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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. 195/140/17-RA /6196 Date of issue: 02/11/2022

ORDER NO. 999 /2022-CX (WZ)/ASRA/MUMBAI DATED 31.10.2022 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. Boss Ceramics

Respondent: Pr. Commissioner of Central Excise & Service Tax, Rajkot

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. RAJ-EXCUS-000-APP-127 to 128-16-17 dated 28.12.2016 passed by the Commissioner (Appeals-III), Central Excise, Rajkot.

ORDER

This Revision Application has been filed by M/s. Boss Ceramics, Rafaleshwar GIDC, Plot No. 207/26, 8A, National Highway, Morbi – 363 641 (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. RAJ-EXCUS-000-APP-127to128-16-17 dated 28.12.2016 passed by the Commissioner (Appeals-III), Central Excise, Rajkot.

2. Brief facts of the case are that the applicant is engaged in manufacturing of excisable goods, i.e. 'Ceramic Wall Tiles'. They had filed a rebate claim amounting to Rs.8,61,443/- on 16.09.2015 under Section 11B of the Central Excise Act, 1944, in respect of goods exported by them. However, the rebate sanctioning authority vide Order-in-Original (OIO) No. 13/Rebate/2015 dated 23.10.2015, rejected the rebate claim 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.

3.1 Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) impugned order is not sustainable as the learned Commissioner (Appeals) has upheld the order passed by the Assistant Commissioner on misconceived grounds in as much as rebate claim is held liable to be rejected on the ground of limitation prescribed under Section 11B of the Central Excise Act, 1944 without referring to conditions prescribed under relevant Notification No. 19/2004-CE (NT) dated 06.09.2004, though the rebate claim was filed in terms of Rule 18 of the Central Excise Rules, 2002 read with the said notification.

(b) prior to Notification No. 19/2004-CE (NT), another Notification No. 41/1994-CE (NT) dated 12.09.1994 was earlier in force for claiming rebate of duty paid on exported goods. The said notification

specifically incorporated one of the conditions for the purpose of limitation as under:

> "Provided that:
>
> (iv) the claim or, as the case may be, supplementary claim, for rebate of duty is lodged with the Maritime Cottector of Central Excise or the Collector of Central Excise having jurisdiction over the factory of manufacture or warehouse, as mentioned in the relevant export documents; together with the proof of due exportation within the time limit specified in section 11B of the Central Excises and Salt Act 1944;"

It is evident from the condition referred at no. (iv) above that the notification specifically provided that time limit specified under Section 11B of the Act was applicable for the purpose of filing the claim. However, no such provision has been made in the present Notification No. 19/2004-CE (NT) dated 06.09.2004, though other conditions and procedures prescribed in both these notifications are almost identical. This conclusively proves that there was no intention of the Government, while issuing Notification No. 19/2004-CE (NT), to restrict the exporter from filing of rebate claim after expiry of one year from the date of export of goods. However, the learned Commissioner (Appeals) has rejected the claim on erroneous grounds under the impugned order and therefore the same deserves to be set aside in the interest of justice.

(c) Applicant further submits that even otherwise, the issue in question is already settled by Hon'ble High Court of Madras in the case of DORCAS MARKET MAKERS PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE - 2012 (281) E.L.T. 227 (Mad.). Facts and circumstances of the said case are almost similar to the impugned case of applicant. In the said case also assessee had exported duty paid goods during the period 21.04.2006 to 26.10.2006. The claim of rebate under Notification No. 19/2004CE

(NT) dated 06.09.2004 was however filed on 17.06.2008 i.e. after expiry of the period envisaged under Section 11B. Therefore, appellant's claim was rejected by the lower authority holding that the same was filed after lapse of 20 time limit stipulated under Section 11B of the, Central Excise Act, 1944. The said exporter's appeal was also dismissed by Commissioner (Appeals) on the same grounds of limitation. Being aggrieved, the appellant assessee had filed Writ Petition No. 26236 of 2010 before Hon'ble High Court. The Hon'ble Judge in the said case has discussed at length provisions of Section 11B of the Act ibid vis-a-vis provisions of Rule 18 of the Central Excise Rules, 2002 and conditions prescribed under the above notification and the earlier notification further read with decision of Hon'ble Supreme Court in Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd. reported in (2000) 5 SCC 299 = 2000 (118) E.L.T. 311 (S.C.).

Applicant further submits that aggrieved by the above judgment, the Revenue had filed Petition for Special Leave to Appeal (Civil) CC No. 17561 against the Judgment and Order dated 26-3-2015 of Madras High Court in Writ Appeal No. 821 of 2012 in the Apex Court. It submits that Hon'ble Supreme Court has also dismissed the said petition filed by Deputy Commissioner, Chennai as reported at 2015 (325) E.L.T. A104 (S.C.). Therefore, the issue under dispute is no longer res integra in view of the above judgment of Hon'ble High Court.

