REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8717 OF 2022

Sansera Engineering Limited …Appellant

Versus

Deputy Commissioner, Large Tax Payer Unit, Bengaluru …Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.07.2021 passed by the High Court of Karnataka at Bengaluru in Writ Appeal No. 249/2020, whereby the Division Bench of the High Court has dismissed the said appeal preferred by the appellant herein and has confirmed the common judgment and order dated 22.11.2019 passed by the learned Single Judge dismissing the writ petitions, upholding the order passed by the respondent rejecting the

claim of the appellant for rebate on the ground that the claim was barred by time/limitation prescribed under Section 11B of the Central Excise Act, 1944 (hereinafter referred to as the 'Act'), the original writ petitioner/appellant herein has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That the appellant herein – M/s Sansera Engineering Limited is a manufacturer of excisable goods. It exported goods on payment of excise duty between August, 2015 and October, 2015 and filed claims for rebate of duty paid on the goods exported on 10.02.2017 to the tune of Rs. 29,47,996/- and Rs. 42,27,928/- under Rule 18 of Central Excise Rules, 2002 (hereinafter referred to as the '2002 Rules') in respect of these exports. Subsequently on 14.02.2017, for the period October 2015 to March 2016, the appellant claimed rebate of Rs. 1,47,27,766/-.

2.1 The original authority rejected the above-mentioned rebate claims as barred by time prescribed under Section 11B of the Act *vide* three different Orders-in-Original. Aggrieved by the respective Orders-in-Original rejected the respective claims as barred by time prescribed under Section 11B of the Act, the appellant preferred writ petitions before the learned Single Judge. The learned Single Judge *vide* common order dated 22.11.2019 dismissed the said writ petitions

holding that the claims for rebate were made beyond the period of one year prescribed under Section 11B of the Act. The judgment and order passed by the learned Single Judge has been confirmed by the Division Bench of the High Court by the impugned judgment and order in Writ Appeal No. 249/2020. Hence, the present appeal.

3. Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant has made the following contentions in support of his submission that for rebate claim, the period prescribed under Section 11B of the Act shall not be applicable:

i) that the grant of rebate of duty paid on excisable goods or duty paid as provided under Rule 18 of the 2002 Rules is different than that of refund of duty entitled under Section 11B of the Act;

ii) that the rebate of duty is on export of the goods and is in the form of an incentive and on furnishing the form R within six months from the date of export, the exporter is entitled to the rebate of duty on fulfilling the relevant conditions as mentioned in the notification No. 19/2004 dated 6.9.2004;

iii) that neither Rule 18 nor notification dated 6.9.2004 specifically provided for the applicability of Section 11B of the Act for the period between 2000 to 2016;

iv) that by notification dated 1.3.2016, notification dated 6.9.2004 came to be amended under heading “(3) Procedures” and the words “before the expiry of the period specified in Section 11B of the Act” came to be inserted. Therefore, a conscious decision was taken that for the period between 2000 to 2016, the period prescribed under Section 11B of the Act shall not be applicable;

v) that in absence of specific provision either in Rule 18 or in notification dated 6.9.2004 which came to be issued in exercise of powers under Section 37 of the Act specifically making Section 11B of the Act applicable which provides for the limitation to make an application within six months/one year applicable, subject to fulfilling of all conditions mentioned in the notification dated 6.9.2004, the exporter shall be entitled to the rebate of duty paid on excisable goods exported;

vi) that as per notification dated 6.9.2004 on fulfilling of such procedure and the conditions as specified in the notification, there shall be granted rebate of the whole of the duty paid on the excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 exported to any country other than Nepal and Bhutan. As it was found that the exporters were causing great hardship in getting the remittance certificates within six months, a conscious decision was

taken at the time when Rule 18 of the 2002 Rules was enacted and when notification dated 6.9.2004 was issued excluding the applicability of Section 11B. As subsequently the period of six months was increased to one year, it appears that thereafter vide notification dated 1.3.2016, again the applicability of Section 11B of the Act was introduced;

vii) that there is a vast difference and distinction between the refund of duty and the rebate claim; and

viii) that as Rule 18 is a special provision for the grant of rebate of duty, general provision of Section 11B of the Act which is for refund of duty shall not be applicable. Reliance is placed on the decision of this Court in the case of ***Collector of Central Excise, Jaipur v. Raghuvar (India) Limited***, ***(2000) 5 SCC 299 = 2000 (118) ELT 311 (SC)***.

3.1 Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant has heavily relied upon the observations made in paragraphs 13, 14 & 17 of the decision in the case of ***Raghuvar (India) Limited (supra)***, in support of his submission that Section 11B of the Act shall not be applicable while considering the claim for rebate of duty.

