



आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142
Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/23/GDM/2017	मूल आदेश सं / O.I.O. No. Rebate/353/2016-17	दिनांक / Date 22.12.2016
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

KCH-EXCUS-000-APP-154-2017-18

आदेश का दिनांक / Date of Order:	24.01.2018	जारी करने की तारीख / Date of issue:	30.01.2018
------------------------------------	-------------------	--	-------------------

Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पठे बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री ललित प्रसाद, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, राजकोट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा २५ के अंतर्गत दर्ज की गई अपील के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
M/s AMW Motors Ltd., 34 Km. Milestone,, Bhuj-Bhachau Road Village : Kanaiyabe, Taluka Bhuj, Kutchchh

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- 126
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001 के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमवली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामले में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केंद्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संमायाविधि पर या बाद में पारित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेटी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order, in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

:: ORDER-IN-APPEAL ::

Being aggrieved with the Order-in-Original No: Rebate/353/2016-17 dated 22-12-2016 (**hereinafter referred to as "impugned order"**), passed by the Deputy Commissioner of Central Excise, Bhuj (**hereinafter referred to as "Lower Authority"**), **M/s. AMW Motors Limited**, 34 Km Milestone, Bhuj – Bhachau Road, Village: Kanaiyabe, Taluka: Bhuj, Dist: Kutch (**hereinafter referred to "the appellant"**), who are engaged in manufacturing of excisable goods falling under Chapter 72 & 87 of First Schedule to the Central Excise Tariff Act, 1985 and also availing CENVAT credit of the Input, Capital goods and Input services under the CENVAT Credit Rules, 2004, have filed present appeal.

2. The appellant filed a Rebate claim on 11-08-2016, under Notification No: 19/2004-Central Excise (N.T.) dated 06.09.2004, as amended (**hereinafter referred to as the "said notification"**), seeking refund of Rs. 4,36,020/- being the amount of Central Excise duty paid by them on clearance of the excisable goods which were exported out of India.

3. During scrutiny of the said rebate claim, it was observed by the Lower Authority that goods were cleared for export from the appellants factory premises on 21.08.2015 under ARE-1 No. 21 dated 21.08.2015, however the same has been exported on 13.07.2016 as per Shipping Bill No. 8828278 dated 13.07.2016. Thus, there was a delay of more than six months, for export, from the date of clearance of the goods from factory and the appellant did not request for extension to the Commissioner as required under Clause 2(b) of the said notification. Thus, the above observations culminated into issuance of Show Cause Notice dated 14.10.2016 by the Lower Authority wherein it was proposed to reject the rebate claim for contravention of clause 2(b) of the said notification.

4. The said Show Cause Notice was adjudicated by the Lower Authority vide his impugned order wherein he rejected the rebate claim on the grounds that there was non compliance to clause 2(b) of the said notification.



5. Being aggrieved with the impugned order, the appellant have filed present appeal on the following grounds that:

- (i) It is fact that the goods have been cleared upon payment of duty and have been exported at later date and the exports proceeds have been realized. Secondly, the claim has been filed within 1 year from the date of let export order.
- (ii) the Lower Authority had proposed to reject the claim for rebate on the grounds that it was barred by limitation, as the exports were made after six months from the date of clearance from factory, even when the rebate claim is filed within one year from the date of export;
- (iii) the appellant while referring to Section 11A and 11B of the Central Excise Act, 1944, stated that period of limitation prescribed in Section 11A ibid does not operate in respect of a claim of rebate made under notification issued under Rule 18 of the Central Excise Rules, 2002 and placed reliance on case law of **Raghuvar (I) Limited - 2000 (118) ELT 311 (SC)**;
- (iv) the appellant further stated that Rule 18 of the Central Excise Rules, 2002, provides for rebate of duty subject to conditions and limitations as may be specified in the notification and therefore the party is entitled to the rebate subject to such conditions or limitations as may be specified in the notification and it is open for Central Government to impose conditions or limitations including as to the period within which the rebate ought to be claimed;
- (v) the appellant stated that the Rule 18 of the Central Excise Rules, 2002, is similar to Rule 12(1) of the Central Excise Rules, 1944 and also stated that where Central Government intended imposing a time limit in respect of a claim for rebate, it provided for the same in the notification issued under the rule i.e. Rule 12 of the Central Excise Rules, 1944 which corresponds to Rule 18 of the Central Excise Rules, 2002;

- (vi) the appellants also placed reliance on the case laws of **Dorcas Market Markers Private Limited - 2015 (321) ELT 45, Everest Flavors Limited - 2012 (282) ELT 481 (Bom)** and contended that their rebate claim ought not to have been rejected for the reasons mentioned in the impugned order since their rebate cannot be denied when it is filed within 1 year from the date of export.

