

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.16018 of 2014 (O&M)

RESERVED ON: 14.07.2015

DATE OF DECISION: 04.08.2015

M/s JSL Lifestyle Limited

....Petitioner

versus

Union of India and others

.....Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA**

Present: Mr. Jagmohan Bansal, Advocate for the petitioner

Mr. Sukhdev Sharma, Advocate for the respondents

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner has challenged an order dated 26.5.2014 of the Commissioner of Central Excise (Appeals) dismissing its appeal on the ground that its claim for rebate is barred by limitation.

2. The petitioner exported certain goods on payment of duty during September, 2011. It filed the ARE-I Forms within 48 hours from the date of clearance of the goods. The other documents were, however, admittedly, filed more than a year thereafter. The adjudicating authority rejected the claim for rebate on the ground that it was barred by limitation. The appellate authority also dismissed the claim on the same ground.

3. The petitioner's case is that as per rules 18 and 19 of the Central Excise Rules, 2002 read with rule 5 of the Cenvat Credit Rules, 2004, it is entitled to export goods without payment of duty. The petitioner contends that an exporter has several options. The petitioner opted to pay duty on inputs and to export

the goods on payment of duty and thereafter claimed a rebate of the duty paid in respect of the exported goods.

4. Section 11-B of the Central Excise Act, 1944, is relevant to this case. We will, however, be referring to a judgment of the Supreme Court in which Section 11-A fell for consideration also on the point of limitation. It will be convenient, therefore, to set out here Sections 11-A and 11-B of the Central Excise Act in so far as they are relevant:

"11-A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-(1)

Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-

- (a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

.....

(3) Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of—

- (a) fraud; or
- (b) collusion; or
- (c) any wilful misstatement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under Section 11-AA and a penalty equivalent to the duty specified in the notice.

(5) Where, during the course of any audit, investigation or verification, it is found that any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-section (4) but the details relating to the transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under Section 11-AA and penalty equivalent to fifty per cent of such duty.

(6) Any person chargeable with duty under sub-section (5) may, before service of show-cause notice on him, pay the duty in full or in part, as may be accepted by him along with the interest payable thereon under Section 11-AA and penalty equal to one per cent of such duty per month to be calculated from the month following the month in which such duty was payable, but not exceeding a maximum of twenty-five per cent of the duty, and inform the Central Excise Officer of such payment in writing.

(7) The Central Excise Officer, on receipt of information under sub-section (6) shall—

(i) not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the Central Excise Officer that the amount of duty, interest and penalty as provided under sub-section (6) has been fully paid;

(ii) proceed for recovery of such amount, if found to be short-paid in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of such information.

(7-A) Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (4) or sub-section

(5), the Central Excise Officer may, serve, subsequent to any notice or notices served under any of those sub-sections, as the case may be, a statement, containing the details of duty of central excise not levied or paid or short-levied or short-paid or erroneously refunded for the subsequent period, on the person chargeable to duty of central excise, then, service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1) or sub-section (3) or sub-section (4) or sub-section (5), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice or notices.

(8) Where the service of notice is stayed by an order of a court or tribunal, the period of such stay shall be excluded in computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4) or sub-section (5), as the case may be.

(9) Where any appellate authority or tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty has not been established against the person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year, deeming as if the notice were issued under clause (a) of sub-section (1).

(10) The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice.

(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)–

(a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);

(b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4) or sub-section (5).

(12) Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10), then the amount of penalties and interest under this section shall stand modified accordingly, taking into account the amount of duty of excise so modified.

(13) Where the amount as modified by the appellate authority or tribunal or court is more than the amount determined under sub-section (10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority or tribunal or court in respect of such increased amount.

(14) Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

(15) The provisions of sub-sections (1) to (14) shall apply, mutatis mutandis, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.

Explanation 1.—For the purposes of this section and Section 11-AC,—

(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,—

(i) in the case of excisable goods on which duty of excise has not been levied or paid or has been short levied or short-paid, and no periodical return as required by the provisions of this Act has been filed, the last date on which such return is required to be filed under this Act and the rules made thereunder;

(ii) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid and the return has been filed on due date, the date on which such return has been filed;

(iii) in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder;

(iv) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;

(c) "specified records" means records including computerised records maintained by the person

chargeable with the duty in accordance with any law for the time being in force.'.

