

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Writ Appeal No.11 of 2016

M/s.Hyundai Motors India Limited,
rep.by its Assistant Vice President-Taxation,
Mr.B.C.Datta,
Plot No.H1, SIPCOT Industrial Park,
Irrungattukottai,
Sriperumpudur Taluk,
Kancheepuram District - 602 117. ... Petitioner/Appellant

Vs.

1. The Department of Revenue,
Ministry of Finance,
rep.by its Joint Secretary,
14, HUDCO Vishala Building "B" Wing,
6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.
2. The Commissioner of Central Excise
Large Tax Payer Unit,
No.1775, Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101. ... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 07.10.2015 passed in W.P.No.9062 of 2015 on the file of this Court.

W.P.No.9062 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records comprised in Order No378/14.cx dated 11.12.2014 on the file of the 1st respondent and quash the same and consequently direct the second respondent to refund the balance rebate claim of Rs.28,89,150/- to the petitioner.

For Appellant : Mr.S.Muthuvenkataraman
for M/s.K.Magesh

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J)

Challenging the order dated 07.10.2015 passed in W.P.No.9062 of 2015 of 2014 by a Writ Court of this High Court, this Writ Appeal has been preferred by the writ petitioner/appellant.

2. The short facts of the case are as follows:-

The appellant company, viz., M/s. Hyundai Motors India Ltd., is a manufacturer of cars which are cleared for home consumption as well as export to various countries by way of exports, without payment of duty under their Letter of Undertaking or on payment of prescribed duty. In the month of November, 2008, the appellant exported cars. However, it was noticed that 303 cars were subjected only to excise duty at 25% and the specific duty of Rs.15,000/- per car was not levied in the excise invoice due to system error and thus, the ARE1 did not contain the said difference amount. Thereafter, the appellant fulfilled the payment of specific duty by way of debiting the CENVAT credit amount on 15.12.2008. Subsequently, the appellant filed rebate claim dated 27.11.2009 for refund of differential duty of excise amounting to Rs.46,81,350/- paid by them on 15.12.2008 (at the rate of Rs.15,000/- per car with education cess and secondary and higher education cess) for export of 303 Nos. of 120 cars under 19 ARE-1s. On scrutiny of application and documents, it was noticed that in respect of 10 ARE-1s, in which 187 cars were exported, left India on 11.11.2008 and 15.11.2008 and the rebate claim was filed only on 27.11.2009 i.e. after one year of the relevant dates (dates of export) as per section 11B of the Central Excise Act, 1944. The revenue issued show cause notice under C.No.IV/10/76/2009 - R.F.LTU (LTG - 1) dated 22.1.2010 to the appellant company as to why a part of their claim of Rs.28,89,150/- pertaining the aforesaid 10 ARE-1s should not be rejected as time barred in terms of section 11B of the Central Excise Act, 1944. Aggrieved by the show cause notice, the appellant filed an appeal before the Commissioner (Appeals) that differential additional excise duty of Rs.15,000/- per car was not debited for a particular variant at the time of export and on knowing the fact, the differential additional duty was debited in the Cenvat account on 15.12.2008 i.e. after the cars were exported (viz., 11.11.2008 and 15.11.2008) and that the date of payment should be reckoned as the relevant date for the rebate claim filed on 27.11.2009. Considering the case of the appellant and after perusing the materials on record, the Commissioner (Appeals), by order dated 23.2.2011, rejected the appeal in Appeal No.16 of 2011, holding that the adjudicating authority was right in rejecting part of the claim as time barred as the relevant date is date of export as provided u/s.11B(B)(a)(i) of the Central Excise Act, 1944. Against this order, the appellant filed a revision application before the Ministry of Finance,