Shri Datar, learned Senior Advocate has also relied upon the following decisions of the High Courts of Madras, Allahabad, Punjab &

Haryana and Rajasthan taking the view, after following the decision of this Court in the case of ***Raghuvar (India) Limited (supra)***, that the claim for rebate of duty under Rule 18 of the 2002 Rules is different and distinct than the claim for refund under Section 11B of the Act and therefore the limitation prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate of duty paid:

1. ***Deputy Commissioner of Central Excise v. M/s Dorcas Market Makers Pvt. Ltd.,*** **2015 SCC OnLine Mad 8492 :** ***2015 (321) ELT 45(Madras);***
2. ***Camphor and Allied Products Ltd. v. Union of India,*** **2019 SCC OnLine All 4705 :** ***2019 (368) ELT 865 (Allahabad);***
3. ***JSL Lifestyle Ltd. v. Union of India,*** **2015 SCC OnLine P&H 13023 :** ***2015 (326) ELT 265 (P&H) (paragraphs 14,15,16 & 17); and***
4. ***Gravita India Ltd. v. Union of India, 2016 (334) ELT 321 (Rajasthan) (Paragraphs 12, 14 & 16).***

3.2 Shri Arvind P. Datar, Learned Senior Advocate appearing on behalf of the appellant has further submitted that the decision of this Court in the case of ***Union of India v. Uttam Steel Limited, (2015) 13 SCC 209 = 2015 (319) ELT 598 (SC)*** is distinguishable and shall not be applicable while considering the claim for rebate of duty payable under

Rule 18 r/w notification dated 6.9.2004. It is submitted that in the case before this Court, this Court was considering Rule 12 of the 2002 Rules, which subsequently came to be deleted by insertion of Rule 18.

3.3 Learned senior counsel appearing on behalf of the appellant has also relied upon the decision of the Gujarat High Court in the case of ***Cosmonaut Chemicals v. Union of India, 2009 (233) ELT 46 (Gujarat)*** in support of his submission that as observed and held by the Gujarat High Court mitigating circumstances and when the assessee is not in a position to get the necessary documents within the prescribed period of limitation, the refund under Section 11B of the Act cannot be denied. It is submitted that it is observed and held by the Gujarat High Court in the aforesaid decision that any procedure prescribed by a subordinate legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. It is submitted that applying the same to the rebate claim, many a times the exporters were facing the difficulty in getting the requisite remittance certificates and therefore in such a situation the exporter who has in fact exported the goods and earned the foreign remittance cannot be denied the rebate claim.

3.4 Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant has submitted that the object and purpose of the rebate of duty on export of goods can be termed as “incentive” to boost the

export and earn foreign remittance. It is submitted that therefore if such a claim for rebate of duty is denied despite earning foreign remittance on the goods exported on such technical grounds, it may defeat the object and purpose for grant of rebate.

3.5 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeal.

4. The present appeal is vehemently opposed by Shri Siddhant Kohli, learned Advocate appearing on behalf of the revenue.

4.1 It is vehemently submitted by the learned counsel appearing on behalf of the revenue that as such the issue involved in the present case is squarely covered by the decision of this Court in the case of ***Uttam Steel Ltd. (supra)***. It is submitted that in the case of ***Uttam Steel Ltd. (supra)***, it is specifically observed and held by this Court that the period of limitation prescribed under Section11B of the Act shall be applicable with respect to rebate of duty. It is submitted that after considering the decision of this Court in the case of ***Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 = 1997 (89) ELT 247(SC)***, it is observed and held that the claim for rebate can only be made under Section 11B of the Act within the period of limitation stated therefor.

4.2 It is further submitted that the decision of this Court in the case of ***Raghuvar (India) Ltd. (supra)***, which has been relied upon on behalf of

the appellant, shall not be applicable at all and/or the same shall not be of any assistance to the appellant. It is submitted that in the case before this Court, this Court was considering Section 11A of the Act, vis-à-vis Rule 57-I. It is submitted that as it was found that Section 11A of the Act is a general provision for recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded, the same shall not be made applicable with respect to recovery of credit wrongly availed of or utilized in an irregular manner under Rule 57-I. It is submitted that there is a vast difference and distinction between Section 11A and Section 11B of the Act. It is submitted that as per Explanation (A) to Section 11B of the Act, for the purpose of Section 11B, "refund" includes rebate of duty of excise… It is submitted that therefore the period of limitation of one year prescribed under Section 11B of the Act shall be applicable with respect to the rebate of duty.