Explanation 2.—For the removal of doubts, it is hereby declared that any non-levy, short-levy, non-payment, short-payment or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of Section 11-A as it stood immediately before the date on which such assent is received."

.....

"11-B. Claim for refund of duty.—(1) Any person claiming refund of any duty of excise may make an application for refund of 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 and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 12-A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act:

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) 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) unspent advance deposits lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;

(e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

(f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its reassembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.

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

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;

(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of Section 5-A, the date of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made

thereunder, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;

(f) in any other case, the date of payment of duty." *(emphasis supplied)*

5. Rule 18 of the Central Excise Rules, 2002 reads as under:-

"Rule 18: Rebate of duty .. - Where any goods are exported, the Central Government may, by Notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation: "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."

6. In exercise of powers under rule 18, the Central Government issued a notification being Notification No.19/2004 dated 06.09.2004 granting a rebate of the whole of the duty on excisable goods specified therein "subject to the conditions, limitations and procedures specified hereinafter". This notification does not prescribe any period of limitation in respect of a claim for rebate. Clause 2 of the notification specifies the "Conditions and Limitations". Sub-clauses (a) to (g) specify various conditions and limitations but do not prescribe any limitation as to the period within which a claim for rebate is to be made. Even more important is clause 3(b) of the notification which relates to presentation of claim for rebate to Central Excise. It reads as under:-

"(b) Presentation of claim for rebate to Central Excise:-

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of the application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

The remaining sub-clauses of clause 3 provide for detailed procedures with respect to claim of rebate by electronic declaration, special procedure for store for consumption on board an aircraft on foreign run and cancellation of documents.

7. Mr. Bansal, the learned counsel appearing on behalf of the petitioner submitted that the period of limitation prescribed in Section 11-A does not operate in respect of a claim for rebate made by an assessee in respect of a claim prescribed by a notification under rule 18. His reliance upon the judgment of the Supreme Court in *Collector of Central Excise, Jaipur vs. Raghuvar (India) Ltd.*, (2000) 5 SCC 299 is well founded.

In that case, the respondents filed the declaration under Rule 57-G of the Central Excise Rules, 1944, for adoption of MODVAT Credit in respect of certain inputs used by them. The authorities, contending that the respondents had wrongly availed credit, debited the same. A notice was also served upon the respondents to show cause why a certain amount should not be recovered from them under Section 11-A of the Act, as the

respondents were not entitled to take credit for a certain period. The respondents raised the plea of limitation contending that the notice had not been issued within the period of six months stipulated in Section 11-A. The plea of limitation was rejected. The Tribunal, however, held that the show cause notice was beyond the prescribed period of six months and that even the reversal of credit already taken was beyond the period of six months envisaged in Section 11-A. The matter went before the Supreme Court by way of a reference under Section 35-H of the Central Excise and Salt Act, 1944. The Supreme Court upheld the submission on behalf of the Revenue that Section 11-A had no application whatsoever to the case which was governed by the relevant provision of the MODVAT Scheme which was a special provision with a self contained machinery even for enforcement whereas Section 11-A was a general provision. Paragraphs 7, 13, 14 and 15 of the judgment read as under:-

"7. In *Thungabhadra Steel Products Ltd. case* [(1991) 56 ELT 340 (Kant)] a learned Single Judge of the Karnataka High Court opined that the restriction of time-limit for exercise of powers under Section 11-A should govern the cases envisaged under Rule 57-I and, therefore, Rule 57-I, as it stood prior to its amendment, should receive the same interpretation as it should receive after its amendment with effect from 6-10-1988, by assuming that the amendment introduced to the Rule indicated the intention of the legislature to amend the Rule to bring it in conformity with the spirit and scope of Section 11-A. There is no rhyme or reasonable basis for such an assumption. The Division Bench of the Madras High Court, which decided the case in *Advani Oerlikon Ltd.* [(1993) 63 ELT 427 (Mad)] expressed the view that notwithstanding the omission in Rule 57-I prior to its amendment, to provide for the issue of a notice, the obligation to issue such notice followed from the principles of natural justice as well as Section 11-A of the Act and, therefore, the period of limitation in Section 11-A will be attracted to exercise the power of demand for reversing the credit wrongly availed of or utilised

