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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. 195/479/16-RA/4031 Date of Issue: 21.09.2022

ORDER NO.869 /2022-CX (WZ) /ASRA/Mumbai DATED20 .09.2022 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 3A Composites India Pvt. Ltd.,
Unit 852, 5th floor, Solitaire Corporate Park,
Andheri (East), Mumbai 400 093.

Respondent : Principal Commissioner of CGST & Central Excise,
Pune – I Commissionerate, ICE House, B-Wing,
4th floor, 41-A, Sassoon Road, P.B. No.121,
Pune – 411 001.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PUN-SVTAX-000-APP-0116-16-17 dated 20.06.2016 passed by the Commissioner of Service Tax (Appeals), Pune.

## ORDER

The subject Revision Application has been filed by M/s 3A Composites India Private Limited having their unit at B-32/1/1, Ranjangaon MIDC Industrial Area, Village, Dhoksangvi, Taluka Shirur, Pune – 412210 (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 20.06.2016 passed by the Commissioner of Service Tax (Appeals), Pune which in turn decided an appeal by the applicant against the Order-in-Original dated 24.02.2016, passed by the Assistant Commissioner, Central Excise, North Shirur Division, Pune – IV Commissionerate, Pune, rejecting their rebate claims for an amount of Rs.12,57,742/-.

2. Brief facts of the case are that the applicant manufactured and cleared 'aluminium composite panels' to various units in the SEZ. Thereafter, they claimed rebate of the duty paid on such clearances under Rule 30 of the SEZ Rules, 2006 read with Rule 18 of the Central Excise Rules, 2002. The original authority found that in six cases the claims filed by the applicant were time barred in terms of Section 11B of the Central Excise Act, 1944 and proceeded to reject them. The details of the said claims are as under:-

| Sl. No. | ARE-1 No. & date | Amount of rebate claimed (Rs.) | Date of Shipment | Date of filing claim |
|---|---|---|---|---|
| 1 | 1 dated 26.11.2014 | 1,56,380/- | 26.11.2014 | 25.01.2016 |
| 2 | 4 dated 08.12.2014 | 10,09,919/- | 08.12.2014 | 25.01.2016 |
| 3 | 6 dated 10.01.2015 | 3,84,279/- | 10.01.2015 | 25.01.2016 |
| 4 | 7 dated 14.01.2015 | 1,79,709/- | 14.01.2015 | 25.01.2016 |
| 5 | 8 dated 14.01.2015 | 1,75,733/- | 14.01.2015 | 25.01.2016 |
| 6 | 12 dated 24.01.2015 | 2,51,722/- | 24.01.2015 | 25.01.2016 |
| | **TOTAL** | **12,57,742/-** | | |

3. The applicant preferred an appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal dated 20.06.2016 upheld the order of the original authority and dismissed the appeal filed by the applicant. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) The Commissioner (Appeals) has failed to appreciate that the Directorate General of Foreign Trade was the relevant authority to define the date of export and the date of export of shipments by road is the date on which goods crossed Indian border as certified by the Land Customs authorities and hence the claim with respect to shipment covered by ARE-1 No.12/14-15 dated 24.01.2015 was not time barred as the same was allowed to be transferred from the DTA to the SEZ by the Customs Authorities on 03.02.2015 as indicated by the endorsement of the Customs authorities on the said ARE-1; that the SEZ is a deemed foreign territory and transfer of goods from DTA to SEZ is the date of export; that the Commissioner (Appeals) had erroneously concluded that sub clause (f) of Section 11B(5) can be made applicable to this case by ignoring sub clause B(ii) which provides that in the case of export through land, the date of export is the date on which the goods cross the Customs frontier;

(b) In respect of the other claims, it was submitted that the GOI had removed the limitation period with respect filing of rebate claims and that Section 11B does not mention that the concept of 'relevant date' applies to rebate claims too; that there was no machinery provision in the law, i.e. Rule or notification and hence limitation cannot be made applicable to a exporter;

(c) That Rule 12 of the Central Excise Rules, 2002 and the notification no.41/94-CE (NT) dated 22.09.1994 issued under Rule 12 had specifically imposed a time limit whereas no such time limit was specified in Rule 18 of the Central Excise Rules, 2002;