Government of India, under Section 35EE of the Central Excise Act, 1944. The revisionary authority vide order No.378/14-cx dated 11.12.2014 held that original and the appellate authority has rightly rejected the rebate claim which was filed beyond the stipulated one year period. Challenging the aforesaid order, the appellant company filed a Writ Petition in W.P.No.9062 of 2015 before this High Court to issue a writ of Certiorarified Mandamus seeking to quash Order No.378/14-cx dated 11.12.2014 passed by the revisionary authority and to direct the 2nd respondent to refund the balance rebate claim of Rs.28,89,150/- to the appellant. By order dated 07.10.2015, the Writ Court dismissed the Writ Petition holding that the revenue authorities were right in rejecting the claim of the appellant, after hearing the parties and perusing the counter affidavit filed by the second respondent in the Writ Petition. The aforesaid order is impugned in the instant appeal.

3. The learned counsel for the appellant would submit that the order of the learned Judge in dismissing the Writ Petition is arbitrary and baseless. There is no specific provision governing the time limit for filing a rebate claim under Rule 18 of the Central Excise Rules, 2002 and Notification No.19/2004 - CE (NT) dated 6.9.2004. There is also no connection between the rebate claim filed under Rule 18 of the Central Excise Rules 2002 and Section 11B of Central Excise Act. Though short payment of duty was made due to error in system and the same was not noticed by the scrutinizing authority, such amount of duty was paid by the appellant company on its own, without any demand notice from the revenue, which itself shows the bonafide intention of the appellant. The learned Judge failed to consider that reliance was placed on Notification No.19/2004-CE (NT) dated 6.9.2004 and Rule 18 of Central Excise Rules, 2002. Both these provisions do not specify any time limit for the rebate of duty. The learned Judge erred in placing reliance on the decision rendered in the case of Union of India versus Uttam Steel Ltd., [2015 (319) E.L.T.598 (S.C.)] where the facts and circumstances are different from that of the present case. Inasmuch as the other conditions of the earlier notifications remain stand in the Notification No.19/2004-C.E.(N.T.), and no time limit has been prescribed in the Notification No.19/2004-C.E.(N.T.), the impugned order passed by the learned Judge is liable to be set aside.

4. Further, the learned counsel for the appellant would submit that the question of rebate of duty is governed separately by Section 12 of Central Excise Act, 1944 and the entitlement to rebate would arise only out of a notification under section 12(1). Rule 18 of the Central excise Rules, 2002 is to be construed independently. Rule 18 should be read as per the notification issued by Central Government. Notification No.19/2004-CE dated 6.9.2004 which supersedes the previous Notification No.41/94 C.E. did not contain the prescription regarding time limitation. The omission of the

time limit is clearly a conscious omission inasmuch as all the other conditions prescribed in the Notification No.41/94-CE (NT) are retained in the Notification No.19/2004 CE (NT). It is not in dispute that neither Notification No.19/2004 CE (NT) nor Rule 18 has a condition with regard to limitation of time. Even prior to Notification No.41/94 CE, the time limit for filing rebate claim was mandatory in terms of Notification No.27/89-CE (NT) dated 9.6.1989 which amended the Notification 197/62-CE (NT), which has been omitted now as per Notification No.19/2004-CE (NT). In the absence of any prescription in the scheme, the rejection of application for refund as time barred is unjustified.

5. Adding further, the learned counsel for the appellant submitted that Notification No.19/2004-C.E.(NT) is a beneficial notification and its aim is to encourage exports. In support of his contention, he placed reliance on the decision rendered in the case of Kosmos Health Care vs. Assistant Commissioner, Central Excise, Kolkata [2013-297-ELT-45]. The learned Judge was bound to follow the ratio laid down by this Court in the case of Dy.Commissioner of Central Excise, Chennai, versus Dorcas Market Makers Pvt.Ltd., [2015 (321) E.L.T 45 (Mad.)], which was upheld by the Hon'ble Supreme Court in the judgment reported in 2015 (325) E.L.T A104 (S.C.). The aforesaid decision is squarely applicable to the facts and circumstances of the case.