under the MODVAT Scheme. There is no justification in law to equate the notice expected to be issued to satisfy the principles of natural justice with the one ordained by the statutory provision to be issued within a stipulated time for one or the other of the purposes specified in such a provision, and that in order to suffer a limitation on the very exercise of the power. A Division Bench of the Bombay High Court also held in the decision reported in *Fabril Gasosa case* [(1997) 96 ELT 241 (Bom)] that the power to frame rules since was derived from the Act itself and the Rules owe their existence to the Act, as long as there is any provision in the Act, even if the rules are silent on that aspect of the matter, it will have to be presumed that the provisions in the Act will govern the interpretation of the Rules and, therefore, the limitation in the Act will apply to cases of demand/recovery under Rule 57-J (sic 57-I), as it stood prior to amendment, particularly when there is nothing in Section 11-A which renders it inapplicable to cases provided under the MODVAT Scheme. This reasoning overlooks the position that the Rule in question was not enacted either under Section 11-A or to carry out the purposes of Section 11-A but actually in exercise of the rule-making power under Section 37, particularly sub-section (2)(xvii). A Division Bench of the Patna High Court, in the decision reported in *TELCO case* [(1999) 111 ELT 9 (Pat)] while following the view expressed by the Madras, Karnataka and Bombay High Courts disagreed with the view of the Gujarat High Court and held that when the limitation is provided for in the parent Act, it need not be provided for in the subordinate legislation, viz., the rules, and therefore the limitation prescribed in Section 11-A has to be read into Rule 57-I, unamended also. It was also observed therein that the maxim "*generalia specialibus non derogant*" applies only to same legislative instruments and not when one instrument is an Act of Parliament and the other rule framed by the Central Government. This differentiation has no relevance for the application of the maxim noticed above and what is relevant would be the scope, extent and area of the operation of the relevant provisions, only.

.....

13. Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the courts to import any specific period of limitation by implication, where there is really none, though courts may always hold when any such exercise of

power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period. Section 11-A is not an omnibus provision which provides any period of limitation for all or any and every kind of action to be taken under the Act or the Rules but will be attracted only to cases where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded. The section also provides for an extended period on certain contingencies and situations. The situation on hand and the one which has to be dealt with under Rule 57-I, as it stood unamended, does not fall under any one of those contingencies provided for in Section 11-A of the Act. Part AA of the Rules in which Rule 57-I is found included provides a special scheme for earning credit and adjustment of duty paid on excisable goods used as inputs in the manufacture of what is referred to as "final product", and thereby enable the manufacturer to utilise the credit so allowed towards payment of duty of excise leviable on the final products, in the manner and subject to the terms and conditions stipulated therein. The manufacturer, in this case while removing the final product manufactured has adjusted against payment of excise duty on such final product a part or portion of the credit earned by him under the special scheme and what is sought to be really and in substance done is to inform the manufacturer that the adjustment he purported to have made was with an amount not legitimately or factually earned by or due to him. For this purpose, the irregularity and impropriety committed by the manufacturer in maintaining the accounts and the error in the calculation of the credit said to have been earned by him is pointed out, and the manufacturer is only directed to reverse the credit so wrongly and undeservedly made by readjustment and if need be, to recover the amount equivalent to such credit wrongly availed of and disallowed by the proper officer. The recovery of credit availed of and utilised in utter breach of the faith and mutual trust and confidence which is the *raison d'être* for the proper and successful working of the MODVAT Scheme and that too in gross violation of the mandatory requirements necessarily to be fulfilled before ever claiming or availing of such benefits cannot be said to be the same as the demand for payment to be made under Section 11-A of the Act of any excise duty not levied or paid or which has been short-levied or short-paid. They fall into two distinct and different categories altogether with basic as well as substantial differences to distinguish them from each other. As a matter of fact, Rule 57-I envisages disallowance of the credit and consequential adjustment in the credit account or the account-current maintained by

the manufacturer and if only any such adjustments are not possible proceed to recover the amount equivalent to the credit illegally availed of. Consequently, the situation postulated to be dealt with under Rule 57-I cannot be said to involve a case of manufacture and removal of excisable goods without subjecting such goods to levy or payment of the various nature and category enumerated in Section 11-A. Hence, Section 11-A of the Act on its own terms will have no application or operation to cases covered under Rule 57-I of the Rules.