(d) That the presentation of the ARE-1 at the time of removal needs to be accepted as the filing of rebate claim as the goods have been removed for export and that the filing of Shipping Bill and export is verifiable by the rebate sanctioning authority from Customs website and therefore submission of any further application was superfluous and that drawback claims were sanctioned in similar manner and the same should be applicable to rebate claims too; that the said refunds can be simply credited to the exporters account through systems without human intervention; they placed reliance on the decision of the Hon'ble Supreme Court in the case of DC vs Dorcas Market Makers P. Ltd. [2015(325)ELT A104(S.C.)] to submit that notification no.19/2004 dated 06.09.2004 does not contain the prescription regarding limitation.

In light of the above, the applicant prayed that the impugned Order-in-Appeal be set aside and the amount claimed by them be refunded with interest.

4. Personal hearing in the matter was held on 14.06.2022 and Shri Makrand Joshi, Advocate, appeared online on behalf of the applicant. He submitted that five out of the seven claims are not time barred as the date of payment of duty is to be taken as the relevant date as held by the Commissioner (Appeals).

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

6. Government finds that the issue involved in the present case is limited to deciding whether the impugned Order-in-Appeal was proper in upholding the rejection of rebate claims of the applicant in the above cases

for being time barred. Government finds that the applicant, in their written submission, have claimed that the consignment covered by ARE-1 No.12/14-15 dated 24.01.2015 was not time barred, as the relevant date in this case would be 03.02.2015, the date on which the goods left the DTA and entered the SEZ as indicated by the endorsement of the Customs officer indicating receipt of the said goods in the SEZ. As regards, the other consignments, the applicant has submitted that there was no time limit prescribed in the relevant rule/notification and hence the claims should be allowed.

7. Government first takes up the case of the claim with respect to ARE-1 No.12/14-15 dated 24.01.2015 wherein the Commissioner (Appeals) had held that 'the date of payment of duty' would be the relevant date in this case in terms of Explanation B(f) to Section 11 B of the Central Excise Act, 1944. On examination of the copy of the said ARE-1, Government finds that it bears the endorsement of the 'Appraiser of Customs' SEZ, Noida indicating receipt and verification of the said consignment in the SEZ on 03.02.2015. In this context, Government finds that it has been clarified by the Board vide several Circulars that SEZ has to be treated as a territory outside the Customs territory of India for the purpose of undertaking its authorized operations. Relevant portion of the Circular No. 1001/8/2015-CX.8 dated 28.04.2015 issued through F.No.267/18/2015-CX.8 by the Board, clarifying various aspects of the rebate of duty on goods cleared from DTA to SEZ, is-reproduced below:- —

> " *iv. Section 53(1) of the SEZ Act mentions that "A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations".*
>
> .....
>
> *3. It can thus be seen that according to the SEZ Act, supply of goods from DTA to the SEZ constitutes export. Further, as per Section 51 of the SEZ Act, the provisions of the SEZ Act shall have over riding effect over provisions of any other law in case of any inconsistency. Section 53 of the SEZ Act makes an SEZ a territory outside the customs territory of India. It is in line of these provisions that Rule 30(1) of the SEZ Rules, 2006 provides that the DTA supplier*

*supplying goods to the SEZ shall clear the goods either under bond or as duty paid goods under claim of rebate on the cover of ARE-1."*

A reading of the above makes it clear that a SEZ has to be treated as a territory outside the Customs territory of India while processing a claim for rebate. Having found so, Government proceeds to examine Section 11B of the Central Excise Act, 1944, which deals with refund, relevant portion of the same has been reproduced below:-

*" Section 11B. Claim for refund of duty and interest, if any, paid on such duty . -*

*"(1) Any person claiming refund of any [1][duty of excise and interest, if any, paid on such duty] may make an application for refund of such [2][duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise* ***before the expiry of one year from the relevant date*** *in such form and manner as may be prescribed.....*

