IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **14.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.8002, 8008, 8016, 8020, 8023, 8026, 8043, 8046 and 8048 of 2022

W.P.No.8002 of 2022:

M/s.Panvo Organics Pvt. Ltd.,
No.61, SR Kandigai Road,
Chinna Obulapuram Village,
Gummidipoondi - 601 201.
Rep. by its Authorized Signatory,
B.Muthukumar ... Petitioner

Vs.

1.The Principal Commissioner & Ex-Officio,
Additional Secretary to the Government of India,
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai - 400 005.

2.Commissioner of CGST,
Chennai Outer Commissionerate,
No.2054-I, II Avenue, 12th Main Road,
Newry Towers, Anna Nagar,
Chennai - 600 040. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent relating to the impugned No.136/2022-Cx(SZ) ASRA/Mumbai dated 03.02.2022 issued on 07.02.2022 having F.No.195/276-284/17-RA/454 passed by the 1st respondent rejecting the revision application and upholding the order-In-Appeals No.129 to 137/2017(CXA-I) dated 29.05.2017 passed by the Commissioner (Appeals - I), Central Excise, Chennai to quash the same as illegal, arbitrary and devoid of merit.

For Petitioner
In all W.Ps. : Mr.M.V.Swaroop

For Respondents
In all W.Ps. : Mr.S.Gurumurthy
Senior Panel Counsel

COMMON ORDER

The issue raised in these Writ Petitions viz., whether the Subordinate legislation viz., the Income Tax Rules can extend the period of limitation prescribed under Section 11B of the Central Excise Act, is now covered by a recent decision of the Honourable Supreme Court in the case of ***Sansera Engineering Limited Vs. Deputy Commissioner, Large Tax Payer Unit, Bengaluru*** reported in ***2022 SCC Online SC 1635***. The relevant paragraphs of the aforementioned decision are as follows:

"28. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002 Rules and notification dated 6.9.2004 can be said to be a subordinate legislation. The subordinate legislation cannot override the parent statute. Subordinate legislation can always be in aid of the parent statute. At the cost of repetition, it is observed that subordinate legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory. If the submission on behalf of the appellant that as there is no mention/reference to Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 and therefore the period of limitation prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate of duty is accepted, in that case, the substantive provision - Section 11B of the Act would become otiose, redundant and/or nugatory. If the submission on behalf of the appellant is accepted, in that case, there shall not be any period of limitation for making an application for rebate of duty. Even the submission

on behalf of the appellant that in such a case the claim has to be made within a reasonable time cannot be accepted. When the statute specifically prescribes the period of limitation, it has to be adhered to.

29. It is required to be noted that Rule 18 of the 2002 Rules has been enacted in exercise of rule making powers under Section 37(xvi) of the Act. Section 37(xxiii) of the Act also provides that the Central Government may make the rules specifying the form and manner in which application for refund shall be made under section 11B of the Act. In exercise of the aforesaid powers, Rule 18 has been made and notification dated 6.9.2004 has been issued. At this stage, it is required to be noted that as per Section 11B of the Act, an application has to be made in such form and manner as may be prescribed. Therefore, the application for rebate of duty has to be made in such form and manner as prescribed in notification dated 6.9.2004. However, that does not mean that period of limitation prescribed under Section 11B of the Act shall not be applicable at all as contended on behalf of the appellant. Merely because there is no reference of Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 on the applicability of

Section 11B of the Act, it cannot be said that the parent statute - Section 11B of the Act shall not be applicable at all, which otherwise as observed hereinabove shall be applicable with respect to rebate of duty claim. "

2. Heard, Mr.M.V.Swaroop, learned counsel for the petitioner and Mr.S.Gurumurthy, learned Senior Panel Counsel appearing for the respondents.

3. In the impugned orders all dated 03.02.2022 issued on 07.02.2022, the rebate claimed by the petitioner under Section 11B of the Central Excise Act has been rejected on the ground of limitation i.e., the rebate claimed has been made beyond the period of one year.

4. Since the Honourable Supreme Court in the aforementioned decision has made it clear that any rebate claim will have to be made within a period of one year, there is no merit in these Writ Petitions, as admittedly the claim for rebate was made by the petitioner beyond the period of one year.

5. In view of the aforesaid decision of the Honourable Supreme Court, these Writ Petitions are dismissed. No Costs.

14.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

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ABDUL QUDDHOSE. J.,

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(1/2)