SC in Sansera Engineering Limited – Rebate vs Refund – Implications under GST Laws

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The Supreme Court in the M/s Sansera Engineering Limited[1] has concluded the long outstanding issue of distinction between the refund and rebate under the erstwhile indirect taxation laws. The assessee tried to distinguish rebate from refund, since there was no specific time limit mentioned for rebate. Before dealing with the said judgment and its implications under the GST laws, a brief background on the thin line of distinction between refund and rebate is *sina qua non.*

Refund vs. Rebate – Erstwhile Indirect Taxation Laws:

Under the system of erstwhile indirect taxation laws, that is under service tax law and excise law, there were majorly two different ways to liquidate the input tax credit, which is used for exports. As everyone is aware, that input tax credit is only given as refund, when the assessee is engaged in export of goods or services. The most regular way is called 'refund'. In this method, the assessee exports the goods or services, as the case may be, then goes to the tax authorities qua a refund application and seeks the refund of input taxes that have gone into the export of goods or services. Since the exports are zero rated, there will not be any liability for the services and the input tax credit remains unutilised. Naturally, since no country does not want to export taxes, the input tax burden is relieved to the assessee by granting the refund of such input taxes, which have gone into provision of export of goods or services, as the case may be. This ensures that the exporter is essentially exporting the value of goods or services (without loading any input taxes in his sale price) so that he stays competitive in international field. Since such taxes are not loaded into the sale price, the country as an export measure, grants the refund of taxes to the exporter. Such obtaining of input tax credit back from the tax authorities is usually called as refund (though there are other scenarios, where refund is possible, we are restricting here to the extent of export transactions).

In case of rebate, there are other aspects at play. It is not simple as refund, explained above. In case of rebate, the exporter first arrives at the quantum of input tax credit that was used for export of goods or services. Then, based on the quantum, he arrives at the turnover of the goods or services. Let us take an example for better understanding. An exporter has input tax credit of Rs 1 Crore, which is used for export of goods. Then, he arrives at a transaction value, which yields a tax liability of Rs 1 Crore. Naturally, this should be an export transaction. Now, the artificial tax liability (since it is an export transaction, ideally, there should not be any tax liability. However, for the purposes of claiming the rebate, he creates a liability and hence we call it is an artificial tax liability) of Rs 1 Crore is paid using the input tax credit that is lying with him. After such process, he applies to the department, to rebate the taxes paid on such transaction. This is an indirect way or another way to liquidate the input tax credit.

In both the methods, essentially what is being liquidated is the input tax credit, that is used for export of goods or services, as the case may be. Only the modus operandi and terminology is different and nothing else. With this brief background and distinction between the refund and rebate, let us proceed to understand the issue before the Honourable Supreme Court in Sansera Engineering Limited (supra).

[1] 2022 Live Law (SC) 997, 2022 (12) TMI 49 – Supreme Court

Supreme Court in Sansera Engineering Limited:

The facts in the subject matter were that Sansera Engineering Limited (Sansera) has exported goods on payment of excise duty[2] between August 2015 and October 2015 and filed an application of rebate for duty paid on 10.02.2017 under Rule 18 of Central Excise Rules, 2002. Subsequently, another application for rebate was filed for period October 2015 to March 2016.

The original authority has rejected the rebate applications stating that those were time barred in terms of Section 11B of Central Excise Act, 1944. Aggrieved by the above orders, Sansera has preferred an appeal before the Single Judge of Karnataka High Court. Sansera argued that the time limit specified under Section 11B was applicable only to refunds and not rebates. Since the instant applications were rebate, the time limit specified under Section 11B does not apply and accordingly the rebate has to be granted in terms of Rule 18, which do not specify any time limit. However, the Learned Single Judge has held that since the rebate applications are filed beyond one year from the relevant date as specified in Section 11B, the said applications were time barred and rebate cannot be granted. The Division Bench of Karnataka High Court has also upheld the order of Learned Single Judge. Against such order of Division Bench, Sansera appealed before the Supreme Court.

Sansera argued that the period prescribed under Section 11B should not be applied to rebate claims, as the grant of rebate of duty paid on excisable goods or duty paid under Rule 18 is different from the refund of duty entitled under Section 11B. Sansera also argued that the rebate of duty is in the form of an incentive for export and that the exporter is entitled to the rebate of duty by fulfilling the relevant conditions outlined in notification No. 19/2004, and that neither Rule 18 nor this notification specifically provide for the applicability of Section 11B for the period between 2000 and 2016. It was only after amendment in 2016, that the time limit as specified in Section 11B was made applicable to rebates also. Hence, Sansera argued that it was conscious decision of the legislature not to have any time limit for rebates between the period 2000 to 2016.

Further to the above, Sansera has relied upon the judgment of Raghuvar (India) Limited[3], wherein it held that the that the claim for rebate of duty under Rule 18 is different and distinct than the claim for refund under Section 11B of the Act and therefore the limitation prescribed under Section 11B cannot be applied to claim for rebate of duty paid.

