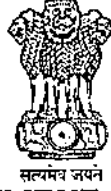


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

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

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F.No.195/49/15-RA/307

Date of Issue: 24.12.2021

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ORDER NO. 894 /2021-CX (SZ)/ASRA/MUMBAI DATED 24.12 2021  
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. PCW Casting Private Limited.

Respondent: Commissioner of Central Excise, Chennai-IV.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. 33/2014(M-IV) dated  
03.12.2014 passed by the Commissioner (Appeals)-II, Central Excise,  
Chennai.

ORDER

This Revision Application is filed by the M/s. PCW Casting Private Limited having their office at Shed No.113, SIDCO Industrial Estate, Thirumudivakkam, Chennai - 600 044 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 33/2014(M-IV) dated 03.12.2014 passed by the Commissioner (Appeals)-II, Central Excise, Chennai.

2. Brief facts of the case are that the Applicant, had filed a rebate claim for Rs.5,90,483/- on 10.09.2008 under Rule 18 of the Central Excise Rules, 2002 for rebate of excise duty paid on the value of goods exported by them during the month of February 2007 with Assistant Commissioner, Chrompet Division, Chennai-IV Commissionerate.

2.1 The rebate sanctioning authority rejected the rebate claim on the grounds that the application for rebate claim was time barred and hit by limitations in terms of section 11B of Central Excise Act, 1944. Aggrieved, the applicant filed an appeal. However, the Commissioner (Appeals) upheld the order of rebate sanctioning authority, hence the applicant preferred to file a revision application with the Central Government under Section 35EE of the Central Excise Act, 1944. The Joint Secretary, Government of India passed an Order No. 94/2013-CX dated 31.01.2013 setting aside the impugned orders and remanded the case back for denovo adjudication by taking into account the judgment of Hon'ble Madras High Court in the case of M/s. Dorcas Market Makers P. Ltd., Chennai.

2.2 During denovo proceeding, the rebate sanctioning authority observed that the department had filed Writ Appeal No. 821 of 2012 before Hon'ble Madras High Court against the said order in the case of M/s. Dorcas Market Makers P. Ltd. and consequently the Hon'ble High Court had stayed the said order vide MP No. 1 of 2012 dated 25.04.2012. Taking this into consideration and also the judgment of Hon'ble Bombay High Court in the

case of M/s. Everest Flavours Ltd., the rebate sanctioning authority rejected the rebate claim vide Order-in-Original No.81/2013 (Rebate) dated 27.06.2013. Aggrieved, the Applicant filed appeal with the Commissioner (Appeals)-II, Central Excise, Chennai. The Commissioner (Appeals) vide Order-in-Appeal No. 33/2014(M-IV) dated 03.12.2014 rejected the Applicant's appeal and upheld the Order-in-Original.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

- a) the Learned Commissioner (Appeals) ought to have seen that in the case of Birla Limited, vs. Collector of Central Excise reported in 1998 (99) ELT 387, the Tribunal held that if the duty has been paid and the goods have been exported, rebate of duty is admissible to the Appellants, although procedures under Central Excise Rules not followed. It is submitted that in the case of Barot Exports reported in 2006 (203) ELT 321, the Government of India held that a procedure rule ordinary should not be construed as mandatory, if the defect in that Act then in pursuance of can be cured by permitting appropriate rectification to be carried out t their subsequent stage, unless by recording such permission to rectify the error, later on another rule would be contravened.;
- b) the Learned Commissioner (Appeals) ought to have seen that in the case of Modern Process Printers reported in 2006 (204) ELT 632, the Government of India held that rejection of rebate was bad as substantive fact of export was not in doubt and rebate being a beneficial scheme, it should have been interpreted liberally. The Government of India also held that procedural infraction are to be condoned, if exports have really taken place and the law is settled now that substantial benefit cannot be denied for procedural lapses. The Learned Commissioner (Appeals) ought to have seen that in the case of the applicants, there is no dispute in the matter of export;