6. The Central Board of Excise and Customs vide Notification No. 26/2017-Cx(NT) dated 17.10.2017 read with Order No. 05/2017-Service Tax dated 16.11.2017, has appointed undersigned as appellate authority under Section 35 of the Central Excise Act, 1944, for the purpose of passing orders in this appeal.

7. Accordingly, a personal hearing in the matter was held on 17-01-2018. Shri R. Subramanya, Advocate of M/s. Subramanya Law Company, Ahmedabad appeared for personal hearing and reiterated the written submissions made by them in appeal memorandum and placed reliance on the case laws cited therein and requested to allow their appeal. Nobody was represented by the department despite being asked to do so vide letter dated 29.12.2017.

Discussions and findings:

8. I have carefully gone through the appeal memorandum and the submissions made by the Ld. Advocate during personal hearing. I find that since the appeal is against rejection of rebate claim, therefore there is no need for compliance to requirement of Section 35F(i) of Central Excise Act, 1944. I also find that vide letter dated 01.03.2017 Lower Authority was asked to submit parawise comments on the points raised by the appellants, but till date the same has not been received.

9. I find that only point required to be decided in this case is whether the impugned order rejecting the rebate claim is just and proper or otherwise. I further find that it is undisputed fact that (i) duty, of which rebate is being sought, has been paid, (ii) the goods on which the same has been paid have not been exported within six months from the

date of clearance from the factory of the appellants, and (iii) the rebate claim has been filed within 1 year from the date of export.

10.1 Since the present dispute is for exports done under Notification No. 19/2004-Central Excise (NT) dated. 06.09.2004, as amended, the relevant portion of the same are as under:

" In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (NT), dated the 26th June 2001, [G.S.R.469(E), dated the 26th June, 2001] in so far as it relates to export to the countries other than Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

(2) Conditions and limitations: -

- (a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;
- (b) **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;**
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)

(3) Procedures:-

- (a)
- (b) Presentation of claim for rebate to Central Excise:-
 - (i) **Claim of the rebate of duty paid on all excisable goods before the expiry of the period specified in section 11B of Central Excise Act, 1944(1 of 1944) 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 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 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.*

Since the goods in question has been exported to NEPAL, therefore as per explanation (ii) of Section 11B of Central Excise Act, 1944, the claim is required to be filed within 1 year from the date on which the goods passes the frontier.

10.2 In this case the goods were cleared from factory on 21.08.2015 and they crossed the frontier on 13.07.2016 and the rebate was filed on 11.08.2016. Now comparing the above date line with the statutory provisions, I find that as per Clause 2(b) of the said notification, the goods should have been exported within 6 months from the date of clearance from factory i.e. it should have crossed frontier on or before 20.02.2016, which is not so in this case. Therefore, the appellant were required to seek extension from the Commissioner. However, I find that appellant has at no point of time sought extension from the Commissioner. I also find that this fact is not disputed by the appellants.

10.3 I find that appellants in their Appeal Memorandum have dedicated quite number of pages in reproducing Section 11A and 11B of the Central Excise Act, 1944 and have then referred to clause 3(b) of the said notification according to which the claim is required to be filed within 1 year from the date on which the goods passes the frontier. I find contention of the appellant that notification does not prescribes any period of limitation in respect of claim of rebate is not acceptable since provisions of Section 11B of the Central Excise Act, 1944 have already been incorporated in the said notification. I find that my views are supported by judgment of **Hon'ble Madras High Court in the case of**



Hyundai Motors India Limited V/s. Dept of Revenue, Ministry of Finance reported at **2017 (355) ELT 342 (Mad)**. I further find that the appellant has ignored the conditions prescribed under Clause 2(b) of the said notification. Therefore, I find that the arguments placed forth are not relevant in this case, since the rebate has not been rejected on the ground of limitations but it has been rejected on the grounds of non-compliance to Clause 2(b) of the said notification and the appellant has not placed any argument on this point.