6. Adding further, the learned counsel for the appellant submitted that the provisions of Section 11B are not applicable to the claim made under Rule 18 of Central Excise Rules, 2002 in terms of Notification No.19/2004 CE (NT). He also placed reliance on the decision rendered in the case of Collector of Central Excise, Jaipur vs. Raghuvar India Ltd. [2002-TIOL-711-SC-CX-LB) to contend that the period of limitation has to be clearly stipulated and it is not for the Courts to import any specific period of limitation by implication. On the aforesaid backdrop, the learned counsel for the appellant would pray to set aside the impugned order of the learned Judge and consequently to direct the second respondent to allow the rebate claim.

7. On the contrary, Mr.A.P.Srinivas, learned Standing Counsel for the respondents would submit that the contention of the learned counsel for the appellant that Section 11B of the Central Excise Act, 1944 would not be applicable to the facts of the case on hand cannot be countenanced. The contention of the appellant that Rule 18A of the Central Excise Rules is independent one and Section 11B is an independent one and therefore, section 11B of the Central Excise Act, 1944 is not applicable, is misconceived. The aforesaid provision provides for claim of refund of Central Excise Duty and the interest paid. The learned Standing Counsel specifically pressed the relevant proviso (A) to Section 11B which provides that "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.

8. The learned standing counsel has also further relied on the explanation clause of the said proviso of Section 11B(A). Section 11B reads as follows:-

Section 11B. 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 12A) 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:

(2).....

(3).....

(4).....

(5).....

[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.

Therefore, Section 11B totally controls rebate. The learned standing counsel further submitted that section 37 (2) (xvi) of the Central Excise Act provides for the Central Government to make rules for grant of rebate in respect of export of goods.

9. The learned Standing Counsel further submitted that according to the said Rules, it is merely an ancillary provision only and not substantial provision to grant benefit. Further, it is submitted that the notification issued under the said Rule prescribes a format. Subsequent to the decision relied on by the learned counsel for the appellant, the Hon'ble Supreme Court of India in the case of Union of India versus Uttam Steel Ltd., 2015 (319) reported in E.L.T 598(S.C.) at para 13, has laid down the principles of law with regard to the proviso of "A" of Section 11B of the Central Excise Act. The aforesaid recent judgment of the Hon'ble Supreme Court would apply to the facts of this case. Therefore, the decision relied on by the appellant is no longer a good law in the light of the recent decision of the Hon'ble Supreme Court in the case of Uttam Steel Ltd.,. The respondent/revenue also relied on the other decision in the

case of Commissioner of Central Excise, Coimbatore versus GTN Engineering (I) Ltd., reported in 2012 (281) E.L.T.185 (Mad.) and Ashwin Fasteners of Ashwin Panchal Versus Union of India. In the case of Delphi-TVS Diesel Systems Ltd., versus CESTAT, Chennai reported in 2015(324) E.L.T.270 (Mad.), this High Court has held that Rules, being subordinate legislation, cannot prescribe different period of limitation or different date of commencement of period of limitation. In the case of Ashwin Fasteners of Ashwin Panchal versus Union of India reported in 2010 (258) E.L.T.174 (Guj.), Gujarat High Court has held that the authority has no power or jurisdiction to entertain the claim for refund after expiry of the period of one year from the relevant date. Therefore, in the light of the aforesaid decisions, the impugned order passed by the revenue is perfectly valid in the law. Therefore, no interference is warranted in the order passed by the Writ Court.

10. Heard the learned counsel for the appellant and the learned Standing Counsel for the respondents and perused the materials on record.