(d) Applicant's contention is also supported by the decisions of Hon'ble Punjab and Haryana High Court in the case of JSL Lifestyle Vs. UOI — 2015 (326) ELT 265 (P&H) also held as under:

> "Export rebate claim - Limitation - Export of goods on payment of duty - Conditions or limitations for rebate claim neither imposed by Rule 18 of Central Excise Rules, 2002 nor under Notification No. 19/2004-C.E. - Petitioner's claim for refund governed by Rule 18 ibid read with notification issued

thereunder - Rejection of petitioner's claim for rebate not well founded - Impugned order quashed and set aside - Application for rebate shall be processed and dealt with in accordance with law on basis that it is not barred by period of limitation prescribed in Section 11B of Central Excise Act, 1944 Where the Central Government intended imposing a time limit in respect of a claim for rebate, it provided for the same in the notification issued under the rule, i.e., Rule 12 of erstwhile Central Excise Rules, 1944 correspondence to Rule 18 of Central Excise Rules, 2002. [paras 10, 12, 15, 19]"

(e) All the above decisions of Hon'ble High Courts were also brought to the notice of learned Assistant Commissioner by applicant. However, he had failed to maintain judicial discipline by discarding the same without attributing any reasons for not following the judicial precedent in gross violation of principles of judicial discipline. It is settled law that lower authorities are bound to maintain judicial discipline by following the judgments of higher appellate authorities, unless such decision is stayed or over ruled in further proceedings. The decision of Hon 'ble single judge in the case of DORCAS MARKET MAKERS PVT. LTD. (supra) was further affirmed by Hon'ble Division Bench of Madras High Court. Department's Petition in the said case was also subsequently dismissed by Hon'ble Supreme Court, as explained above. It is not department's case that the said judgment has been stayed or over ruled. The learned Commissioner (Appeals) has failed to maintain judicial discipline by not considering the above judgments as discussed in para infra. It submits that the CBEC has also issued several instructions from time to time for the departmental authorities to follow such binding decisions to avoid undue litigation in such matters. One of the instructions was issued under No. F. No. 201/01/2014-CX.6 dated 26.06.2014 consequent to the strictures passed by Hon'ble High Court of Gujarat in the case of M/s. E. I. Dupont India Pvt. Ltd. in Special Civil Application no

14917 to 14921 of 2013 dated 25-10-2013 [2013TIOL-1172-HC-AHM-CXI wherein M/s. Dupont had filed appeal before the Hon'ble High Court against rejection of a refund claim on an issue which had earlier been decided by the Hon'ble High Court against the revenue.

(f) The learned Commissioner (Appeals) has inter alia held at para 8 of the impugned order that if plea of applicant is accepted, then very purpose of Explanation (A) and Explanation B to Section 11B of the Central Excise Act, 1944 would be redundant; that Rule 18 cannot be read in isolation of the Act; that in case of conflict between a provision contained in the Act and one contained in the Rules made under that Act, the provisions contained in the Act will prevail over the Rules made under that Act etc. Applicant in this regards submits that answers to all observations of learned Commissioner (Appeals) raised in the impugned order are available in the above decisions, and in particular case of DORCAS MARKET MAKERS PVT. LTD. as reported at 2012 (281) E.L.T. 227 (Mad.) and at 2015 (321) E.L.T. 45 (Mad.) discussed supra.

(g) Applicant further submits that without referring to the judgments relied upon by it, learned Commissioner (Appeals) has erroneously placed reliance on decision of Hon'ble Supreme Court in the case of Mafatlal Industries Ltd.- 1997 (89) ELT 247 (SC), Hon'ble HC of Gujarat and respectively in the case of IOC Ltd.- 2012 (281) ELT 209 (Guj) and Sarita Elanda Exports- 2015 (321) ELT 434 (P&H). The case of Mafatlal Industries Ltd. is not applicable here because it neither deals with claim of rebate of duty paid on goods exported in terms of Rule 18 nor discusses provisions of Notification No. 19/2004-(CE)(NT). The said case particularly deals with unjust enrichment and validity of provisions of amended section 11B. Similarly in the case of IOC Ltd., issue was relating to refund of excise duty paid mistakenly by appellants and not rebate of duty in terms of the above rule and notification. Hence, the said decision is also not

reliable in the impugned case. In the case of Sarita Handa Exports the dispute was relating to rejection of refund claim as time barred in respect of duty paid on exported excisable goods which was not payable and not relating to rebate claim under Rule 18. In short, applicant submits that none pf the case relied upon by Commissioner (Appeals) deals with the dispute involved in the impugned case. Therefore, he has erred in placing reliance on the above judgments and at the same time he has also failed to follow the judicial precedent by overlooking ratio of the judgments relied upon by applicant, though the same are squarely applicable here.

