Government is persuaded by the ratios of judgments of M/s Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru [2020(371)ELT 29(Kar)] and M/s Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380 (Del.)] which unequivocally hold that the time limit specified in Section 11B of the CEA, 1944 would be applicable to rebate claims.

9. In the instant case, the applicant has admittedly cleared the goods under ARE 1 Nos. 37 & 38/2010-11 both dated 31.12.2011 under Shipping Bill Nos. 9231731 dated 07.01.2011 & 9274720 dated 20.01.2011. The applicant has filed the rebate claims on 07.05.2012 before the sanctioning authority, which was beyond the period of one year from the 'Let Export' date, and was thus barred by limitation of time under Section 11B of the Central Excise Act, 1944

10. In view of the above discussion, Government holds that the appellate authority has rightly rejected the appeal filed by the applicant. Thus, Government does not find any infirmity in the Orders-in-Appeal Nos. 61 to 62/2013 (Ahd-III)SKS/ Commr. (A)/Ahd dated 30.03.2013 passed by the Commissioner (Appeals-III) Central Excise, Ahmedabad and therefore, upholds the impugned Orders-in-Appeal.

11. The Revision Applications are dismissed as being devoid of merits.


(SHRAWAN KUMAR)

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

ORDER NO. ⁸³⁰⁻831/2022-CX (WZ) /ASRA/MUMBAI DATED 30.08.2022

To,

M/s.Lensco Cosmetics,
I/42, GIDC, Balasinor, Kheda,
Gujarat 388 255

Copy to :

- 1) The Commissioner of CGST, Vadodara I, GST Bhavan, Race Course Circle, Vadodara 390 007
- 2) The Commissioner of CGST, Appeals, Vadodara, Central Excise Building, 6th Floor, Race Course Circle, Vadodara 390 007
- 3) Sr PS to RA, Mumbai
- ~~4) Guard File.~~
- 5) Spare copy.