11. The appellant in the above Writ Appeal exported 303 i20 cars on 15.12.2008 and the claim for rebate was filed on 27.11.2009. The appellant company paid duty between 11.11.2008 and 15.11.2008 for the export of goods. Thereafter, the appellant paid additional duty of Rs.15,000/-. As per Notification dated 30.6.2008, claim was made by the appellant on 27.11.2009 before the Assistant Commissioner of Central Excise under Section 11B of the Central Excise Act 1944. The Assistant Commissioner, by order in C.No.IV/10/76/2009-LTG-1 dated 26.2.2010, rejected a part of the claim of Rs.28,89,150/- as time barred under section 11B of the Central Excise Act 1944. The appellant, challenging the order of the Assistant Commissioner, preferred an appeal before the Commissioner (Appeals) and contended that the payment should be reckoned as the relevant date for claim filed on 27.11.2009. Therefore, the claim made by the appellant is within the period of limitation. The aforesaid appeal was dismissed by the Commissioner of Central Excise (Appeals) on 23.2.2011 in Appeal No.16/2011. Against the aforesaid order, the company preferred a Revision before the Government of India, New Delhi, under Section 35 EE of the Central Excise. The Government of India, by an order No.378/14-CX, dated 11.12.2014, has rejected the rebate claim by the appellant. Thereafter, the appellant filed a Writ Petition in W.P.No.9062 of 2015 before this Court and the same was dismissed on 7.10.2015 by the Writ Court. Now, the appellant has filed the instant Appeal before this Court.

12. The point for consideration is two folds:-

(i) Rule 18 of the Central Excise Rules 2002 is an independent one and Section 11B of the Central Excise Act, 1944 is not applicable for

rebate of duty for the export of goods for submitting the claim application within the period of limitation.

(ii) The appellant company falls under clause "F" Section 11B of the Central Excise Act, 1944. Hence, the claim is filed within a period of one year from the date of payment of additional duty dated 15.12.2008.

13. The appellant placed reliance on clause iv of Notification No.41/94-C.E.(N.T.), dated 12.9.1994, which reads as follows:-

(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 Central Excise having jurisdiction over the factory of manufacture or ware house, 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).

In Notification No.19/2004 dated 6.9.2004, no such time limitation is prescribed in the notification. Notification No.18/2016 amends Notification No.19/2004 dated 6.9.2004 wherein it reads as follows:-

"18/2016-Central Excise (N.T.) dated : March 1, 2016. In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002, the Central Government hereby makes the following further amendments in the Notification Number 19/2004-Central Excise (N.T.), dated the 6th September, 2004, in the Ministry of Finance, Department of Revenue published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (I) vide number G.S.R. 570(E), dated the 6th September, 2004, namely: (2) under heading "(3) Procedures" in Paragraph (b), in sub-paragraph (I) after the words "shall be lodged", the words figures, letter and brackets "before the expiry of the period specified in section 11B of the Central Excise Act 1944 (1 of 1944)" shall be inserted.

14. Therefore, the appellant company claims that in the Notification No.19/2004 dated 6.9.2004, no time limit is prescribed to submit the application for claiming rebate of duty for the export of cars.

15. It is useful extract Rule 18 of the Central Excise Rules 2002:

Rule 18. Rebate of duty - Where any goods are exported, the Central Government may, by Notification, grant rebate of duty paid on 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 stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

16. Section 11B of the Central Excise Act, 1944 reads as follows:-

Section 11B. 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 12A) 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:

(2).....

(3).....

(4).....

(5).....

[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;

17. The appellant would strongly rely upon the decision in the case of Dy.Commissioner of Central Excise, Chennai, versus Dorcas Market Makers Pvt.Ltd., [2015 (321) E.L.T 45 (Mad.)]. This Court considered the similar issue of applicability of Rule 18 of the Central Excise Rules. The

following paragraphs of the judgment are usefully extracted.

15. Therefore, we are of the considered opinion that the view taken by the learned Judge that Rule 18 is to be construed independently, cannot be said to be wrong. Rule 18 of the Central Excise Rules, 2002, by itself does not stipulate a period of limitation. Rule 18 reads as follows:-

"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 fulfillment 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."

