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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F. No. 195/285/15-RA / 9605 Date of Issue: 06.10.2022

ORDER NO. 954 /2022-CX (SZ)/ASRA/MUMBAI DATED 03.10.2022 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. Siemens Limited,
Kalwa Works, Thane-Belapur Road,
Airoli, Navi Mumbai - 400-601

Respondent : Pr. Commissioner of CGST & CX, Belapur

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. CD/ 489 /RGD/2015 dated 18.05.2015 passed by the Commissioner of CGST & CX, Raigad(Appeals).

ORDER

This revision application has been filed by M/s. Siemens Limited, Kalwa Works, Thane-Belapur Road, Airoli, Navi Mumbai - 400-601 (hereinafter referred to as "the applicant") against Order-in-Appeal No. CD/ 489 /RGD /2015 dated 18.05.2015 passed by the Commissioner of CGST & CX, Raigad(Appeals).

2. The brief facts of the case are that the appellant is holding Central Excise Registration No. AAACS0764LXM003 for manufacture of excisable goods i.e. Outdoor Vaccuum Circuit Breaker falling under Chapter Sub heading No. 85352129 of CETA, 1955. The said claimant filed rebate claim on 28.03.2013 for Rs. 10,88,970/- under Rule 18 of the Central Excise Rules, 2002 for goods exported on 21.01.2012.

3.1 On examination of the rebate claim, the jurisdictional Deputy Commissioner, Belapur IV Division found that rebate claim had been filed beyond the stipulated period of one year. After following due process of law, the jurisdictional Deputy Commissioner, rejected these claims as time barred under Order in Original No Bel/ Dn.- IV/ R-III/ R-180/A.R./D.C./14-15 dated 22/05/2014.

3.2 The applicant being aggrieved by these order-in-original filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) upheld the order of the original and rejected the appeal filed by the applicant.

4. Being aggrieved by the impugned Orders in appeal, the applicant filed present Revision Applications mainly on the following grounds:

4.1 Rule 18 of Central Excise Rules, 2002 as well as the Notification issued there under does not prescribe any time limit for filing of the rebate claim,

Rule 18 of Central Excise Rules, 2002 provides that rebate of excise duty paid on finished goods exported is available. The Notification No. 19/2004-CE (NT) dated 06.09.2004 issued there under specifies the conditions and procedures to be followed in this regard. However, neither the Rule nor the

Notification stipulates any time limit for filing of the rebate claim. In such a case, the condition of time limit specified in Section 11B cannot be applied when the primary provision dealing with rebate does not specify the same. Hence, there is no statutory time limit for filing of rebate claims. In support of the aforesaid submissions, reliance is placed on the decision in the case of Dorcas Market Makers Pvt. Ltd. v CCE-2012 (281) ELT 227 (Mad.).

4.2 The rebate claim in question has been filed within the time limit of one year as stipulated under Section 11B of the Act

The applicant clears finished goods for export on payment of appropriate excise duty under claim of rebate as well as without payment of excise duty under bond. However, on account of oversight on the part of the applicant, the details of the said finished goods cleared for export on 21.01.2012 under claim for rebate vide ARE-1 No. B-344/SWB/ 2011-12 dated 16.01.2012 were incorrectly included in the details of the finished goods exported under bond and submitted with the jurisdictional Range Officer on 07.05.2012. The aforesaid error came to the notice of the applicant in March, 2013 only. Accordingly, the applicant vide letter dated 22.03.2013 requested the Deputy Commissioner of Central Excise, Belapur-IV Division to return all the original documents showing proof of export in respect of the finished goods exported on 21.01.2012 vide ARE-1 No. B-344/SWB/2011-12 dated 16.01.2012, so that the same can be filed with the appropriate refund sanctioning authority. The jurisdictional Range Officer vide letter dated 22.03.2013 returned the required documents to the applicant. Thereafter, immediately, the applicant filed the rebate claim in dispute with the Deputy Commissioner of Central Excise, Division II, Belapur on 28.03.2013. In the aforesaid background facts, the applicant submits that the date of filing of the rebate claim should be taken as 07.05.2012 and not 28.03.2013. The applicant submits that it was only a case of filing of the documents before the wrong authority. However, all the requisite documents for sanctioning of the rebate claim had been filed on 07.05.2012 itself. Once the error was noticed, the applicant immediately resubmitted all the documents before the appropriate refund sanctioning authority in the specified manner on 28.03.2013. The applicant submits that the law of limitation is only procedural and does not take away any substantive right. It should be interpreted liberally and beneficially and not rigidly, once the substantive right to claim of rebate of duty on exports is evidenced.

