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सत्यमेव जयते

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. 195/545/2016-RA / 3792 Date of issue: 15.09.2022

ORDER NO. 860 /2022-CX (WZ)/ASRA/MUMBAI DATED 13.9.2022 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. Hi-Tech Radiators Pvt. Ltd.

Respondent: Commissioner of Central Excise, Raigad

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PK/4/RGD/2016 dated 24.08.2016 passed by the Commissioner (Appeals-II), Mumbai Zone-II.

ORDER

This Revision Application has been filed by the M/s. Hi-Tech Radiators Pvt. Ltd., Gut.No.131, Takai Adoshi Road, Dheku, Khopoli, Dist. Raigad – 410 203 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PK/4/RGD/2016 dated 24.08.2016 passed by the Commissioner (Appeals-II), Mumbai Zone-II.

2. Brief facts of that case are that the applicant manufacture and export excisable goods, i.e., 'Radiators for Transformers'. During the period from 25.12.2014 to 10.02.2015, they had carried out exports under various ARE-1s under LUT. However, subsequently they found that the LUT against which the goods were cleared, had expired on 10.12.2014. Therefore, they paid the duty involved alongwith interest against the clearances and intimated the same to the jurisdictional Range Superintendent vide their letter dated 28.02.2015. Later on, the applicant filed 14 rebate claims together on 29.02.2016 alongwith necessary documents under Rule 18 of the Central Excise Rules, 2002 (CER). However, the adjudicating authority rejected the rebate claims on the ground of limitation of time under Rule 18 of CER read with Section 11B of the Central Excise Act, 1944 (CEA) vide Order-in-Original No. R-AC/ABG/RC-1to14/15-16 dated 01.04.2016. 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) Excise duty was not payable on the goods cleared under the disputed ARE-1's. The applicants have incorrectly paid excise duty on such goods. Hence, the amount of excise duty so paid on the export goods is refundable to the applicants.

The present case is of an incorrect payment of duty and therefore the time limit of limitation would apply from the date of payment. Hence, the impugned Order rejecting the refund on the ground that the

relevant date is date of export and therefore rebate claim is time barred is baseless.

(b) The applicants have mistakenly paid excise duty on the goods cleared under disputed ARE-1's after such goods have been exported. Therefore the said amount is nothing but deposit and does not have the character of duty. Department cannot withhold the amount of deposit. Hence, the statutory time limit will not apply on such deposit.

The applicants submit that they have incorrectly paid excise duty on the goods covered under the disputed ARE-1's, post removal for export. It is submitted that the applicants were under mistaken belief that they have to discharge excise duty on the goods since the UT-I under which the goods were cleared had expired. There is no provision under law which provides to pay excise duty on the goods which were already exported. Admittedly, the goods under dispute have been exported and the payment of export has been received is not in dispute. In fact, while clearing the finished goods under the aforesaid ARE-1, the applicants have complied with the provision contained under Rule 19 of Central Excise Rules, 2002 read with Notification No. 42/2001—CE(NT) dated 26.6.2001. This fact is also not under dispute. It is settled law that the export should not suffer taxes. Therefore, the department cannot unjustly retain amounts which are not required to be paid at all in law at first instance. This is unfair and inequitable upon the applicants. The department cannot retain these amounts at all and they should immediately refund the amount incorrectly paid by the applicants.

In any case, it is submitted that the abovementioned payments made by the applicants are not in the nature of payment of excise duty since the same has been erroneously paid and hence, the provisions of Section 11B will not be applicable to such payments. It is

submitted that the above view is supported by the judgment of the Hon'ble Madras High Court in the case of Natraj and Venkat Associates Vs. ACST — 2010 (17) STR 3 (Mad). In that case, the Hon'ble Madras High Court held that where tax has been erroneously paid on an activity which is not liable, what is paid is not "Service tax" and consequently, a refund claim filed (on 20.9.2006) even beyond a period of one year from the date of payment of tax (on 4.7.2005) is not barred by the limitation under Section 11B of the Central Excise Act, 1944. The applicants further place reliance on the following decisions:

- Hon'ble Karnataka High Court in the case of KVR Constructions vs. CCE - 2010 (17) STR 6 (Kar).
- CCE vs. Shankar Ramchandra- 2010 (19) STR 222 (T)
- CCE vs. Pratibha Constn. Engnr. -2011 (22) STR 182 (T)
- Karvy Consultants Ltd. vs. CCE - 2008 (10) STR 166 (T)
- CCE vs. Yokogawa Blue star Ltd. -2011 (21) STR 161 (T)

In view of the ratio of the aforesaid decisions, the provisions of Section 11B will not be applicable to the rebate claim filed by the applicants since the amount paid by the applicants is deposit and not in the nature of tax. Hence, reject of rebate claim filed by the applicants is incorrect. Therefore, the impugned Order-in-Appeal is liable to be set aside.

(c) Without prejudice to any of the grounds taken, the relevant date for calculation of limitation period for time-bar of rebate claim under Section 11B is to be determined from the date of payment of duty and not the date of export of goods.

The case of the department is that the rebate claim has been filed beyond the stipulated statutory limitation period of one year as prescribed under Explanation (B)(a)(i) of Section 11B of the Central Excise Act, 1944. For the purpose of argument, assuming without accepting, it is presumed that the amount paid does carry the character of duty. It is submitted that even then, the rebate claim filed by the applicants would not be barred by the period of

limitation. The department in the present case is relying on clause (B)(a)(i) of Explanation to Section 11B which provides that the relevant date for calculation of central excise refund for the goods exported by sea is the date of the goods actually leaving the territory of India by sea. The applicants submit that the goods cleared under disputed ARE-I 's were exported on various dates on or before 9.2.2015. The physical export of goods from India would have happened on that date. However, the actual date of making payment of excise duty on the goods covered under disputed ARE-I 's is 28.2.2015. For the purposes of rebate claim in the present matter, the relevant date cannot be taken as the date of export. This is because duty has not been paid on the export goods at the time of removal for export. Clause would apply in a case where goods are removed for export on payment of duty. In the present case, admittedly, no duty was discharged on the goods when removed for export under UT-I No. Raigad/KPL/UT-1/30[KFPL/13 during the period from 25.12.2014 to 9.2.2015. It is absurd to calculate limitation period for a claim from a date when the amount in question was not deposited. In other words, the facts which give rise to a right or cause of action did not take place at the time of export. Right to claim a refund of an amount would obviously arise only when that amount is paid. Assuming (but not accepting) that the amount of Rs. 15,46,746/- paid by the applicants is tantamount to payment of duty, the limitation period would still have to be calculated from the actual date of payment i.e., 28.2.2015. Hence, the relevant date for the purpose of determination of limitation period should be considered as the date of actual payment of duty. This date is 28.2.2015. Rebate claim was filed on 25.2.2016 which is within the statutory period of one year from the date of payment of duty. The Hon'ble CESTAT in the case of Good Year India Ltd. vs. CCE - 2015 (326) ELT 340 (T) has taken a view that the "relevant date" for cash refunds under Rule 57F(13) of the erstwhile Central Excise Rules, 1944 is not the date of clearance of goods for export,

and the limitation under Section 11B does not apply to these cases because the refund claim becomes admissible only after export of the goods having been made under bond. The applicants also rely upon the judgment in the case of In Re: Caspro Exports — 2010 (261) ELT 790 (Comml. Appl.). This was a case where the exporter, inter alia, sought refund of supplementary duty paid subsequent to export. The Commissioner (Appeals) held that as far as supplementary duty is concerned, the date of payment of duty would be relevant date while calculating limitation for filing claim and not the date of export.

(d) When the core fact of export is not disputed, the valuable right to claim rebate cannot be denied due to technical or procedural breach.

The law provides that manufacturer should pay excise duty on all clearances and claim rebate of the duty paid on goods which are exported in accordance of aforesaid Rule 18 of Central Excise Rules, 2002. These provisions are enacted to avoid evasion of duty for home consumption and regulate the system based on which refund/rebate of duty paid on goods exported is sanctioned. Non-compliance, if any, of such procedural provisions cannot result in imposition of tax especially when it is undisputed that the goods have been exported. Once the essential condition for rebate of duty stands fulfilled i.e., goods have been exported, entire duty paid on such goods at the time of clearance of goods from the factory is refundable either in cash or credit.