16. As rightly pointed out by the learned Judge, the rebate of duty under Rule 18 should be as per the notification issued by the Central Government. The Notification bearing No.19/2004 dated 6.9.2004 prescribes the conditions, limitations and procedures for considering the claim for refund. Under Clause 2 (d) of the notification, the rebate claim may be allowed from such place of export and such date, as may be specified by the Board, by filing electronic declaration. This Notification dated 6.9.2004 superseded the previous notification bearing No.41/1994 dated 12.9.1994. At the time when the 1994 notification was issued, the procedure for filing electronic declaration had not been made. Since everything was made manually at that time, the notification of the year 1994 prescribed a time limit for filing claim. But, the 2004 notification did not contain the prescription regarding limitation. This was a conscious decision taken by the Central Government and hence, the view taken by the learned Judge is fair and reasonable.

17. Coming to the decisions relied upon by the learned Senior Central Government Standing Counsel, it is seen that the decision of the Supreme Court in Collector of Central Excise vs. Raghuvar (India) Limited, arose out of the rules relating to MODVAT Credit. The Assessee, who was entitled to avail duty credit only from 10.03.1997, availed it even from 01.03.1997. Hence, a show cause notice under Section 11-A of the Act read with Rule 57-I of the Central Excise Rules, was issued. But it was issued beyond the period of six months. Therefore, CEGAT set aside the notice forcing the Department to seek a reference under Section 35-H of the Central Excise Act. The question that arose before the Supreme Court was

whether the provisions of Section 11-A of the Central Excise Act were applicable to proceedings under Rule 57-I as it stood before the 1988 Amendment or not. It is in that context that the Supreme Court held that any law or stipulation prescribing a period of limitation to do or not to do a thing, after the expiry of the period so stipulated, has the consequence of creation and destruction of rights and therefore, must be specifically enacted and prescribed therefor.

18. But, in the very same decision, the Supreme Court pointed out that even Section 11-A of the Act is not an omnibus provision and that the situation contemplated under Rule 57-I, as it stood unamended, did not fall under any of the contingencies provided for in Section 11-A of the Act.

19. As a matter of fact, the Supreme Court observed that there is a distinction between the recovery of credit availed of and utilised in utter breach of the faith and mutual trust and confidence and that too in gross violation of the mandatory requirements on the one hand and the demand for payment to be made under Section 11-A in respect of any duty not levied or short levied. Therefore, the said decision can have no application to the case on hand, since we are not concerned here with a case of credit availed wrongly by an assessee.

* * *

23. As we have pointed out earlier, the Scheme of Section 11-B has to be seen in the context of:

- (A) the enabling provision under sub-section (1) for filing an application for refund;
- (B) the power conferred under sub-section (2) upon the Assistant Commissioner to order refund;
- (C) the non-obstante Clause contained in sub-section (3) only with reference to sub-section (2);
- (D) the definition of the expression "refund" in Clause (A) of the Explanation under sub-section (5) that includes rebate within the meaning of the expression "refund"; and
- (E) the separate provision for rebate available under Section 12 and the definition of the expression "relevant date" under Clause (B) (ec) of the Explanation under sub-section (5) of section 11 B.

* * *

31. Therefore, the understanding of the Ministry of Finance itself is quite different from what the appellant now contends. Moreover, the Department, many a times, invokes the theory of unjust enrichment. This is seen even from para 6 of the Circular of the Ministry dated 28.4.2004. In the case on hand, there is no dispute about the fact that the first respondent actually exported the goods. Their entitlement to refund is not at all in doubt. The

factum of their having exported the goods is borne out by ARE-1 forms. After the advent of online filing of applications, it is very easy to check up whether the exports have taken place and whether duty had been paid or not. Therefore, in the absence of any prescription in the scheme, the rejection of the application for refund as time barred, is unjustified. Hence, the writ appeal is dismissed. There will be no order as to costs.

18. Against the aforesaid decision, the revenue has preferred an Appeal before the Hon'ble Supreme Court in Deputy Commissioner of Income Tax v. Dorcas Market Makers Pvt.Ltd., reported in [2015 (325) E.L.T.A104 (S.C.)] and the same was dismissed. The appellant would strongly rely upon the aforesaid decision wherein this Court relied upon the decision rendered in Collector v. Raghuvar [India] Ltd reported in 2000 (118) ELT 311 (SC). Hence, the notification issued therein did not prescribe any time limit. Hence, Section 11B of the Act cannot be made applicable.