*Explanation. - For the purposes of this section, -*

*(A)* ***"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;*

*(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....."*

*[emphasis supplied]*

A reading of the above makes it clear that the 'relevant date' for the purpose of filing a rebate claim with respect to goods exported by land is the date on which such goods pass the frontier. A harmonious reading of the clarifications issued by the Board discussed above, along with the

provisions of Section 11B of the Central Excise Act, 1944, makes it clear that a SEZ has been deemed to be a territory outside the Customs territory of India and hence the 'relevant date' for clearances made from the DTA to the SEZ by land would be the date on which it passes the frontier, in this case, from the DTA to the SEZ. Applying this ratio to the present case, Government finds merit in the submission of the applicant that the 'relevant date' for arriving at the time limit for application for rebate in the case of the consignment covered by ARE-1 No.12/14-15 dated 24.01.2015 is 03.02.2015, as it was on this day the goods passed from the DTA to the SEZ, as confirmed by the endorsement of the Customs officer on the ARE-1. Government finds that the applicant had filed their application for rebate with respect to the said ARE-1 on 25.01.2016, which was within the prescribed time limit of one year. Government finds that the Commissioner (Appeals) erred on this aspect by relying on clause B(f) of the Explanation to Section 11B of the Central Excise Act, 1944, which is a residual clause, as the present case was covered by an earlier clause viz. Clause B(a)(ii), as discussed above. Thus, Government finds the decision of the lower authorities to reject the rebate claim with respect the ARE-1 dated 24.01.2015 to be incorrect and sets aside the same and holds that the applicant will be eligible to the rebate on the same.

8. Government now takes the case of the other five ARE-1s involved in the present case, wherein the rebate claims were rejected as they were found to be time barred. Government notes that the applicant has not made any submission with respect to these five ARE-1s as done in the case of ARE-1 No.12/14-15, which was discussed above. Thus, Government finds that it is an admitted position that the rebate claims with respect to these ARE-1s were filed after one year from the 'relevant date' specified by Section 11B of the Central Excise Act, 1944. At this juncture, Government finds the need to point out that the written and oral submissions of the applicant were contradictory, inasmuch as in their written submissions they have contested the decision Commissioner (Appeals) to hold the date of payment of duty as the 'relevant date', whereas, during the personal hearing

it was submitted that five of their claims are not time barred as the date of payment of duty has to be taken as the 'relevant date' in terms of the order of the Commissioner (Appeals). Government finds the submission made by the applicant during the personal hearing to be erroneous in light of the findings above and rejects the same. Further, Government also notes that the applicant, apart from the above, has made certain submissions which are in the domain of policy decisions and have little to do with the laws governing the sanction of rebate in force at the material time; Government finds that these submissions will have no traction here as this is not the appropriate forum for deciding the issues raised by these submissions and hence rejects the same.

9. Government now proceeds to examine whether the impugned order was correct to hold that the rebate claims with respect to the rest of the ARE-1s were time barred and hence liable to be rejected. Government notes that the applicant has, in their written submissions, stated that there is no time limit prescribed for filing of rebate claims and has sought to place reliance on the decision of the Apex Court in the case of Deputy Commissioner vs Dorcas Market Makers Pvt. Ltd [2015 (325) ELT A104 (SC)] in support of their argument. Government notes that this decision was passed by the Hon'ble High Court of Madras and the Supreme Court had, while rejecting the appeal against the same, not gone into the merits of the case. Government finds that this issue is no longer *res integra* and has been laid to rest by a number of decisions of the higher Courts. Government observes that the Hon'ble High Court of Madras in a subsequent decision, while dismissing a Writ Petition filed by Hyundai Motors India Limited [2017 (355) E.L.T. 342 (Mad.)] had upheld the rejection of rebate claims which were filed after one year from the date of export and held that the limitations provided by a Section will prevail over the Rules. Further, Government also notes that the Hon'ble High Court of Karnataka while deciding the case of Sansera Engineering Pvt. Ltd. Vs Dy. Commissioner, Bengaluru [2020 (371) ELT 29 (Kar.)], an identical case, had

distinguished the decision of the Apex Court referred to by the applicant and had held as under:-