The Revenue contended that the decision of Raghuvar (India) Limited (supra) would not be applicable because it dealt with Section 11A, which concerns the recovery of duties. The Revenue contended that there is a distinction between Section 11A and 11B and accordingly the above judgment cannot be applied for rebate matters. Further, the Revenue also relied on the decision of Supreme Court in the matter of Uttam Steel Limited[4], wherein it was held that the time limit specified in Section 11B applies to rebate claims also. Revenue placed reliance on the decisions of Madras High Court in Hyundai Motors India Limited[5] and Supreme Court's decision in Maftalal Industries Limited[6] to further its stand.

[2] The payment of excise duty which is being referred here is the artificial liability that was created as explained in the previous paragraphs.
[3] Collector of Central Excise, Jaipur v. Raghuvar (India) Limited, (2000) 5 SCC 299 = 2000 (118) ELT 311 (SC)
[4] 2015 (5) TMI 214 – Supreme Court
[5] 2017 (6) TMI 1103 – Madras High Court
[6] 1996 (12) TMI 50 – Supreme Court

The Supreme Court after hearing both the sides, stated that the principal contention of the Sansera is that since the Rule 18 does not make any specific reference to Section 11B, the time limit specified under the said section cannot be applied to the rebate application made under Rule 18. The Supreme Court stated that on a fair reading of Section 11B, it appears that vide Explanation (A) to said section, the 'refund' includes in its ambit 'rebate of duty'. Hence, the time limit prescribed under Section 11B cannot be said only to refund, but also covers the instances of rebate. Hence, the Court has set aside the contention of Sansera that the time limit is applicable only to refund cases and not rebate cases. The said conclusion arrived by Court is supported by the express definition of refund including rebate in its ambit.

The Court further stated that merely Rule 18 does not make any reference to Section 11B, it cannot be stated that the time limit available in parent statute cannot be made applicable to rebate applications, just because they are filed under the delegated legislation qua Rule 18. The Court held that the rebate of duty being discussed is an export incentive benefit granted under subordinate legislation and must therefore be governed by the statute and it also held that, rebate of duty of excise on excisable goods exported out of India would be covered under Section 11B of the Act.

The Supreme Court has referred to the decision of Everest Flavours Ltd[7], wherein it was held that Section 11B applies to rebate claims of excise duty, and that the Rule 18 cannot be considered independently of this requirement.

The Court finally concluded that that the limitation period prescribed under Section 11B of the Central Excise Act, 1944 applies to claims for rebate of duty under Rule 18 of the Central Excise Rules, 2002. Since Sansera's claims were beyond the one-year period, they were correctly rejected by the appropriate authority and confirmed the order of High Court.

Implications of SC Judgment in Sansera Engineering Limited under GST Laws:

The stark difference between the erstwhile indirect taxation laws and the current laws is the usage of expression. As discussed earlier, the old laws, have used two different terms, 'refund' and 'rebate', whereas under the GST laws, only 'refund' is used. Though the GST laws use only 'refund', the methodology of rebate is still existing. Let us proceed to understand the same.

Section 54 of the CT Act[8] prescribes the procedure for claiming a refund of input tax credit. However, the rules[9] specifies two types of refunds: those with payment of tax[10] and those without payment of tax[11]. An explanation to Section 54 states that the word 'refund' includes refunds of taxes paid on zero-rated supplies and deemed exports, as well as refunds of unutilized input tax credits. Hence, on a combined reading of Section 54 with Explanation and appropriate rules, it appears that the old rebate is being now called as refund of tax paid on export of goods or services (Rule 96A).

[7] Everest Flavours Ltd. v. Union of India, 2012 (282) ELT 481 (Bombay)
[8] Central Goods and Services Tax Act, 2017
[9] Central Goods and Services Tax Rules, 2017
[10] Rule 96 of CT Rules – Refund of IT paid on goods or services exported out of India
[11] Rule 96A of CT Rules – Export of goods or services under bond or LUT

Since the main section employs only one expression 'refund', this would make the ground clear from litigation unlike under the erstwhile indirect tax laws. Hence, under the GST laws, the time period is equally applicable to both the types of refunds and there is no direct implication of judgment of Sansera Engineering Limited (supra). However, it is not out of place to mention that, the underlying principle in Sansera Engineering Limited (supra) is that the refund and rebate have to viewed as same but not as two different things. Applying that rationale to the situation under GST laws, one could argue that the refund of input tax credit is to be treated as same with refund of taxes paid on export of goods and cannot be seen differently. However, the Board's circular subtly makes a distinction between both of them. In one type of refund, that is, where goods or services are exported without payment of tax, only refund of input and input services are allowed. Whereas, in the other type of refund, that is refund of tax paid on export of goods or services, the refund of input, input services and capital goods is allowed. Whether such differential treatment qua the refund of credit of taxes paid on capital goods only for one type of refund is intentional or an unintentional error is unknown. If one sees the above question from the lens of Sansera Engineering Limited (supra), it appears that the refund of credit of taxes paid on capital goods should either be allowed or disallowed in both the options. Before litigation picks upon this front, the Board has to clarify the above question especially after the judgment of Supreme Court in Sansera Engineering Limited (supra).