- c) the Learned Commissioner (Appeals) ought to have seen that in the case of Uttam Steel Limited reported in 2003 (158) ELT 274 (Bom.), the Hon'ble Bombay High Court held that the law of limitation is only procedural and not substantive law and once there is export, the substantive right accruing under Rule 18 cannot be defeated by procedural law of limitation;
- d) the Learned Commissioner (Appeals) erroneously in para 9 of the impugned Order in Appeal held that unless the wordings "under protest" is mentioned legibly in the duty paid column of the statutory returns filed with the department for the relevant period as also in the other statutory records maintained by them, it cannot be taken that their duty payment is under protest. The applicant submits that wherever there is an export, the appellants had clearly indicated in the RG 23A Part II register itself that the duty paid is subject to rebate claim. This register has been periodically verified by the concerned authorities every month. In other words, the applicants had already conveyed the protest to the department. In other words, the applicants paid duty provisionally reserving the applicant's right for future rebate claim. The learned Commissioner (Appeals) ought to have seen that there is no format for a protest, and that protest can be communicated in any form. In the case of CCE, Chennai vs. ITC Ltd. 2005 (185) E.L.T. 114 (Mad.), the Hon'ble Madras High Court held that the words "under protest" are not to be taken in a narrow and pedantic manner. In the case of Crompton Greaves Ltd., vs. CCE reported in 1997 (92) ELT 251 (Tri.), the Tribunal held that in the absence of any prescribed proforma for showing protest, any communication to the department contain his unwillingness to pay the full amount of duty will constitute protest;
- e) the Learned Commissioner (Appeals) ought to have seen that if the main part of the Section 11B applies to rebate, the proviso must be in the picture. The proviso to Section 11B makes it clear that the limitation of one year will have no application, if duty is paid under protest;

- f) the learned Commissioner (Appeals) erred in not considering RG 23A Part II and Form ARE-I where in it clearly stated that the export is subject to rebate claim.

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal.

4. Personal hearing in the case was fixed for 17.09.2021. Shri Akash B., Advocate attended the online hearing on behalf of the Applicant and he reiterated the earlier submissions. He submitted that the duty was paid under protest, therefore, their claim is not time barred. He requested to condone the delay in filing claim.

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

6. Government observes that during denovo adjudication the rebate sanctioning authority again rejected the rebate claim of the applicant in view of the order dated 25.04.2012 in M.P. No. 1 of 2012 filed by the Department wherein the Hon'ble Madras High Court stayed its own order dated 23.12.2011 passed in respect of M/s. Dorcas Market Makers P. Ltd.

7. Government observes that the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. vs. CCE [2012(281)ELT 227(Mad.)] dismissed the appeal filed by the Department holding that period of limitation prescribed under Section 11B of the Excise Act is not applicable to rebate claim filed as both Rule 18 of the Central Excise Rules,2002 and Notification 19/2004-CE (NT) dated 06.09.2004 do not prescribe the time limit for filing rebate claim. 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.

7.1 Further, 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."*

7.2 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."*

Thus, the statute is sacrosanct and is the edifice on which the rules and other delegated legislations like notifications are based.

7.3 As regards the applicant's claim that they had paid the central excise duty "under protest" as wherever there is an export they had clearly indicated in the RG 23A Part II register itself that the duty paid is subject to

rebate claim, Government observes that the claimant has not provided any reason as to why they had exported the goods "under protest". Whether there was any dispute with the Department as regards goods manufactured by them, viz. 'Aluminum Cast Components' falling under Chapter subheading 76169910 such as valuation dispute or classification dispute or applicability of any exemption notification. Further, the words "subject to rebate claim" do not imply that that they are paying duty "under protest".

8. In view of the findings recorded above, Government upholds the Order-in-Appeal No. 33/2014(M-IV) dated 03.12.2014 passed by the Commissioner (Appeals)-II, Central Excise, Chennai and rejects the impugned revision application filed by the applicant.

9. The Revision Application is disposed of on the above terms.

*Shrawan*  
*24/12/21*  
(SHRAWAN KUMAR)

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

ORDER No. *894* /2021-CX (SZ)/ASRA/Mumbai DATED *24.12.2021*

To,  
M/s. PCW Casting Private Limited,  
Shed No.113, SIDCO Industrial Estate,  
Thirumudivakkam, Chennai – 600 044.

Copy to:

1. Commissioner of GST & Central Excise,  
Chennai-Outer Commissionerate,  
Newry Towers, No.2054-I, II Avenue,  
12<sup>th</sup> Main Road, Anna Nagar, Chennai – 600 040.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.