(h) Applicant further submits that the Assistant Commissioner's order was also not sustainable on the ground that he had travelled beyond the scope of SCN. To be precise, applicant submits that he has unduly placed reliance onthe instructions contained in CBEC Circular No. 234/68/96-CX dated 26.07.1996 though this circular was not cited in the SCN while proposing to reject its rebate claim. It is settled law that adjudicating authority cannot advance a new ground which was not brought on record in the SCN to sustain his decision. However, without considering or rebutting above arguments of applicant, learned Commissioner (Appeals) has also placed reliance (para 9) on the said Circular at para 9 of the impugned order. In any case, it respectfully submits that even otherwise, the instructions contained in above circular are not applicable in the present case for the reason that it is applicable to rebate claims filed under the notifications issued under Rule 12(1) of Central Excise Rules, 1944 wherein time-limit was specifically prescribed in the notifications itself giving reference to Section 11B of Central Excises & Salt Act, 1944. However, no such time limit has been fixed under Notification No. 19/2004-CE (NT) dated 06.09.2004 as discussed in para supra. Therefore, the Assistant Commissioner had grossly erred in placing reliance on the above circular dated 26.07.1996. Besides, learned Commissioner (Appeals) has erroneously presumed at para 9 of the

impugned order that Notification has been issued under the Central Excise Act and Rules and it presumes that provisions of the Central Excise Act and its Rules will be applicable to all the Notifications, unless otherwise it is mentioned in the Notification. He has failed to note that the instructions of CBEC can be applied to goods which were exported in terms of Notification No. 41/ 1994-CE (NT) dated 12.09.1994 wherein specific reference was made about filing of rebate claim within time limit specified under Section 11B. He has also failed to consider that the said condition of time limit was omitted by the government in subsequent Notification No. 19/2004-CE (NT) which is applicable in the impugned case. Therefore, learned Commissioner (Appeals) has grossly failed in placing reliance on the said Circular dated 26.07.1996.

(i) Applicant respectfully further submits that the Board is a creature of the statute and cannot go beyond the powers granted under the statute. If the Central Government has, in its wisdom, provided for granting rebate upon fulfillment of certain conditions and subject to certain procedural safeguards, C.B.E.C. cannot be permitted to render the notification issued by the Central Government redundant by issuing any instruction/ clarification. Nor can C.B.E. & C. exercise such powers so as to render Rule 18 otiose. Hence, for this reason also, the impugned instructions cannot be relied upon to unduly reject its claim of rebate.

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

3.2 The Department vide their letter F.No. V/2-573/OIO/RRA/2016 dated 25.04.2017 have interalia submitted as under:

(a) Commissioner of Central Excise (Appeals-III), Rajkot has rightfully held in his Order-in-Appeal No.RAJ-EXCUS-OOO-APP-127 to 128 dated 23-12-2016 and observed at para 8 as under:

"the appellants have vehemently argued that time limit prescribed under Section 11B of the Act would not be applicable to rebate claims as no limitation has been prescribed for filing claim of rebate of duty paid on exported goods either under Rule 18 of the Central Excise Rules, 2002 or the Notification issued thereunder. I do not find any merits in the arguments put forth by the appellants. The adjudicating authority in the present case rejected the rebate claims holding the same as time-barred in view of provisions of Section 11B of the Act. I observe that Central Excise Rules, 2002 have been framed by the Central Government by exercising powers vested under Section 37C of the Central Excise Act, 1944. The Rule 18 of the Central Excise Rules, 2002, in particular, has been framed by virtue of powers granted under sub-section 2(xvi) of Section 37 of the Act. The Notification No. 19/2004-CE (NT) dated 06.09.2004 has been issued by the Central Government under Rule 18 of the Rules. Thus, I find that each and every refund claim including rebate claim should be governed under the provisions of Section 11B of the Act, If the plea of the appellants is accepted, the very purpose of Explanation (A) & Explanation (B) to Section 11B of the Act WOU/d be redundant. I also find that Rule 18 of the Central Excise Rules, 2002 and the Notification issued under the said Rules cannot be read independently and in isolation of the Act. It is also a we// accepted legal proposition that in the case of a conflict between a provision contained in an Act and the one contained in the Rules made under that Act, the provisions contained in the Act will prevail over the Rules and the rule which travels beyond the scope of Act cannot be given effect to."