> *" It is well settled principle that the claim for rebate can be made only under section 11-B and it is not open to the subordinate legislation to dispense with the requirements of Section 11-B. Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11-B is only clarificatory.*
>
> ***14.*** *It is not in dispute that the claims for rebate in the present cases were made beyond the period of one year prescribed under Section 11-B of the Act. Any Notification issued under Rule 18 has to be in conformity with Section 11-B of the Act.*
>
> ***15.*** *The decision of Original Authority rejecting the claim of rebate made by the petitioners as time-barred applying Section 11-B of the Act to the Notification No. 19 of 2004 cannot be faulted with."*

A Writ petition filed against the above decision was decided by a Larger Bench of the Hon'ble High Court of Karnataka in Sansera Engineering Limited vs Deputy Commissioner, LTU, Bengaluru [2021 (372) ELT 747 (Kar.)] wherein the Hon'ble High Court upheld the decision by the Single Judge in the above cited case with the following remarks :-

> *" A reading of Section 11B of the Act makes it explicitly clear that claim for refund of duty of excise shall be made before the expiry of one year from the relevant date. The time prescribed under Section 11B of the Act was earlier six months which was later on amended on 12-5-2000 by Section 101 of the Finance Act, 2000. Rule 18 of the Central Excise Rules and the Notification dated 6-9-2004 did not prescribe any time for making any claim for refund as Section 11B of the Act already mandated that such application shall be filed within one year. Section 11B of the Act being the substantive provision, the same cannot yield to Rule 18 of the Rules or the Notification dated 6-9-2004. As rightly held by the Learned Single Judge, the Notification dated 1-3-2016 was mere reiteration of what was contained in Section 11B of the Act, and therefore, the Law as declared by the Hon'ble Supreme Court in Uttam Steel (supra) is applicable to the facts of this case. In that view of the matter, the judgment of the Madras High Court in the case of Dorcas Market Makers Pvt. Ltd., (supra) is not applicable to the facts of this case. As a matter of fact, the Madras High Court in the case of Hyundai Motors India Ltd. v. Department of Revenue, Ministry of Finance reported in 2017 (355) E.L.T. 342 (Mad.) did not subscribe to the law declared in Dorcas Market Makers Pvt. Ltd., (supra) and held that the time prescribed under Section 11B of the Act is applicable.*
>
> ***13.*** *In view of the aforesaid, the Learned Single Judge had extensively considered the questions of law and the applicability of Section 11B of*

*the Act and has rightly held that the claim of the appellant for refund was time-barred as it was filed beyond the period of one year. We do not find any justification to interfere with the findings of the Learned Single Judge. Hence, W.A. No. 249/2020 lacks merit and is dismissed."*

Government finds the above decision is squarely applicable to the issue on hand and finds that it relies on the decision of the Hon'ble Supreme Court in the case of UOI & Others vs. Uttam Steel Limited [2015 (319) E.L.T. 598 (S.C.)] to hold that the limitation of one year prescribed by Section 11B of the Central Excise Act, 1944 is applicable to claims for rebate. In light of the above, Government finds that the claims for rebate in respect of the rest of the ARE-1s, appearing from Sl. No.1 to 5 in the Table at para one above, having been filed after a period of one year from the relevant date, are hit by the limitation prescribed in Section 11B of the Central Excise Act, 1944 and are hence time barred and accordingly holds so.

10. The Revision Application is disposed of in the above terms.

Shrawan 20/9/22

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

ORDER No. 869 /2022-CX (WZ) /ASRA/Mumbai dated 20.09.2022

To

1. M/s 3A Composites India Pvt. Ltd.,Unit 852, 5th floor, Solitaire Corporate Park, Andheri (East), Mumbai 400 093.
2. M/s 3A Composites India Pvt. Ltd., B-32/1/1, Ranjangaon MIDC Indl. Area, Dhoksangvi, Tal. Shirur, Pune – 412 210.

Copy to:

1. The Principal Commissioner of CGST & Central Excise, Pune – I Commissionerate, ICE House, B-Wing, 4th floor, 41-A, Sassoon Road, P.B. No.121, Pune – 411 001.
2. The Commissioner of Service Tax (Appeals), Pune, F-Wing, 3rd floor, ICE House, Sassoon Road, Pune – 411 011.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.