10.4 I find that another set of arguments placed forward is that Rule 12 of Central Excise Rules, 1944 and Rule 18 of Central Excise Rules, 2002 are similar and thereby drawing the conclusion that where the Central Government intended imposing a time limit in respect of a claim for rebate, it provided the same in the notification issued under Rule 12 of Central Excise Rules, 1944 which corresponds to Rule 18 of Central Excise Rules, 2002. Since the said notification, has been issued under Rule 18 of Central Excise Rules, 2002 and upon referring it reads as under:

“Rule 18. Rebate of duty.-

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

Thus, Rule 18 of the Central Excise Rules, 2002 clearly refers the notification and the said notification clearly lays down the condition that the goods should be exported within 6 months from the date of which they were cleared for export from the factory of manufacture or within such extended period, as the Commissioner of Central Excise may allow. I find that appellant has not placed any evidence on record that they have sought extension from the Commissioner in this regard or the Commissioner has granted such extension to them. Thus, I find that there is non-compliance to Clause 2(b) of the said notification. I find my views are well supported by the



decision of Government of India in the case of **Ind Swift Laboratories Limited** reported at **2014 (312) ELT 865 (GOI)** wherein it has been held that limitation condition of six months for export and requirement of permission by authority for extension of time, is statutory and mandatory condition under Notification No. 19/2004-C.E. issued under Rule 18 of Central Excise Rules, 2002 and accordingly it was held that rebate is not allowable for violation of said mandatory conditions. Thus, the Order-in-Appeal granting refund was set aside. Identical views were once again taken in the case of **L'amar Exports Private Limited** reported at **2014 (311) ELT 941 (GOI)** and **Remlaks Exports Private Limited** reported at **2011 (272) ELT 637 (GOI)**.

10.3 I find that case law of **Rahuvar (India) Limited - 2000 (118) ELT 311 (SC)** is not applicable since the dispute is not about limitation but it is about substantial compliance to conditions of the said notification. I find that appellant has relied upon the case law of **Dorcac Market Makers Private Limited - 2015 (321) ELT 45 (Mad)** on the point of limitation. Upon referring the same I find that it clearly endorses the view that Rule 18 of the Central Excise Rules, 2002 is to be construed independently and the rebate of duty should be under Notification No. 19/2004-Central Excise, dated 06.09.2004, as amended. Thus, it was on the part of the appellant to satisfy the clause 2(b) of the said notification, which they failed to do so. I further find that another relied upon case law of **Everest Flavors Limited - 2012 (282) ELT 481 (Bom)** has not been accepted by the Madras High Court in the case law of **Dorcac Market Makers Private Limited - 2015 (321) ELT 45 (Mad)**. Thus relied upon case laws are not of any help to the appellants.

10.4 On the contrary in the case of **Tata Motors Limited** reported at **2014 (311) ELT 897 (GOI)**, I find that it has been clearly held that rebate is not admissible in case of the goods exported after stipulated six months without obtaining permission from the competent authority for extended period.


10.5 I also find that in the case of **M/s. Cadila Health Care Limited** reported at **2015 (320) ELT 287 (Bom)**, the goods were cleared

for export under the said notification on 31.01.2005 and could not be exported within six months, as per requirement of Clause 2(b) i.e. on or before 30.06.2005. Therefore after expiry of six months on 17.06.2005 the party requested competent authority for extension of another 3 months i.e. upto 31.10.2005 and during the pendency of such request the goods were exported on 09.09.2005. Since the party could not produce the extension before the authority the rebate was rejected. In an appeal against such rejection, Hon'ble High Court of Bombay has upheld the rejection by the authority. Likewise, I find that in the case of **Positive Packaging Industries Limited** reported at **2014 (314) ELT 876 (GOI)** it has been clearly held that rebate of the goods is admissible which are exported within 6 months.

11. In light of above discussions and findings, I hold that appeal of the appellant is devoid of any merit. Accordingly, appeal is rejected and impugned order upheld.

F. N. V.2/23/GDM/2017
Place: Rajkot.

Dated: .01.2018


(LALIT PRASAD)
COMMISSIONER, CGST & CEX, RAJKOT/
COMMISSIONER (APPEALS-III),
CGST & CEX, RAJKOT

By Speed Post

To,
M/s. AMW Motors Limited,
34 Km Milestone,
Bhuj - Bhachau Road,
Village: Kanaiyabe,
Taluka: Bhuj,
Dist: Kutch 370020

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
 - 2) The Commissioner, GST & Central Excise, Kutch.
 - 3) The Commissioner, GST & Central Excise, Rajkot.
 - 4) The Assistant Commissioner, GST & Central Excise, Division-Bhuj.
 - 5) Guard File.
- 