(b) Thus, from the law laid down by the aforesaid decision, it is clear that all claims for rebate/refund have to be made only under Section 11B of the Act. Further, the Hon'ble Apex Court in the case of ITW Signode India Ltd. as reported at 2003 (158) ELT 403 (S.C.) held that "It is a well-settled principle of law that in case of a conflict between a

substantive act and delegated legislation, the former shall prevail inasmuch as delegated legislation must be read in the context of the primary/legislative act and not the vice-versa."

(c) Further, CBEC Circular No. 234/68/96-CX. dated 26-07-96 had also clarified that the limitation period for filing rebate claim as prescribed under Section 11B is absolute since the Act do not prescribe any provision for relaxation. No Rules or Notification can transcend, modify or abbreviate the provision of the Act. It is the appellant's argument that the governing Notification does not specify the time limitation, which is not proper. Notification has been issued under the Central Excise Act & Rules and it presumes that the provisions of the Central Excise Act and its Rules will be applicable to all the Notifications, unless otherwise it is mentioned in the Notification. If appellant's argument is accepted than each Notification will have to incorporate all the relevant provisions of Central Excise Act & Rules in it including registration of the assessee, which is ridiculous. The Notification has to be read in harmony of Central Excise Act & Rules unless otherwise something specifically mentioned in the Notification."

The appellant, M/s. Sonam Clock Pvt. Ltd, Morbi has submitted that Hon'ble Commissioner (Appeals) has failed to follow/not perused, the dictum of decisions under the citations viz. 1 - Chistia Texturising V/s. Union of India & 2. Sunil Sponge Pvt. Ltd. V/s. Commr. of C.Ex. & S.T., Raipur However, the plea raised by the appellant in the Revision Application is not legal, correct and tenable. Hon'ble Commissioner(Appeals) in their OIA dated 23.12.2016 in his findings at para 8 & 9 has referred the decisions under the citations viz. (i) Mafatlal Industries Ltd. v. Union of India, 1997 (89) E.L.T. 247 (S.C.), (ii) Indian Oil Corporation Limited — 2012 (281) ELT 209 (Guj.), (iii) Sarita Handa Exports (P) Ltd. - 2015 (321) ELT 434 (P&H), (iv) ITW Signode India Ltd. as reported at 2003 (158) ELT 403 (S.C.). After giving reliance of these citations, Hon'ble Commissioner (Appeals) had held that "No Rules or Notification can transcend, modify or

abbreviate the provision of the Act. It is the appellant's argument that the governing Notification does not specify the time limitation, which is not proper. Notification has been issued under the Central Excise Act & Rules and it presumes that the provisions of the Central Excise Act and its Rules will be applicable to all the Notifications, unless otherwise it is mentioned in the Notification. If appellant's argument is accepted than each Notification will have to incorporate all the relevant provisions of Central Excise Act & Rules in it including registration of the assessee, which is ridiculous"

4. Personal hearing in the case was fixed for 04.10.2022. Shri P.D. Rachchh, Advocate attended the online hearing and submitted that Section 11B time limit is not applicable for rebate under Rule 18. He referred to Madras High Court case of Dorcas Metal on the subject.

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 the Central Excise Act, 1944.

7.1 Government observes that the applicant is a manufacturer of excisable goods, 'Ceramic Glazed Wall Tiles'. They had filed a rebate claim on 02.07.2015 under Section 11B for an amount of Rs.8,61,443/-, in respect of excisable goods manufactured by them and exported by M/s. Maxim Exports vide ARE-1 No. 38/2014-15 dated 16.06.2014. After verification of documents submitted, the rebate sanctioning authority rejected the rebate claim on the grounds of being time barred in terms of section 11B of the Central Excise Act, 1944 as it was filed after the prescribed period of one year from the relevant date, viz. 22.06.2014 (the date of shipment).

7.2 Government observes that the applicant has contended that the time limit prescribed by Section 11B of the Central Excise Act, 1944 (hereinafter referred to as CEA), is not applicable to rebate claims as the notification issued under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as 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.

7.3 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

7.4 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."*

7.5 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. RAJ-EXCUS-000-APP-127 to 128-16-17 dated 28.12.2016 passed by the Commissioner (Appeals-III), Central Excise, Rajkot and rejects the impugned Revision Application.

31/10/22

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

ORDER No. 999 /2022-CX (WZ)/ASRA/Mumbai dated 31.10.2022

To,
M/s. Boss Ceramics,
Rafaleshwar GIDC,
Plot No. 207/26, 8A,
National Highway,
Morbi – 363 641.

Copy to:

1. Pr. Commissioner of CGST,
   Rajkot, Central GST Bhavan,
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   Rajkot – 360 001.

2. Shri Pankaj D. Rachchh,
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   150, Feet Ring Road, Rajkot – 360 001.

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