19. Hence, the decision relied on by the respondent in Uttam Steels' case (supra) wherein the Hon'ble Supreme Court has no occasion to consider the earlier decision in Collector v. Raghuvar [India] Ltd reported in 2000 (118) ELT 311 (SC). Therefore, the earlier decision if not followed in the later decision would attract per incuriam. The later dictum of the Hon'ble Supreme Court will prevail over the earlier judgment of the Hon'ble Supreme Court. Therefore, the decision rendered in Dy.Commissioner of Central Excise, Chennai versus Dorcas Market Makers Pvt.Ltd., reported in 2015 (321) E.L.T.45 (Mad.) would be applicable to the facts of this case. The decision rendered in Collector v. Raghuvar [India] Ltd reported in 2000 (118) ELT 311 (SC) was considered in the decision of Dorcas Market Makers Pvt.Ltd's case, reported in 2015 (321) E.L.T.45 (Mad.). Paragraph 19 of the judgment reads as follows:-

"19. As a matter of fact, the Hon'ble Supreme Court observed that there is a distinction between recovery of credit availed of and utilised in utter breach of the faith and mutual trust and confidence and that too in gross violation of the mandatory requirements on the one hand and the demand for payment to be made under Section 11A in respect of any duty not levied or short levied. Therefore, the said decision can have no application to the case on hand, since we are not concerned herewith a case of credit availed wrongly by an assessee."

20. On the facts of this case, the appellant company made a claim before the authority under notification No.19/2004-CE(NT) dated 6.9.2004. It is not the case of the appellant that the revenue authority had initiated action for

recovery of credit availed in violation of the mandatory requirement of the provisions of law or for the demand of payment of duty to be made in respect of duty not levied or short levied.

Hence the recent decision of the Hon'ble Supreme Court in the case of Delphi-TVS Diesel Systems Ltd., Versus CESTAT, Chennai, reported in 2015 (324) E.L.T.270 (Mad.). A Division Bench of this Court held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder:-

"8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B) (b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

21. In the case of Commissioner of Central Excise, Coimbatore Versus GTN Engineering (I) Ltd., reported in 2012 (281) E.L.T.185 (Mad.), a Division Bench of this Court has held as follows:-

"A reading of the above rule, though there is no specific relevant date is prescribed in the notification, the relevant date must be the date on which the final products are cleared for export. If any other conclusion is arrived, it will result in disentitling any reason person to make a claim of refund of CENVAT credit. Admittedly, the respondent has made a claim only invoking Rule 5 of the CENVAT Credit Rules, 2004. In that view of the matter, there cannot be any difficulty for us to hold that the relevant date should be the date on which the export of the goods was made and for such goods, refund of CENVAT credit is claimed.

22. Against the decision of Dy.Commissioner of Central Excise, Chennai versus Dorcas Market Makers Pvt.Ltd., reported in 2015 (321) E.L.T.45 (Mad.), the appeal filed by the revenue was dismissed at the admission stage.

23. In the recent Judgment of the Hon'ble Supreme Court, similar issue was considered in Union of India versus Uttam Steels Ltd., reported in 2015 (319) E.L.T. 598(S.C.), relevant paragraphs of the Judgment are extracted hereunder:-

12. And now to Shri Bagaria's argument. In order to understand the argument, we will set out Rules 12 and 13 of the Central Excise Rules together with the notification dated 22.9.1994.

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.

(2) Where the Central Government does not grant Under Clause (a) of Sub-rule (1) either wholly or partially any rebate of duty paid on goods exported to a country outside India, it may, in order to promote exports or fulfil obligations arising out of any treaty entered into between India and the Government of that country, provide, by notification in the Official Gazette, for payment to the Government of that country an amount not exceeding the duty paid on such goods which are exported out of India to that country.