4.3 It is further submitted that as per Section 11B (1) of the Act, an application for rebate of duty has to be made before the expiry of one year from the "relevant date". It is submitted that as per Explanation (B) to Section 11B of the Act, "relevant date" means in the case of goods exported out of India where a refund of excide 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. It is submitted that

therefore in Section 11B of the Act, there is a specific reference to the rebate of duty and such claim of rebate of duty shall have to be made before the expiry of one year from the relevant date. It is submitted that therefore the period of limitation prescribed under Section 11B of the Act shall be applicable with respect to claim for rebate of duty also.

4.4 It is further submitted by the learned counsel appearing on behalf of the revenue that Section 11B of the Act can be said to be a parent statute and Rule 18 and notification dated 6.9.2004 can be said to be a subordinate legislation. Notification dated 6.9.2004 which has been issued in exercise of powers under Section 37 of the Act provides for "procedure". It is submitted that as per Section 37(xxiii) of the Act, the Central Government may make rules to specify the form and manner in which application for refund shall be made under Section 11B of the Act. It is submitted that in exercise of such powers, notification dated 6.9.2004 has been issued in exercise of powers conferred under Rule 18 of the 2002 Rules.

4.5 It is further submitted that Rule 18 cannot be read in isolation. It is further submitted that Rule 18 being subordinate legislation cannot override the main statute. It is submitted that notification dated 6.9.2004 cannot be read *de hors* the statute and Section 11B of the Act.

4.6 It is further submitted that the rebate of duty is an export incentive benefit granted under the subordinate legislation and any such benefit has to be governed by the statute.

4.7 It is further submitted by the learned counsel appearing on behalf of the revenue that the decision of this Court in the case of ***Raghuvar (India) Ltd. (supra)***, which has been relied upon by the Allahabad High Court in the case of ***Camphor & Allied Products Ltd. (supra)*****,** shall not be applicable to the facts of the case on hand, while considering the rebate claim. It is submitted that the question involved in the case of ***Raghuvar (India) Ltd. (supra)*** was with respect to recovery of Modvat credit wrongly availed of. In the said case, it was the manufacturer who claimed the benefit of Section 11A of the Act by stating that no recovery could be made from him during the period of limitation of one year under Section 11A of the Act. It is submitted that this Court negated the said claim on the reasoning that recovery contemplated under Section 11A of the Act is different and distinct from recovery of Modvat wrongly claimed. It is submitted that for reaching that conclusion this Court considered the separate nature of duties contemplated under Section 11A of the Act and the Modvat Scheme envisaged by Rule 57A to 57P of the Rules prevalent at the relevant time. It is submitted that in the present case the rebate claim shall be governed by Section 11B of the Act. It is submitted

that by virtue of Explanation (A) appended to Section 11B of the Act, the claims of rebate of excise duty have been specifically included in the statutory definition of claims for refund.

4.8 Learned counsel appearing on behalf of the revenue has also relied upon the subsequent decision of the Madras High Court in the case of ***Hyundai Motors India Limited v. Department of Revenue, 2017 (355) ELT 342 (Madras) (paras 24 & 25)*** as well as the decision of the Bombay High Court in the case of ***Everest Flavours Ltd. v. Union of India, 2012 (282) ELT 481 (Bombay) (paras 10,11 & 12)***.

4.9 Learned counsel appearing on behalf of the Revenue has further submitted that if the submission on behalf of the appellant that the period of limitation of one year prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate is accepted, in that case, there shall not be any limitation at all and at any time, exporter can make an application for rebate claim. It is submitted that therefore Rule 18 and notification dated 6.9.2004 are to be read harmoniously with the parent statute – Section 11B of the Act.

4.10 Making above submissions and relying upon the decision of this Court in the case of ***Uttam Steel Ltd. (supra)*** and the decision of the Madras High Court in the case of ***Hyundai Motors India Ltd. (supra)***

and the decision of the Bombay High Court in the case of ***Everest Flavours Ltd. (supra)***, it is prayed to dismiss the present appeal.

5. In rejoinder, Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant has submitted that if the contention on behalf of the appellant that the period of limitation of one year prescribed under Section 11B of the Act shall not be applicable with respect to rebate claim is accepted, in that case also, the exporter has to make an application within a reasonable time.

6. We have heard Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant and Shri Siddhant Kohli, learned Advocate appearing on behalf of the Revenue at length.

The short question which is posed for consideration of this Court is, “whether the claim for rebate of duty provided under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1994 shall be applicable or not?