14. The above conclusion of ours is itself sufficient to answer the question in favour of the Revenue and against the manufacturer, even dehors the applicability or otherwise of the principle of construction – *generalia specialibus non derogant*, since they do not operate in the same field or cover the same area, to be reconciled in order to avert any clash or inconsistency. That apart, even if it is to be assumed that they relate to one and the same nature of demand from the manufacturer of any amount due from him to the State, the provisions contained in Section 11-A are general in nature and application and the MODVAT Scheme being a specific and special beneficial scheme, with self-contained procedure, manner and method for its implementation, providing for its own remedies to undo any mischief committed by the manufacturer in abuse thereof, the provisions of the said special scheme alone will govern such a situation and there is no scope for reading the stipulations contained in a general provision like Section 11-A into the provision of the Rules in question which alone will govern in its entirety the enforcement of the MODVAT Scheme. The question as to the relative nature of the provisions general or special has to be determined, as observed earlier, with reference to the area and extent of their application either generally in all circumstances or specially in particular situations and not on the ground that one is a mere provision in the Act and the other is a provision in the Rule. We are not also concerned in this case with any challenge to the inconsistency of a rule with any statutory provision in the Act.

15. On going through very carefully the decisions of the Gujarat High Court on the one hand and those of the other High Courts noticed above, we are of the view that the Gujarat view is more reasonable and quite in accord with the purpose, object, aim and successful implementation of the MODVAT Scheme and the fallacy in the line of reasoning adopted by the other decisions lie in their assumption that the period of limitation prescribed in Section 11-A of the Act has universal application to govern

every act or course of action envisaged under the Act and the Rules, wherever there is no limitation stipulated to the contra. The restricted operation of the provisions contained in Section 11-A is found inherently inbuilt due to the specification of the various categories of cases enumerated in the provision itself to be dealt with. The Scheme of MODVAT, introduced for the first time in 1986, did not consider it necessary either to have its own period of limitation inbuilt in the Rules nor has the enforcement of the Scheme been made subject to Section 11-A of the Act. The fact that even when an amendment was made on 6-10-1988, it was prospective in nature and the amendment was not given any retrospective effect indicates the intention unmistakably that the subsequent amendment should have no impact on the construction to be placed on the provisions as it existed before such amendment. The further fact that the amendments to Rule 57-I had its own pattern of limitation and method of computation of such limitation also would militate against the manner of construction adopted by the decisions of the High Courts other than that of the Gujarat High Court."

8. It is important to note that the Supreme Court rejected the respondents' plea of limitation on more than just one ground. This is important in view of the petitioner's reliance upon the judgment of a Division Bench of the Bombay High Court delivered under Section 11-B which has distinguished the judgment of the Supreme Court on the ground that the Supreme Court had held that Section 11-A had no application or operation to cases covered under rule 57-I as Section 11-A did not bring within its purview an action for recovery of MODVAT Credit wrongly availed of which formed the subject matter of rule 57-I. We will deal with this aspect a little later. We will assume, therefore, that the observations of the Supreme Court in paragraph-13 are not relevant to the present case.

9. In paragraphs 14 and 15, however, the matter was dealt with on a different basis. The Supreme Court held that even

assuming that section 11-A and rule 57-I relate to one and the same nature of demand, the provisions contained in section 11-A are general in nature and application and the MODVAT Scheme being a specific and special beneficial scheme with a self-contained procedure, manner and method for its implementation providing for its own remedies, the provisions of the special scheme would govern a situation and that there was no scope for reading the stipulation in a general provision, namely, section 11-A into the provisions of the rules in question which alone would govern in its entirety the enforcement of the MODVAT Scheme. These observations would apply with equal force to the case before us.