The applicants seek to place reliance on the following decisions which hold that the refund / rebate cannot be denied once the core fact of export is not in dispute:

- Universal Enterprises vs. GOI. - 1991 (55) ELT 137 (GOI) "Export not in dispute. The claim filed before wrong authority in time. Claim subsequently transferred to the correct

jurisdictional authority to be treated as having been filed in time."

- Poulose Mathew vs. CCE 1989 (43) ELT 424 (T) Affirmed by SC 2000 (120) ELT A64 (SC) "Refund filed before the authority not having territorial jurisdiction. Application is not ab-initio void or non est. Treatable as refund claim if otherwise valid."
- Madras Process Printers - 2006 (204) ELT 632 (GOI) "Rejection of claim is bad in law as substantiating fact of export was not in doubt and rebate being beneficial scheme, it should have been interpreted liberally."
- Barot Exports - 2006 (203) ELT 321 (GOI) "Core aspect in determination of rebate claim is the fact of manufacture and payment of duty thereon and its subsequent export. If this fundamental requirement is met, other attendant procedural requirements can be condoned."

(e) Applicants are eligible to take suo motu credit. No need in law to file a formal rebate claim.

It is submitted that there is no legal requirement for the applicants to file a formal rebate claim of excise duty paid subsequent to the goods exported. The applicants can take suo motu credit which is admissible & correct in law. The mere fact that rebate claim has been filed by the applicants does not mean that the department should propose to reject it. In Balkrishna Industries Ltd. Vs. CCE — 2015 (326) ELT 702 (T), the CESTAT held that if the assessee mistakenly paid SED on exported goods even though there was no legal obligation on them to pay SED, reversal and re-credit of SED is admissible.

(f) Exports should not suffer tax

It is well settled legal position that the taxes cannot be exported. The applicants submit that it has been the policy of the Government since inception that exports should be tax free. In other words, the object of the Government is to export goods and services and not taxes. (Refer Repro India Limited — 2009 (235) ELT 614 (Bom)). Hence, the denial

of rebate claim of excise duty on the excisable goods, exported by the applicants would lead to export of taxes which are against the policy of the Government. Hence, the impugned Order-in-Appeal is incorrect and liable to be set aside.

(g) The bar of unjust enrichment is not applicable for rebate of duty of excise paid on excisable goods exported out of India.

The applicants submit that in the present case they are claiming rebate of excise duty paid on the excisable goods exported out of India. Therefore, the bar of unjust enrichment would not be applicable in the present case.

(h) The rebate claim filed by the applicants is not hit by the bar of unjust enrichment since the excise duty paid by the applicants is shown as "receivables" in the Balance Sheet.

It is submitted that the applicants have not collected excise duty since the applicants have paid excise duty post removal of goods and hence, not transferred to the customer. Therefore, the applicants have not collected any excise duty amount from any other person.

The CESTAT in the case of Dabur India Ltd. vs CCE reported at 2008 (228) ELT 131 (Del. Tri.) held as under:

"5. We find that in this case admitted fact is that the respondents paid differential duty after clearance of goods. Demand of differential duty was confirmed for the period 1-3-90 to 30-9-97 and the duty has been paid in the year 1998. It is settled law that all the refund claimed are subject to the principle of unjust enrichment and onus is on the assessee to show that the burden of duty has not been passed on to the customer. In the present case demand was confirmed in respect of product-Gulabari after classifying the same under heading different from heading claimed by the respondent. Demand was subsequently set aside by the Tribunal. In the balance sheet for the financial year, 1997-98 this amount is shown as excise duty recoverable from the revenue department. The amount, in question, was also shown in subsequent balance sheet as recoverable excise duty. We find that the Tribunal in various

decisions relied upon by the respondents has taken a view that in case balance sheet amount of refund was shown as recoverable, it has been taken as established that the respondents have not passed on extra duty burden but have borne the same themselves. In these circumstances, as the balance sheet which is as per record under the Companies Act showing the amount as recoverable from the revenue and in view of the earlier decisions on this issue impugned, order is set aside. Appeal is allowed".