7. It is the case on behalf of the appellant that as in Rule 18 of the 2002 Rules and notification dated 6.9.2004, there is no mention to the applicability of Section 11B of the Act and that the claim for rebate of duty under Rule 18 is different and distinct than that of the claim for refund of duty under Section 11B of the Act, the period of limitation

prescribed under Section 11B of the Act shall not be applicable, while considering the claim for rebate of duty under Rule 18 of the 2002 Rules.

8. While considering the aforesaid issue, first of all, relevant provisions of Section 11B of the Act are required to be referred to and considered. Section 11B of the Act is as under:

> "**11-B. Claim for refund of** [**duty and interest, if any, paid on such duty**].— (1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on 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
>
> Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 (40 of 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 and interest, if any, paid on such 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 and interest, if any, paid on such duty] 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 and interest, if any, paid on such duty] 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 [Principal Commissioner of Central Excise or 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 and interest, if any paid on such duty] paid by the manufacturer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

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

(*f*) the [duty of excise and interest, if any paid on such duty] 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 and interest, if any, paid on such 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.]"

9. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, "refund" includes "rebate of duty" of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application **for refund of such duty to the appropriate authority before the expiry of one year from the relevant date** and only in the form and manner as may be prescribed. The "relevant date" is defined under Explanation (B) to Section 11B of the Act, which means 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 goods….. Thus, the

"relevant date" is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the "relevant date" and in such form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004 issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.

10. 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.

11. 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.

12. As such, the issue involved in the present appeal is squarely covered by the decision of this Court in the cases of ***Mafatlal Industries Ltd. (supra)*** and ***Uttam Steel Limited(supra)***. After taking into consideration Section 11B of the Act and the notification and procedure under Rule 12, it is specifically observed and held that rebate of duty of excise on excisable goods exported out of India would be covered under Section 11B of the Act. After referring to the decision of this Court in the case of ***Mafatlal Industries Ltd. (supra)***, it is further observed in the case of ***Uttam Steel Limited(supra)*** that such claims for rebate can only be made under Section 11B within the period of limitation stated therefor.

On the argument based on Rule 12, this Court has specifically observed that such argument has to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B. The aforesaid observations made by this Court in the case of ***Uttam Steel Limited(supra)*** clinches the issue. The said decision has been subsequently rightly followed by the Madras High Court in the case of ***Hyundai Motors India Limited (supra)***.

13. Now so far as the reliance placed upon the decision of this Court in the case of ***Raghuvar (India) Ltd. (supra)***, relied upon by the learned senior counsel on behalf of the appellant is concerned, on considering the relevant provisions of Central Excise Act, namely, Sections 11A & 11B of the Act, we are of the opinion that the said decision shall not be applicable with respect to the period of limitation prescribed under Section 11B of the Act with respect to claim for rebate of duty. The question involved in the ***Raghuvar (India) Ltd. (supra)*** was with respect to recovery of Modvat wrongly availed. In that case, it was the manufacturer who claimed the benefit under Section 11A of the Act by stating that no recovery could be made beyond the period of one year limitation under Section 11A of the Act. This Court negated that claim by observing that recovery contemplated under Section11A is different and distinct from the Modvat wrongly availed. For reaching that conclusion,

this Court considered that the recovery of Modvat would be governed by a special provision contained in Rule 57-I and therefore the provision of Section 11A of the Act, which is a general provision, shall not be applicable. In the present case, as observed hereinabove, section 11B of the Act shall be specifically applicable with respect to claim for rebate of duty. Therefore, as such, section 11B of the Act cannot be said to be a general provision. Therefore, the period of limitation prescribed under Section 11B of the Act shall have to be made applicable with respect to claim for rebate of duty.

The decision of the Allahabad High Court in the case of ***Camphor and Allied Products Ltd. (supra)*** and other decisions of the Madras High Court, Punjab & Haryana High Court and Rajasthan High Court taking a contrary view, relying upon the decision of this Court in the case of ***Raghuvar (India) Ltd. (supra)***, are not a good law and shall not be of any assistance to the appellant.

14. At this stage, the decision of the Bombay High Court in the case of ***Everest Flavours Ltd.(supra)*** is required to be referred to. In the said case, the Bombay High Court was considering the limitation prescribed under Section 11B of the Act with respect to rebate of excise duty. In the said decision, it is specifically observed that since statutory provision for refund in Section 11B ibid brings within its purview, a rebate of excise

duty, Rule 18 of the 2002 Rules cannot be read independent of requirement of limitation prescribed in Section 11B. Before the Bombay High Court, the decision of the Madras High Court in the case of ***Dorcas Market Makers Pvt. Ltd. (supra)***, which is relied upon on behalf of the appellant was also pressed into service by the assessee. However, the Bombay High Court did not agree with the said decision. The Bombay High Court also distinguished the decision of this Court in the case of ***Raghuvar (India) Ltd. (supra)***. In paragraphs 7 to 10, it is observed and held 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. – (2000) 5 SCC 299.* 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.