10. Rule 18 of the Central Excise Rules, 2002, expressly provides that where any goods are exported the Central Government may by notification grant a rebate of the duty paid and that rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure as may be specified in the notification. Under rule 18, therefore, a party is entitled to the rebate subject to such conditions or limitations as may be specified in the notification. In respect of grant of rebate, it is open to the Central Government to impose conditions or limitations including as to the period within which the rebate ought to be claimed. The rule is wide enough to authorise the Central Government to impose a condition or limitation stipulating the period within which the facility granted, namely, rebate is to be claimed. The language is wide enough in this regard.

11. It is of vital importance to note that this is how the Central Government itself has already viewed the matter. Mr. Bansal, the learned counsel appearing on behalf of the petitioner,

invited our attention to the fact that rule 12 of the Central Excise Rules, 1944, was similar to rule 18 of the Central Excise Rules, 2002. Rule 12(1) of the Central Excise Rules, 1944, reads as under:-

"12. Rebate of duty.- (1) The Central Government may, from time to time, by notification in the Official Gazette, grant rebate of-

(a) duty paid on the excisable goods;

(b) duty paid on materials used in the manufacture of goods;

If such goods are exported outside India or shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft, to such extent and subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, destination, mode of transport and other allied matters as may be specified in the notification:

Provided that if the Commissioner of Central Excise or as the case may be the Maritime Commissioner of Central Excise is satisfied that the goods have in fact been exported, he may, for reasons to be recorded in writing, allow, the whole or any part of the claim for such rebate, even if all or any of the conditions laid down in any notification issued under this rule have not been complied with."

A notification was issued under rule 12 of the Central Excise Rules, 1944. The notification in so far as it is relevant reads as under:-

"Export - Rebate of duty on export of all excisable goods except mineral oils and ship stores.

In exercise of the powers conferred by clause (a) of sub-rule (1) of rule 12 of the Central Excise Rules, 1944, the Central Government hereby directs that rebate of duty paid on the excisable goods as specified in the Table annexed hereto, shall on their exportation out of India to any country except Nepal and Bhutan, be made to the extent specified in column (3) thereof:

Provided that -

(i) to (iii)

(iv) the claim or, as the case may be, supplementary claim, for rebate of duty is lodged with the Maritime Collector of Central Excise or the Collector of 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 (1 of 1944);" (emphasis supplied)

12. Thus, 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 the 1944 rules which corresponds to rule 18 of the Central Excise Rules, 2002.

13. Even in *Collector of Central Excise, Jaipur vs. Raghuvar (India) Ltd. (supra)*, the Supreme Court noted that the claim of MODVAT introduced in 1986 did not consider it necessary to have any period of limitation inbuilt in the rules and also the enforcement of the Scheme had not been made subject to section 11-A of the Act. Further, as noted at the end of paragraph-15, the amendment to rule 57-I had its own pattern of limitation and method of computation of limitation. The Supreme Court held that the same militated against the manner of construction adopted by the decisions of some of the High Courts which read into rule 57-I the limitation prescribed in Section 11-A. These observations clearly support Mr. Bansal's submission on a parity of reasoning.

14. A Division Bench of the Madras High Court in *Dy. Commissioner of C. Ex., Chennai vs. Dorcas Market Makers Pvt. Ltd*, 2015 (321) E.L.T. 45 (Mad.) dealt specifically with Section 11-B. In that case also the respondent had filed a claim for rebate under rule 18 of the Central Excise Rules, 2002, for refund of the duty paid for the exported goods. The claim was made beyond the period

of one year. The department, contending that the rebate claimed was not within the period of one year prescribed in Section 11-B of the Act, rejected the claim. It was held following the above judgment of the Supreme Court that the period of limitation prescribed in Section 11-B cannot be imported into a scheme/notification under section 18. We are in respectful agreement with this observation.

15. It is held, therefore, that the petitioner's claim for refund would be governed by rule 18 of the Central Excise Rules, 2002 read with the notification issued thereunder. The said notification does not provide any period of limitation for a claim for rebate. The rejection of the petitioner's claim for rebate, therefore, is not well founded.