In view of the above, the applicant submits that the relevant date for limitation should be considered as 07.05.2012, not 28.03.2013 and thus the rebate claim filed by should be treated as being filed within the prescribed time. Hence, the impugned order rejecting the rebate claim on the ground of time bar, without appreciating the factual background, is incorrect and liable to be set aside

4.3 In any case, there is sufficient cause for the delay in filing of the rebate claim in question, Therefore, the said delay ought to have been condoned and the rebate claim cannot be rejected on the ground of time bar.

In view of the aforesaid factual background, the applicant submit that there is sufficient cause for the delay caused in filing of the rebate claim in question. It is only on account of oversight that one ARE-1 was missed out and filed with the jurisdictional Range Officer as a part of the details of the finished goods exported under bond and the very moment the aforesaid error was noticed by the applicant the same was rectified with immediate effect. Further, the departmental authorities also failed to point out any discrepancy. In this regard, the applicant place reliance on the decision in the case of Kosmos Healthcare Pvt. Ltd. - 2013 (297) ELT 345 (Cal.).

The Ld. Commissioner (Appeals) relied on the decision of the Bombay High Court in the case of Everest Flavours Ltd. V/s. UOI-2012 (282) ELT 481 (Bom.) to hold that the rebate claims filed under Rule 18 of the Central Excise Rules, 2002 are governed by the time limit of one year specified in Section 11B of the Act and hence, the present rebate claim being filed beyond the period of one year from the relevant date is barred by time. The applicant submits that the aforesaid decision is not applicable to the present facts. In the aforesaid case, the assessee had filed the Form ARI-1 only before the rebate sanctioning authority and the actual rebate claim along with all the relevant documents had been filed beyond the period of one year from the relevant date and no sufficient cause for delay had been put forth by the assessee. In these circumstances, the Hon'ble High Court had held that mere presentation of the AR-1 alone is not a valid refund claim and therefore, the complete claim having been filed beyond time is liable to be rejected. The applicant submit that the aforesaid decision was passed in the facts and circumstances of the given case and cannot be applied to the present facts as in present case, the delay was on account of sufficient cause as explained above. Hence, the impugned under rejecting the rebate claim solely in view of the aforesaid decision, without appreciating the factual position, is incorrect and liable to be set aside. The applicant also relied on the decision of Hon'ble Madras High Court in Shasun Pharmaceuticals Ltd, v. Joint Secretary, M.F. (D.R.), New Delhi - 2013 (291) ELT 189 (Mad.).

4.4 Taxes should not be exported

It is the policy of the Government to allow refund of central excise duty paid on final products exported. It has been the policy of the Government to not export taxes. Admittedly, the duty paid final products have been exported by the applicant. It is the policy of the Central Government to give rebate/refund of taxes paid on the final product exported. Refund of duty paid on the finished goods is allowed in terms of Rule 18 of the Central Excise Rules, 2002. Similarly, refund of service tax paid on services has been allowed vide Notification No. 41/2007-ST, as

amended from time to time. They relied on the decision in the case of Repro India Vs Union of India 2009 (235) ELT 614.

4.5 Assuming whilst denying there are procedural lapses, even then on merits the rebate claim ought to have been allowed.

