REGISTERED SPEED POST

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. 195/463/16-RA/4453 Date of issue: 04.10.2022

ORDER NO. 921 /2022-CX (WZ)/ASRA/MUMBAI DATED 29.09.2022 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. Diamond Marine.

Respondent: Pr. Commissioner of Central Excise, Mumbai-I

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SK/24 to 26/Mumbai-I/2016 dated 12.05.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

ORDER

This Revision Application has been filed by the M/s. Diamond Marine, 306/B, Madhav Darshan, Waghawadi Road, Bhavnagar, Gujarat – 364 110 (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No.SK/24to26/Mumbai-I/2016 dated 12.05.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

2. Brief facts of the case are that the applicant is a registered merchant exporter exporting various types of excisable goods. They had purchased carbon steel and seamless pipes from a registered manufacturer and had exported the same and had filed a rebate claim for the duty involved in the exported goods amounting to Rs.2,36,422/- under the provisions of Rule 18 of the Central Excise Rules,2002 (CER). However, the rebate sanctioning authority vide letter F. No. V/Rebate/DM/EF/2014-15 dated 13.03.2015 rejected the rebate claim and returned the same on the grounds that the rebate claim had been filed beyond the period of one year from the date of export. 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) The Order passed by the Adjudicating Authority was not in accordance with the "Adjudicating Proceedings" as contemplated under the provisions of the Central Excise Act, 1944 read with the prescribed Norms of proceedings of deciding a case under Section 11B of the Central Excise Act, 1944. Therefore, the applicant had strongly submitted before the Appellate Authority that the said Order dtd. 13.03.2015 was passed without observing the principle of natural justice and no such opportunity to be heard in person was granted to the applicant while returning the above mentioned Rebate Claim filed under the provisions of the Rule 18 of the Central Excise Rules, 2002 read with the Notification issued there under wherein

the procedure/manner of filling such Rebate Claim has been provided. Therefore, the Impugned Order passed by the Appellate Authority is not proper and legal.

(b) It is admitted fact that the Rebate Claim was filed under the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(N.T.) dtd.06.09.2004. In the said Notification, the Government has prescribed certain conditions and limitation at para 2 of the Notification. Accordingly, the applicant had fulfilled the said conditions and limitations. It is admitted fact that the applicant had exported the said dutiable goods which was duly duty paid and directly received from the manufacturer viz, M/s. Symcom Communication Mumbai. The ARE-1 No. 02/2013-14 dtd. 11.09.2013 was also duly countersigned by the said manufacturer and also declared that they had paid Central Excise duty of Rs.2,36,422/- read with Central Excise invoice No. Ex/1379 dtd.11.09.2013. It is also undisputed fact that the applicant had exported the said goods within six months from the date on which the manufacturer had cleared for export from their factory. In this para, the limitations has been provided only with regard to that the export would have been taken place within six months from the date of clearance of the dutiable goods from the factory of the manufacturer. But no limitation has been provided with regard to the time limit of filling the Rebate claim. Therefore, the said authority had wrongly held that the Rebate claim had been received after completion one year. But the said authority had failed to disclose the reasons/ grounds why he had mentioned the words "after completion of one year".

(c) In the said notification, no provisions of Section 11B has been referred to for filling such refund claim. The Section 11B is pertaining only for filing a Refund claim by any person if any duty of excise and interest is paid and may make an application for refund of such duty/ interest before the expiry of one year from the relevant

date. Under this Section the word "any person" is used. "Any person" means who has paid the Central Excise duty. Thus "any person" is used in or in respect of a manufacturer who is manufacturing excisable goods and paying duty. Here in the present case, no such word "any person" as used in the said Section, has not been specified under this Rule 18 of the said CER. In the Rule 18, the only thing is that the exported goods are exported after payment of Central Excise duty, it should be "rebated" as "rebate of duty". Therefore, the limitation for filing a refund claim governed under the said Section 11B is not applicable when a Rebate Claim filed under the provisions of Rule 18 of the CER read with the said notification.

(d) The "relevant date" specified under Sub Section 5 (B) of Section 11B is relating to only in respect of the goods exported out of India where a refund of excise duty is available in respect of the goods themselves or, as the case may be, the excisable material used in the manufacturing of these goods. But, Rule 18 provides for "grant rebate of duty paid on such excisable goods used in the manufacturer or processing of such goods". If the provisions of said Section 5 (B) of Section 11B is applicable to the Rule 18, then such provisions would have been governed under the said notification No. 19/2004-CE. But there is no such provisions are forthcoming in the said Notification under which the Central Government has passed such incentive to boost the export so as to more and more foreign currency is earned by the Govt. of India. Therefore, the Rebate claim was required to be granted irrespective the limitation period of filling such Rebate claim absence of such provisions of Section 11B is applied under Rule 8 read with the notification issued therein.

(e) For the submissions made at para 7 above, the applicant draw kind attention to a Notification No. 27/2012-CE (NT) dtd, 18.06.2012, which is issued under the provisions of Rule 5 of the Cenvat Credit of Rules, 2004. In this Notification, it has specifically been provided at para 3(b) that "the application in Form A along with documents

specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in Section 11B of the Central Excise Act,1944 (emphasis given). If the intention of the Central Government to grant Rebate claim under Rule 18 read with the notification issued there under, the Central Government would have specified such provisions of Section 11B in the said Notification as done in the case of the said Notification No. 27/2012-CE (NT) dtd. 18.06.2012 issued under the provisions of Rule 5 of the Cenvat Credit Rules, which is also pertaining for the procedure for refund of Cenvat Credit when final /intermediate products cleared for export without payment of duty or output service exported without payment of Service Tax. From these statutory provisions of the said Rules, it is clearly established that there is no time limit in filing the Rebate claim under Rule 18 read with notification issued there under except the conditions and limitations prescribed under the said Notification No. 19/2004-CE (NT).