16. Mr. Sukhdev Sharma relied upon a Division Bench judgment of the Bombay High Court dated 29.03.2012 in *Everest Flavours Ltd. vs. The Union of India and Ors.*, Writ Petition No.3262 of 2011. This case is indeed directly on the point and supports Mr. Sharma's contention. We are, however, with great respect, unable to agree with the judgment of the Bombay High Court. This case also involved the same question and was under the same provisions, namely, Section 11-B and Rule 18 and a notification issued thereunder which did not prescribe a period of limitation. The Division Bench distinguished the judgment of the Supreme Court in *Collector of Central Excise, Jaipur vs. Raghuvar (India) Ltd. (supra)* as under:-

"7. Counsel appearing on behalf of the petitioner sought to place reliance on a decision of the Supreme Court in *Collector of Central Excise v. Raghuvar (India) Ltd.*¹ The issue which fell for determination before the Supreme Court, inter alia, was whether action for the recovery of MODVAT credit wrongly availed of or utilised in an irregular manner under Rule 57-I would be governed by the period of limitation of six months (at the relevant time) prescribed in Section 11A. The Supreme Court noted

that Section 11A is not an omnibus provision which provides any period of limitation for all or any and every kind of action to be taken under the Act or the Rules but would be attracted only to cases where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded. The judgment of the Supreme Court holds that Rule 57-I envisages disallowance of the credit and consequential adjustment in the credit account or the account current maintained by the manufacturer and it is only if such adjustments are not possible, that an amount equivalent to the credit illegally availed of could be recovered. Consequently Rule 57-I, it was held, could not involve a case of manufacture and removal of excisable goods without subjecting such goods to levy or payment in the various circumstances enumerated in Section 11-A. Hence, on its own terms, it was held that Section 11A will have no application or operation to cases covered under Rule 57-I. The Supreme Court ruled that the situation on hand and the one which is to be dealt with under Rule 57-I as it stood prior to amendment, did not fall under any of those contingencies provided in Section 11A.

8. In contrast, in so far as Section 11B is concerned, the provision categorically comprehends a rebate of excise duty on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. Since the statutory provision for refund in Section 11B brings within its purview, a rebate of excise duty on goods exported out of India or materials used in the manufacture of such goods, Rule 18 cannot be read independent of the requirement of limitation prescribed in Section 11B. The Judgment of the Supreme Court in *Raghuvar* dealt with a situation where Section 11A did not bring within its purview an action for the recovery of MODVAT credit wrongly availed of which formed the subject matter of Rule 57-I. It was in this view of the matter that the Supreme Court held that the period of limitation prescribed under Section 11A would not apply to an action for recovery of MODVAT credit under Rule 57-I. This can have no application in the present situation which is clearly distinctive, in the sense that Section 11B specifically comprehends an application for rebate of excise duty on goods exported or materials used in their manufacture."

17. As we mentioned earlier, even assuming that the reasoning in paragraph-13 of the judgment of the Supreme Court is of no assistance to the petitioner, the reasoning in paragraphs 14 and 15 certainly is. The Division Bench of the Bombay High Court has not dealt with the observations of the Supreme Court in

paragraphs 14 and 15 or with the line of reasoning therein. We are, therefore, with respect, unable to agree with the judgment of the Bombay High Court.

18. Mr. Bansal also relied upon several other judgments including *Commissioner of C.Ex. & Customs, Surat-I vs. Swagat Synthetics*, 2008 (232) E.L.T. 413 (Guj.), *STI India Ltd. vs. Commissioner of Cus. & C. Ex., Indore*, 2010(19) S.T.R. 614 (M.P.), *Commissioner of Central Excise, Coimbatore vs. GTN Engineering (I) Ltd.*, 2012(281) E.L.T. 185 (Mad.) and *Dorcas Market Makers Pvt. Ltd. vs. Commissioner of Central Excise*, 2012 (281) E.L.T. 227 (Mad.) in support of his contentions. However, in view of the judgment of the Supreme Court, it is not necessary to deal with the same.

19. In the circumstances, the impugned order dated 26.05.2014 of the Commissioner of Central Excise (Appeals) is quashed and set aside. The application for rebate shall be processed and dealt with in accordance with law on the basis that it is not barred by the period of limitation prescribed in Section 11-B the Central Excise Act, 1944.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

04.08.2015
parkash*

(G.S. SANDHAWALIA)
JUDGE

Note: Whether reportable: YES