The applicant submit that assuming whilst denying that there were procedural lapses in the rebate claim filed by the applicant, rebate claim ought to have been allowed where fact that goods have been exported has been established by documentary evidence.

They relied on the decision of following cases, that benefit of notification should not be denied for want of mere procedural formalities:

(a) Hyderabad Allywn Industries V/s CCE, 1990 (45) ELT 584
(b) CCE V/s TL Cycles, 1993 (66) ELT 497
(c) Brindavan Chemicals Lab V/s CCE, 1997 (89) ELT 623
(d) CCE V/s Vinay Cement, 2002 (147) ELT 724
(e) Bombay Processors Vis CCE, 2005 (184) ELT 371
(f) Vinergy international Pvt. Ltd. 2012 (278) ELT 407 (GOI)
(g) Harison Chemicals 2006 (73) RLT 325 (GOI)
(h) Modern Process Printers 2006 (204) ELT 632 (GOI).

Accordingly, they requested that the impugned Order is liable to be set aside and the rebate claim be granted to them.

5. Personal hearing in this case was scheduled on 02.03.2021, 09.03.2021, 06.04.2021, 13.04.2021, 02.02.2022 & 09.02.2022. However, both the applicant as well as the respondent did not appear for the personal hearing on the appointed dates or make any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

6. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA.

7.1 The grounds for revision filed by the applicant are based on the contention that the late filing of rebate claim beyond the time limit of one year is a procedural lapse and not substantive in nature. The applicant further placed reliance on judgments of Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. V UOI [2012 (281) E.L.T. 227 (Mad.)] and 2015 (321) E.L.T. 45 (Mad.) wherein Hon'ble High Court held that Rule 18 of Central Excise Rules, 2002 is not subject to Sections 11A and 11B of Central Excise Act, 1944 and in that view, rebate cannot be rejected on ground of limitation and that Assessee actually exported the goods and their entitlement to refund is not at all in doubt ; in absence of any prescription in the scheme, the rejection of application for refund as time-barred is unjustified. The applicant has placed reliance on various case laws to bolster this contention.

7.2 In the light of the contentions raised by the applicant in the revision application, it would be imperative to first examine whether the requirement of filing rebate claim within the stipulated time limit of one year is procedural in nature. Government observes that Rule 18 of the CER, 2002 has been conceived in exercise of the powers vested under Section 37 of the CEA, 1944 to carry into effect the purposes of the Central Excise Act, 1944 including Section 11B of the CEA, 1944. Moreover, the Explanation (A) to Section 11B explicitly sets out that for the purposes of the section "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. The 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 is covered by Rule 18. Likewise, the third proviso to Section 11B(2) of the CEA, 1944 identifies "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" as the first category of refunds which is payable to the applicant instead of being credited to the Fund. Finally, yet importantly, the Explanation (B) of "relevant date" in clause (a) specifies the date from which limitation would commence for filing

refund claim for excise duty paid on the excisable goods and the excisable goods used in the manufacture of such goods. It would be apparent from these facts that Section 11B of the CEA, 1944 covers refund of rebate within its ambit. If the contention of the applicant that time limit under Section 11B is not relevant for processing rebate claims is accepted, it would render these references to rebate in Section 11B superfluous.

7.3 It can be seen from the Act that Section 37 of the CEA, 1944 by virtue of sub-section (2)(xvi) through the CER, 2002 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, Notification No. 21/2004-CE(NT) dated 06.09.2004 have been issued under Rule 18 of the CER, 2002 to set out the procedure to be followed for grant of rebate of duty on export of goods.

7.4 The statute is sacrosanct and is the edifice on which the rules and other delegated legislations like notifications are based. An argument which suggests that a delegated legislation can allow greater liberties for refund of rebate than the statute itself 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."*

7.5 The inference that follows from the judgment of the Hon'ble High Court is that, 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(NT) dated 06.09.2004 has been validly issued under Rule 18 of the CER, 2002 and the provisions of Section 11B of the CEA, 1944 have expressly been made applicable to the refund of rebate and therefore there is no question of the notification exceeding the scope of the statute. The applicant was therefore duty bound to file rebate claim within the stipulated time limit of one year. In simple words, the time limit of one year stipulated by Section 11B of the CEA, 1944 for filing rebate claims is a statutory requirement and not a procedural requirement as contended by the applicant.