9. A judgment of the Madras High Court in *Dorcas Market Makers Private Limited, Chennai* v. *CIT (Appeals) 2012 (281) E.L.T. 227 (Mad.)* was sought to be relied upon to submit that Section 11B of the Central Excise Act would not operate in respect of an application under Rule 18 of the Central Excise Rules, 2002. The learned Single Judge of the Madras High Court held that when a statutory Notification which was issued under Rule 18 does not prescribe any time limit, Section 11B would not be attracted. With respect, the learned Single Judge of the Madras High Court has not had due regard to the specific provision of Explanation (A) to Section 11B of the Act under which the expression “refund” is defined to include rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of such goods. The judgment of the Supreme Court in *Raghuvar* which has been relied upon by the learned Single Judge of the Madras High Court has already been considered hereinabove.

10. In exercise of the powers conferred by Rule 18, the Central Government has issued a Notification[3]. The Notification prescribes the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that the excisable goods shall be exported within six months from the date on which they were cleared from the factory of manufacture or warehouse. The procedures are stipulated in Clause (3). Sub-clause (iv) provides for the sealing of goods intended for export, at the place of dispatch and the exporter shall present goods along with four copies of an application in Form ARE-I specified in the Annexure to the Notification to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse. Sub-clause (v) then stipulates that the Superintendent or Inspector shall verify the identity of goods mentioned in the application, the particulars of the duty paid or payable and if found in order, shall seal each package or the container and endorse each copy of the application in token of having carried out the examination. The original and duplicate copies of the application are returned to the exporter. The triplicate copy of the application is to be sent to the Officer with whom a rebate claim is to be filed either by post or by handing over to the exporter in a sealed cover after posting the particulars in the official record or to be sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration. Sub-clause (b) of Clause (3) of the Notification makes a provision for presenting a claim for rebate of Central Excise duty in the following terms:

> "(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 provisions of the Notification thus make it abundantly clear that a mere submission of the ARE-I form does not constitute the presentation of a claim for rebate of Central Excise. Form ARE-1 in turn has various parts including Part A which deals with the certification by Central Excise Officer, Part B which deals with certification by the Officer of Customs and Part D which is the actual Rebate Sanction Order. Moreover, it would be necessary to take note of the fact that under Section 11BB of the Act, interest is liable to be paid if any duty which is ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of Section 11B. For the purpose of Section 11BB, presentation of the application is the relevant date from which the period of three months has to be reckoned. If the submission of the petitioner were to be accepted, viz. that the mere presentation of the ARE-1 form would constitute an application for rebate of Central Excise Duty, that would defeat the whole scheme that has been enunciated in Section 11B and Section 11BB. Before the application for rebate can be allowed, an exporter has to furnish various documents including a request on the letterhead of the exporter containing a claim for rebate, the ARE-1 numbers and dates, corresponding invoice numbers and dates, the original copy of the ARE-1, invoice issued under Rule 11, self-attested copy of shipping bill and self-attested copy of bill of lading together with a Disclaimer Certificate in case where a claimant is other than the exporter. These requirements have been spelt out in para 8.3 of the CBEC Excise Manual. The mere presentation of an ARE-1 form does not, therefore, constitute the filing of a valid application for rebate. An application for refund has to be filed, together with documentary material as required. We, therefore, do not accept the second submission which has been urged on behalf of the petitioner."

We are in complete agreement with the view taken by the Bombay High Court in the case of ***Everest Flavours Ltd. (supra)***. Contrary decisions of Madras High Court, Allahabad High Court, Punjab & Haryana High Court and Rajasthan High Court, referred to hereinabove, are herebv overruled.

15. In view of the above and for the reasons stated above, it is observed and held that while making claim for rebate of duty under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed

under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable. In the present case, as the respective claims were beyond the period of limitation of one year from the relevant date, the same are rightly rejected by the appropriate authority and the same are rightly confirmed by the High Court. We see no reason to interfere with the impugned judgment and order passed by the High Court. Under the circumstances, the present appeal fails and deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.

…….J.
[M.R. SHAH]

NEW DELHI;
NOVEMBER 29, 2022.

…….J.
[M.M. SUNDRESH]