In the following decisions, the CESTAT has consistently held that if the refund amount is shown in the Balance sheet as recovery from the department then such refund cannot be hit by unjust enrichment:

- CCE vs. N.G. Thakkar& Sons - 2004 (166) ELT 115;
- Jaipur syntex Ltd. vs. CCE - 2002 (143) ELT 605;
- Hero Honda Motors Ltd. vs. CC - 2000 (126) ELT1014
- CC vs. MarutiUdyog Ltd. - 2003 (155) ELT523
- Sipani Automobiles Ltd. vs. CC - 2004 (176ELT 807

(i) The amount in respect of which the rebate claim has been filed has not been recovered from the customers / any other person and the same has been certified by the Chartered Accountant. Certificate of Chartered Accountant is and evidence to show that the burden of excise duty has not been passed on.

(j) The applicants submit that any amount paid as duty retrospectively is not hit by bar of unjust enrichment since the applicants have not separately charged and collected from their customers any amount towards the said amount paid retrospectively.

(k) Interest on excise duty paid by the applicants should be refunded to the applicants.

The applicants have paid interest on the amount of excise duty paid by them on 28.2.2015. This amount of interest comes to Rs.23,367/-. The present Show Cause Notice as well as impugned Order-in-Appeal does not contain proposal or cite any provision for denying refund of Rs.23,367. In view of the submission made

supra, there was no requirement to pay interest by the applicants and hence, the applicants are eligible for refund of Rs.23,367/-.

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal dated 24.8.2016 and allow the revision application in full with consequential reliefs to the applicants.

4.1 Personal hearing in the case was fixed for 05.07.2022. Ms. Payal Nahar, Advocate attended the hearing and submitted that the applicant paid duty on the instructions of Department as LUT had expired when goods were exported, therefore section 11 B time limit will not apply. She further submitted that their letter dated 28.02.2015 is their original claim. She further submitted that rebate does not attract Section 11B time limit. She requested to allow the claim.

4.2 In the additional submissions, the applicant has inter alia contended that:

a) Time limit prescribed under Section 11B of the Central Excise Act is not applicable to rebate claims filed under Rule 18 of Central Excise Rules.

Rule 18 of Central Excise Rules, 2002 mandates fulfilment of procedure prescribed under Notification No. 19/2004-CE in order to be eligible for rebate. On combined reading of Rule 18 of the Central Excise Rules, 2002 along with Notification No. 19/2004-CE (N.T.) dated 6.9.2004, it is abundantly clear that requirement of fulfilling time limit stipulated under Section 11 B of the Central Excise Act, 1944 was never a condition precedent for sanctioning of rebate claims during the relevant period.

Rule 12(1)(a) of the erstwhile Central Excise Rules, 1944 provided that the Central Government may grant rebate of duty paid on excisable goods by issuing Notification in the Official Gazette. Notification No.41/1994-CE (N.T.) dated 12.9.1994 was issued under Rule 12(1)(a) specifying conditions to be fulfilled for rebate of duty. Notification

No.41/1994-CE (N.T.) specifically provided that claim for rebate is to be lodged within the time limit specified in Section 11B.

A comparison of earlier Notification No.41/1994-CE (N.T.) dated 12.9.1994 and Notification No. 19/2004-CE (N.T.) dated 6.9.2004 shows that there is conscious omission to any reference of time limit in the later Notification by the Central Government as applicable during the relevant period.

The Applicant submits that both Rule 18 and Notification No.19/2004-CE (N.T.) have neither borrowed provisions of Section 11B nor made any mention of Section 11B anywhere whatsoever. Thus, from a conjoint reading of the provisions of law relating to a claim of rebate, it becomes evident that Section 11B had no application in cases relating to rebate claims. Therefore, absent any express provision, application of time limit prescribed under Section 11B to rebate claims is legally not sustainable.

In support of the above, the applicant rely upon the following decisions:

- Dorcas Market Makers Pvt. Ltd. vs. CCE-2012 (281) ELT 227 (Mad.). Affirmed by Division Bench of Hon'ble High Court at 2015 (321) ELT 45 (Mad.) affirmed by the Hon'ble Supreme Court at 2015 (325) ELT Al()4 (S.C.).
- JSL Lifestyle Ltd. vs. UOI -2015 (326) ELT 265 (P&H)
- Camphor and Allied Products Ltd. vs. UOI-2019 (368) ELT 865 (All.)

b) As the amount is liable to be re-credited in cenvat credit account if rebate in cash is denied, the applicant is entitled to refund of the same in cash by virtue of Section 142(3) of the CGST ACT 2017.