(3) No rebate of duty in respect of excisable materials used in the manufacture of goods exported out of India Under Clause (b) of

Sub-rule (1) shall be allowed, if the exporter avails of drawback of the said duty under the Customs and Central Excise Duties Drawback Rules, 1995 or avails of credit of said duty Under Section AA of Chapter V of the Central Excise Rules, 1944.

Explanations--In this rule, the expressions,-

(i) "manufacture" includes the process of blending of any goods or making alterations or any other operation thereon;

(ii) "materials" includes raw materials, consumables (other than fuel) components, semi-finished goods, assemblies, sub-assemblies, intermediate goods, accessories, parts and packaging materials required for manufacture of export goods but does not include capital goods used in the factory in or in relation to manufacture of export goods.

(iii) Omitted.

(4) The provisions of this rule shall not apply to such excisable goods, export of which are prohibited under any law for the time being in force.

13. Export in bond of goods on which duty has not been paid.-

(1) The Central Government may, from time to time, by notification in the Official Gazette-

(a) permit export of specified excisable goods in bond without payment of duty in the like manner, as the goods regarding which the rebate is granted Under Sub-rule (1) of Rule 12, from a factory of manufacture or warehouse or any other premises as may be approved by the Commissioner of Central Excise;

(b) specify materials, removal of which without payment of duty from the place of manufacture or storage for use in the manufacture in bond of export goods, may be permitted by the Commissioner of Central Excise;

(c) allow removal of excisable material without payment of duty for the manufacture of export goods, as may be specified, to be exported in execution of one or more export orders; or for replenishment of duty paid materials used in the manufacture of such export goods already exported for the execution of such orders, or both;

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 which the exporter

undertakes to abide by entering into a bond in

the proper form with such surety or sufficient security, and under such conditions as the Commissioner approves.

(2) The Central Government may, from time to time, by notification in the Official Gazette, permit export of specified excisable goods in bond, without payment of duty from a factory of manufacture or warehouse, to Nepal or Bhutan, subject to such conditions or limitations as regards the class of goods, destination, mode of transport and other matters as may be specified therein.

Explanation I.--In this rule, the expression "manufacture" includes the process of blending of any goods or making alterations or any other operation thereon.

Explanation II.--In this rule, the term "materials" shall include raw materials, consumables (other than fuel), components, semi-finished goods, assemblies, sub-assemblies, intermediate goods, accessories, parts and packaging materials used in the manufacture of export goods but does not include capital goods used in the factory in or in relation to manufacture of export goods.

Notifications and Procedures Under Rule 12

[I] Rebate of duty on export of all excisable goods except ship's stores and mineral oil products exported as stores for consumption on board an aircraft on foreign run. -- 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) except as otherwise permitted by the Central Board of Excise and Customs by a general or a special order, the excisable goods shall be exported after payment of duty directly from a factory or a warehouse;

(ii) the excisable goods are exported by the exporter in accordance with the procedure set out in Chapter IX of the Central Excise Rules, 1944;

(iii) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may

in any particular case allow;

(iv) the claim or, as the case may be, supplementary claims, for rebate of duty is lodged with the Maritime Commissioner of Central Excise or the Commissioner 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 Excise Act, 1944 (1 of 1944);

(v) the market price of the excisable goods at the time of exportation is, in the opinion of the Commissioner of Central Excise not less than the amount of rebate of duty claimed;

(vi) the amount of rebate of duty admissible is not less than five hundred rupees;

(vii) the exporter undertakes to refund any rebate of duty erroneously paid, to the Commissioner of Central Excise sanctioning such rebate in accordance with provisions of Section 11A of the Central Excise Act, 1944 (1 of 1944);

(viii) if the excisable goods are not exported or the proof of export thereof is not furnished to the satisfaction of the Commissioner of Central Excise or, as the case may be, the Maritime Commissioner of Central Excise in the manner and within the prescribed time limit, the said officer on an application being made by the exporter or otherwise, shall cancel the export documents;

(ix) if exported-

(a) by land, the export shall take place by such routes or such land Customs Stations or Border Check Posts as have been approved by the Central Government;

(b) by parcel post, the parcel is delivered by the exporter at the Post Office of despatch within six months of the payment of duty.