(f) The Appellate Authority has erred in not giving the Judicial discipline with regard to the Honorable Supreme Court's Order as reported in 2015 (325) E. L. T. A 104 (SC). In this Judgment, the Honorable Supreme Court has clearly held that no such time limit under Notification No. 19/2004-CE (N.T.) issued under the provisions of Rule 18 has been prescribed.

(g) The Adjudicating Authority as well as Appellate Authority have failed to consider the following case Laws though they were squarely applicable in the present case.

- 2008 (232) E.L.T. 413 (Guj), Commissioner of C.Ex & Customs, Surat-I versus Swagat Synthetics;
- 2012 (281) ELT 227 (Mad)- M/s. Dorcas Market Makers Pvt, Ltd, v Commissioner of Central Excise
- 2013 (291) ELT 189 (Mad)- M/s. Shasun Pharmaceuticals Ltd, v Joint Secretary, MF (D. R.)

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal and grant consequential relief to the applicant.

4. Personal hearing in the case was fixed for 14.06.2022/28.06.2022. However, the applicant, vide its letter dated 16.06.2022, prayed to decide the issue under reference by considering the written submissions filed.

5. Government has carefully gone through the relevant case records available in case files, 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 Government observes that the applicant, a merchant exporter, had exported goods, 'Carbon Steel and Seamless pipe', vide ARE1 No. 02/2013-14 dated 11.09.2013. Against this export, they filed a rebate claim for an amount of Rs.2,36,422/-, being duty paid on the goods exported by the manufacturer, vide letter dated 06.01.2015 submitted on 15.01.2015 in the office of rebate sanctioning authority. After verification of documents submitted, the rebate sanctioning authority rejected and returned the rebate claim of the applicant vide letter F. No. V/Rebate/DM/EF/2014-15 dated 13.03.2015. The relevant extract from the said letter is reproduced hereunder:

> *From verification of Rebate Claim it is observed that Export has taken place under cover of ARE-1 No. 02/13-14 dated 11.09.2013 and you have claimed the rebate claim under the provision of Rule 18 of the Central Excise Rules,2002 for said ARE-1 vide letter dated 06.01.2015 received on 15.01.2015 i.e. after completion of one year.*
>
> *In this connection, in terms of provision of Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules,2002, the Rebate Claim in question is rejected and returned*

herewith in original, which is appealable under section 35(1) of Central Excise Act,1944.

Thus, the rebate claim was rejected as it was time barred in terms of section 11B of the Central Excise Act, 1944 (CEA)

7.2 Government observes that the Appellate authority has discussed and interpreted the relevant law in respect of the issue of time-bar in the impugned OIA. Government concurs with the decision arrived at by the Appellate authority. The relevant paras 6, 6.1 and 7 of the impugned OIA are reproduced hereunder:

6. Section 11B of Central Excise Act,1944 is as below:

> *"(1)Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such 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 mannel as may be prescribed and the application shall be accompanied by such documentary or other evidence including the documents referred to in section 12A as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person"*

6. 1 Further the explanation under Section 11B of Central Excise Act, 1944 provides as under:

"(B) "relevant date" means, -

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, 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

7. A plain reading of the above envisages that the rebate claim has to be filed before the expiry of one year from the date of the goods have left Indian shore/port. I find from the records that in the instant case the goods exported under ARE-1 No. 01/2013-14 dated 29.08.2013, ARE-1 No.02/2013-14 dated 11.09.2013 and ARE-1 No.03/2013-14 dated 25.11.2013 have left Indian shore on 19.09.2013 and 05.12.2013 respectively. As per the above explanation under Section 11B of Central Excise Act,1944 the relevant date would be 18.09.2014 and 04.12.2014 respectively and thus the rebate claim should have been filed on or before these dates. I find that the appellant has filed the rebate claims on 15.01.2015, 14.02.2015 and 24.04.2015 which is beyond the period of one year. Hence I find the rebate claims to be time barred in terms of the provisions of Section 11B of Central Excise Act, 1944. There is absolute no discretion to condone the delay.

7.3 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. As regards, the contention of the applicant that they were denied natural justice as no show cause notice was issued to them before rejecting their rebate claim, Government observes that a deficiency memo cum show

cause notice is issued by the rebate sanctioning authority to the claimant in case of any inadequacy in the claim. However, in the instant case a statutory requirement had been violated which was beyond the scope of original authority in the absence of any provision for condoning this violation. Therefore, the Original authority, after initial verification, rightly rejected and returned the claim.

9. In view of the findings recorded above, Government upholds the Order-in-Appeal No. SK/24 to 26/Mumbai-I/2016 dated 12.05.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-I and rejects the impugned Revision Application.

29/9/22

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

ORDER No. 921 /2022-CX (WZ)/ASRA/Mumbai dated 29.09.2022

To,
M/s. Diamond Marine,
306/B, Madhav Darshan,
Waghawadi Road, Bhavnagar,
Gujarat – 364 110.

Copy to:

1. Pr. Commissioner of CGST,
   Mumbai Central Commissionerate,
   GST Building, 115, M.K. Road,
   Churchgate, Mumbai – 400 020.

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