The Applicant submits that the amount of re-credit should be granted in cash by virtue of Section 142(3) of the CGST Act,2017.

Section 142(3) of the CGST Act, 2017 provides that where any claim for refund of any amount of cenvat credit, duty, tax or interest or any other amount paid under the existing law has been filed by an assessee, the same shall be disposed of in accordance with the

provisions of existing law and any amount eventually accruing to the assessee shall be paid in cash.

Section 142(3) contains a non-obstante clause which overrides anything to the contrary stipulated under the provisions of existing law. The Applicant submits that said non-obstante clause also overrides time limit specified under Section 11 B(l) of the Central Excise Act, 1944.

In support of the above submissions, the applicant rely on the following decisions:

- Hindalco Industries Ltd. vs. Union of India -2018-TIOL-18-HC-MUM-GST
- Thermax Ltd. Vs. Union of India —2019 (31) GSTL 60 (Guj.).

In view of the above, since the rebate claims were filed under the existing law, the amount of rebate by way of Cenvat Credit accruing to the Applicant must be granted in cash. Hence, the Applicant is eligible for the rebate of the amount representing duty paid on the exported goods in cash in terms of the provision of Section 142(3) of the CGST Act, 2017.

c) The applicants vide letter dated 28.2.2015 intimated to the Superintendent of Central Excise, Khopoli about the fact of payment of excise duty on the goods exported without payment of excise duty under the expired UT—I. In the said letter, the applicants also intimated that the applicants shall claim the rebate of the aforesaid excise duty paid / reversed by them. The applicant submit that vide letter dated 28.2.2015 they have staked their claim to avail rebate of the excise duty paid on goods exported outside India. Therefore, limitation stipulated under Section 11B of the Central Excise Act from the date of filing letter dated 28.2.2015. Hence, rebate claimed by the applicant is within the time stipulated under Section 11B of the Central Excise Act, 1944. Hence, the impugned Order rejecting rebate claim is perverse and liable to be set aside.

d) Without prejudice, the date of filing form ARE-I should be considered as date of lodging rebate claims by the applicant.

The Applicant submits that by filing the Form ARE-1 with the Revenue, they have staked claim to avail rebate of the excise duty paid on goods exported outside India. Without prejudice to other submissions, even if limitation provided under Section 11B is applied, it is submitted that limitation stipulated under Section 11B of the central Excise Act from the declaration date of filing in Form ARE-1 to the concerned Assistant/Deputy Commissioner of central Excise and not from the date of filing the formal rebate claims

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 CEA.

7.1 Government observes that the applicant has given varied contentions in the grounds for appeal such as the goods were exported under Notification No. 42/2001-CE(NT) dated 26.6.2001, hence they have wrongly paid the duty and interest which is required to be refunded to them along with interest, to treat the duties paid as deposit, etc. However, the fact remains that in respect of impugned exports, the applicant had filed rebate claims under Rule 18 of CER. Therefore, other contentions of the applicant are not being considered being out of context. The applicant should have staked their claim in proper manner as provided in the law instead of filing rebate claim for duty paid on export of goods. Therefore, Government is taking up for discussion only those arguments which are concerning to claim of rebate under Rule 18 of CER.

7.2 Government observes that the applicant has contended that though the goods cleared under disputed ARE-1s were exported on various dates on or before 09.02.2015, the actual date of making payment of excise duty on them was 28.2.2015. Therefore the relevant date for calculation of limitation

period for time-bar of rebate claim under Section 11B is to be determined from the date of payment of duty and not the date of export of goods. Government observes that the same argument was also put forth before the Original authority, who has aptly reasoned as to why relevant date would be date of ship/aircraft, carrying the export goods, leaving India. Government concurs with this decision of the adjudicating authority. The relevant paras 10 and 11 of the impugned OIO are reproduced hereunder:

> *10. On a bare reading of the legal provisions enunciated in the Section 11B of the Central Excise Act,1944, it is amply clear that as per Section 11B(1) ibid, the application for refund of duty (and interest, if any, paid on such duty) was required to be made to the Assistant Commissioner of Central Excise (or Deputy Commissioner of Central Excise) before the expiry of one year from the relevant dates In terms of clause (B) of the Explanation to Section 11B ibid, "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 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.*
>
> *11. I find that the claimant have filed the 14 claims refund of Rs. 15,44,245/- in respect of Central Excise duty paid on final products exported by them out of India. It is found that all the 14 rebate claims have been electronically filed on 25.02.2016 (Column 2 of Table —I at Para 2 herein-above refers) whereas the hard copies of the rebate claim and supporting documents have been furnished to Alibag Division office on 29.02.2016. The claimant are seen to have paid the Central excise duty of Rs.15,44,245/- in respect of the said clearances for export under the 14 ARE1s on 28.02.2015. However, from the records and the tabular information at Table-II in Para 2 herein-above, it is found that in these clearances for export under the 14 ARE1s, the dates of ship leaving India are 29.12.2014 (in 1 case), 29.01.2015 (in 1 case), 30.01.2015 (in 1*

case), 01.02.2015 (in 3 cases), 04.02.2015 (in 1 case), 08.02.2015 (in 2 cases), 15.02.2015 (in 3 cases) and the date of airway bill for departure of aircraft is 28.01.2015 in 1 case and 10.02.2015 in another case. The claimant were required to file the rebate claims aforesaid within 1 (one) year of each of the said dates. In the present case, the said 14 claims (corresponding to each of the said 14 ARE1s) in relation to Central Excise duty paid on the goods exported out of India have been effectively filed on 29.02.2016 with the Assistant Commissioner Of Central Excise, Alibag Division but much later than the expiry of the stipulated period of 1 year from each of the respective date(s) of ship/aircraft leaving India which date is the relevant date. In as much as the provisions of Section11B of the Central Excise Act, 1944 are unambiguous, particularly sub-clause (a)(i) under clause(B) of Explanation there-under (which is reproduced at Para 10 above) which explicitly specifies the event (in this case, date of ship/aircraft leaving India) for determination of the relevant date, I do not find any force in the claimant's argument that in their case, the date of duty payment in respect of all the 14 ARE is i.e. 28.02.2015, be taken as the 'relevant date' to determine the time-limit for filing the rebate claims in question.....

7.3 Government observes that during personal hearing, it was contended that the applicant's letter dated 28.02.2015 is their original claim. Government notes that the said letter is addressed to jurisdictional Range Superintendent informing that the applicant had inadvertently exported the goods under specified 14 ARE1s under a lapsed UT-1; that they had debited duty alongwith cess totally amounting to Rs.15,46,746/- in their Cenvat account and had paid interest amounting to Rs.23,367/- through GAR 7 Challan; that they shall claim rebate/refund for the debited amount. Government concludes that the letter is informative in nature and expresses a future course of action to be taken by them. However, the letter cannot be termed as a rebate claim filed under Rule 18 of CER before a rebate sanctioning authority. Further, the question arises that if this letter was a rebate claim then why the applicant had to file it again on 29.02.2016?

7.4 Government observes that another contention of the applicant is that the time limit prescribed by Section 11B of CEA, is not applicable to rebate claims as the notification issued under Rule 18 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.

7.5 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

7.6 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."*

7.7 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. PK/4/RGD/2016 dated 24.08.2016 passed by the Commissioner (Appeals-II), Mumbai Zone-II and rejects the impugned Revision Application.

13/9/22

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

ORDER No. 860/2022-CX (WZ)/ASRA/Mumbai dated 13.9.2022

To,
M/s. Hi-Tech Radiators Pvt. Ltd.,
Gut.No.131, Takai Adoshi Road,
Dheku, Khopoli, Dist. Raigad – 410 203.

Copy to:

1. Commissioner of CGST,
   Raigad Commissionerate,
   Plot No.1, Sector-17,
   Khandeshwar, Navi Mumbai – 410 206.

2. M/s. Laxmikumaran & Sridharan,
   2nd Floor, B & C wing, CNERGY IT Park
   Appa Saheb Marathe Marg,
   Prabhadevi, Mumbai – 400 025.

3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.