At the relevant time, Section 11B(2) read as follows:

(2) If, on receipt of any such application, the Assistant 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 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;

xxx

xxx

xxx

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.

13. Shri Bagaria's argument based on the proviso to Rule 12(1) would obviously not have any force if Section 11B were to apply of its own force. It is clear from Section 11B(2) proviso (a) that a rebate of duty of excise on excisable goods exported out of India would be covered by the said provision. A reading of Mafatlal Industries (supra) would also show that such claims for rebate can only be made Under Section 11B within the period of limitation stated therefor. This being the case, the argument based on Rule 12 would have to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B. Equally, the argument that on a bond being provided Under Rule 13, the goods would have been exported without any problem of limitation would not hold as the exporter in the present case chose the route Under Rule 12 which, as has been stated above, is something that can only be done if the application for rebate had been made within six months. We, therefore, allow the appeal and set aside the Bombay High Court judgment dated 12.8.2003."

24. Therefore, the aforesaid decision of the Hon'ble Supreme Court, following the decision in the case of M/s.Mafatlal Industries Limited & Others. v. Union of India & Others reported in 1997 (89) E.L.T. 247(S.C.) = (1997) 5 SCC 536 that such claims for rebate can be made only under Section 11-B within the period of limitation as prescribed under the Act.

25. Therefore, the contention of the appellant that no time limit is prescribed in the notification could not be accepted in view of proviso (a) to subsection (ii) of Section 11B of the Central Excise Act. Therefore, reading of Rule 18, there is no specific relevant date prescribed in the Notification to the effect that the relevant date on which final products or goods was cleared for export.

26. Admittedly, the goods were exported on 10.11.2008 and 15.11.2008. Thereafter, the appellant paid additional duty on 15.11.2008. The claim of rebate of duty made by the appellant company on 27.11.2009 by claiming that period

of limitation is within one year under Section 11B of the Act. Therefore, Issue No.I is answered against the assessee.

27. In view of the above, we are not inclined to accept the contention made by the appellant that relevant date is only from the date of payment of additional duty subsequent to the goods exported by the company.

28. We are also relying upon the decision in Commissioner of Central Excise, Coimbatore versus GTN Engineering (I) Ltd., reported in 2012 (281) E.L.T.185 (Mad.) in Paragraph 14.

"14. The said notification prescribed a period of one year, as provided under section 11B of the Central Excise Act, for the purpose of making application in Form-A along with prescribed enclosures and also the relevant extracts of the records maintained under the Central Excise Rules, 2002, Cenvat Credit Rules, 2004 or Service Tax Rules, 1994 in original. That application should be filed before the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be. For the purpose of dining out as to the relevant date for the purpose of making claim for refund of CENVAT credit, Rule 5 should be made applicable. It is the contention of the learned counsel for the assessee that the provision defining relevant date does not cover the claim for refund of CENVAT credit. We may point out as to the relevant date. Rule 5 specifies that "where any input or input service is used in the manufactures of final product which is cleared for export under bond or letter of undertaking as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed."

29. In Delphi-TVS Diesel Systems Ltd., Versus CESTAT, Chennai, reported in 2015 (324) E.L.T.270 (Mad.), it has been held as follows:-

5. The claim for refund made by the appellant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows:--

"(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 5A, 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;

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

* * *

"8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant

date" is also defined in Explanation (B) (b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

30. Therefore, the second contention raised by the appellant in the above appeal is answered against the appellant company.

31. In the light of the above discussions and decisions cited supra, the Writ Appeal fails. Accordingly, the Writ Appeal is dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

asvm

To

1. The Joint Secretary,
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+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.23753

W.A.No.11 of 2016

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