7.6 At this juncture, it would be apposite to refer to the judgments of the Hon'ble Courts on the issue. The judgment of the Hon'ble Madras High Court in Dorcas Market Makers Pvt. Ltd. vs. CCE[2012(281)ELT 227(Mad.)] had negated the applicability of Section 11B to rebate claims. However, 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.

7.7 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."

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

In such manner, the Hon'ble High Courts of Karnataka and Delhi have reiterated the fact that limitation specified in Section 11B would be applicable to rebate claims even though the notifications granting rebate do not specifically invoke it.

8. The reason put forth by the applicant for delayed filing of rebate claim was, on account of oversight on the part of the applicant. The details of the said finished goods cleared for export on 21.01.2012 under claim for rebate vide ARE-1 No. B-344/SWB/ 2011-12 dated 16.01.2012 were incorrectly included in the details of the finished goods exported under bond and submitted with the jurisdictional Range Officer on 07.05.2012. The law on the limitation as provided under Section 11B of the Act does not provide any latitude to relax the time limit of one year on reasonableness of grounds of delay. As has been held by the Hon'ble Gujarat High Court in its judgment

in Nice Construction vs. UOI[2017(5)GSTL 361(Guj.)], *surely, the law does not come to the aid of indolent, tardy or lethargic litigant.* Hence, this submission cannot be sustained.

9. The applicant was required to file rebate claims within the stipulated time limit which they have failed to do. Even if it is assumed for a while that there is substance in the submissions made by the applicant to explain the delay in filing rebate claims, the irrefutable fact in the present case is that the Central Excise Act, 1944 provides for a period of limitation for filing rebate claims in Section 11B of the CEA, 1944. The powers of revision vested in the Central Government under Section 35EE of the CEA, 1944 are required to be exercised within the scope of the CEA, 1944 which includes Section 11B of the CEA, 1944. In other words, notwithstanding the mitigating circumstances or compelling facts, there can be no exercise of powers in revision outside the scope of the Central Excise Act, 1944.

10. The applicant has cited various case laws and placed reliance upon their ratio to contend that the time limit under Section 11B of the CEA, 1944 is a procedural requirement and is not mandatory. As it were, the judgments/orders cited by the applicant are not squarely on this point and therefore would not be applicable to the facts of the case. However, Government is persuaded by the principle of contemporaneous exposition of law in the later judgments of Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru[2020(371)ELT 29(Kar.)] and Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380(Del.)] which very unequivocally hold that the time limit specified in Section 11B of the CEA, 1944 would be applicable to rebate claims. Moreover, the ratio of the judgment of the Hon'ble Supreme Court in the case of UOI vs. Uttam Steel Ltd.[2015(319)ELT 598(SC)] still holds the field and is a binding precedent. Government respectfully follows the ratio of these judgments of the Hon'ble High Courts and the Hon'ble Supreme Court.

11. In the result, the rebate claims having been filed by the applicant beyond the time limit of one year specified under Section 11B of the CEA,

1944 are time barred. Government therefore finds no reason to interfere with the impugned orders-in-appeal. The revision applications filed by the applicant are rejected as being devoid of merits.

31/10/22

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

ORDER No. 954 /2022-CX (SZ) /ASRA/Mumbai DATED 03.10.2022

To,
M/s. Siemens Limited,
Kalwa Works, Thane-Belapur Road,
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2) The Commissioner of CGST & CX, Raigad(Appeals).
3) Deputy Commissioner of CGST & CX, Belapur IV Division.
4) Sr. P.S. to AS (RA), Mumbai.
5) Guard file.