



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



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

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / काइल संख्या / Appeal / File No	मूल आदेश सं / O.L.O. No	दिनांक / Date
	V2/S/EA2/GDM/2016	Rebate/191/16-17	12.08.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-185-2017-18

आदेश का दिनांक / Date of Order:	20.02.2018	जारी करने की तारीख / Date of issue:	22.02.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जयमन्दा / गांधीधाम। द्वारा उपरोक्तित 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 Appellant & Respondent :-
M/s. AMW Motors Ltd. 34 Km Milestone, Bhuj- Bhachau Road, Taluka: BhujDist: Kachchh-370 020

इस आदेश(अपील) से व्यथित 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 अपील/ 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) विशेष न्यायालय में सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील/ 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 अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील/ न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहमाली भवन असाही अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhamali Bhawan, Asahi Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above.
- (iii) अपील/ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्जे किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, प्रवाज की सीमा और लगाया गया जुर्माना, रूपे 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 अपील/ न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वोच्च श्रेणी के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील/ न्यायाधिकरण की शाखा स्थित है। संबंधित आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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) अपील/ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर विवाद/ न्यायाधिकरण, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जितने 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 सीमा, प्रवाज की सीमा और लगाया गया जुर्माना, रूपे 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 अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील/ न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वोच्च श्रेणी के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील/ न्यायाधिकरण की शाखा स्थित है। संबंधित आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 टर्न की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न की (जहाँ से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा संलग्न आयुक्त अथवा आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील 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 Form 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 अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण 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 टैक्स एंड पेनल्टी का कुल रकम 10 करोड़ 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) सेनवेट जमा की गयी गई गलत रशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत टैक्स रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अंश में पूर्व किसी अपील न्यायाधिकरण के द्वारा विचारणीय स्थिति अर्थात् अपील को जमा नहीं होगी।
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 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 Central Credit taken;
(iii) amount payable under Rule 6 of the Central 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 मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अर्ज सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवाज टॉप बिल्डिंग, संसद 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 मांग के किसी नुकसान के मामले में, जहां नुकसान किसी भंडार को किसी बरखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य बरखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में शक के प्रदर्शन के दौरान, किसी बरखाने या किसी भंडार गृह में मांग 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 मांग के विनिर्माण में प्रयुक्त कच्चे मांग पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबैट) 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 मांग निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty
- (iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समाप्ति तिथि 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 फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदावती के साथ 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 अदावती की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम है 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, उपरोक्त दम से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न पर्यटन करने से बचने के लिए यथास्थिति अपील न्यायाधिकरण को एक अपील या केन्द्रीय 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 Appellate 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) यथास्थिति 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-I in terms of the Court Fee Act,1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में दर्जित एवं अन्य संबंधित मामलों को परिभाषित करने वाले विधायी 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.
- (G) उच्च अपील न्यायाधिकरण को अपील दाखिल करने में संबंधित व्यक्त, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

The Commissioner, Customs & Central Excise, Kutchh, Gandhidham-370 201 (hereinafter referred to as 'the appellant') has filed the present appeal against Order-In-Original No. Rebate/191/2016-17 dated 12.08.2016 (hereinafter referred to as 'the impugned order'), passed by the Deputy Commissioner, Central Excise Division, Bhuj (hereinafter referred to as "the lower adjudicating authority").

2. Brief facts of case are that M/s. AMW Motors Ltd., 34 Km. Milestone, Bhuj-Bhachau Road, Village: Kanaiyabe, Bhuj Kutch (hereinafter referred to as "the respondent") bearing Central Excise Registration No. AAKCA0327REM001 and engaged in manufacturing the exporting of Excisable goods "Heavy Commercial Vehicle" falling under chapter No. 87 of the Central Excise Tariff filed rebate claim of Rs. 4,36,020/- on 13.07.2016 requesting for refund of duty paid on the goods exported, as detailed below:

Sr. No.	ARE-1 No. & Date	Invoice No. & Dae	Assessable value/ FOB Value	Central Excise duty	Duty payment particulars	Shipping Bill No. & date	Date of Export/ Shipment	Amount of rebate
01	24/ 21.08.15	600033, 600034, 600036/ 21.08.15	33,54,000 33,54,000	4,36,020	Cenvat A/c No. 2983/ 21.08.2015	7860537 25.05.15	27.05.16	4,36,020

3. The lower adjudicating authority, after scrutiny of rebate claim, found that the respondent exported the goods within six months of their clearance from the factory; that the rebate claim was filed within one year from the date of sailing of vessel; that the claim is not hit by the limitation of time as provided under Section 11B of the Central Excise Act, 1944; that the doctrine of unjust enrichment does not come into play in terms of provisions of Section 11B(2) of the Central Excise Act, 1944; that the respondent had submitted all the relevant documents in fulfillment of provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE dated 06.09.2004. Accordingly, the lower adjudicating authority sanctioned rebate claim of Rs. 4,36,020/- in favour of respondent.

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

1. The lower adjudicating authority mentioned that the respondent

has exported the goods within six months of their clearance from the factory. However, on perusal of ARE-1 No. 24 dated 21.08.2015 and Bill of Export No. 7860537 dated 25.05.2016, the respondent exported the goods after 9 months of their clearance from the factory, in violation of Para (2)(b) of the Notification No. 19/2004-CE(NT) dated 06.09.2004, which is re-produced below for ready reference:

Notification No. 19/2004-CE(NT) dated 06.09.2004

(2) Conditions and limitations:-

(a) -----

(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.

2. ARE-1 and Shipping Bill, submitted by the respondent, indicate that the respondent had contravened the conditions provided in para (2)(b) of the Notification No. 19/2004-C.E.(NT) dated 06.09.2004. Therefore, the lower adjudicating authority has erroneously sanctioned the rebate claim to the respondent.
5. The respondent vide their letter dated 05.12.2017 submitted the following:
 1. The Deputy Commissioner issued a Show Cause Notice No. V.87(10)/178/Rebate/2016-17 dated 14.10.2016 as the conditions as laid down in Para (2)(b) of Notification No. 16/2004-C.E.(NT) dated 06.09.2004 is not fulfilled.
 2. The Deputy Commissioner, Central Excise passed an Order-In-Original No. Rebate/353/2016-17 dated 22.12.2016 rejecting the rebate claim of Rs. 4,36,020/-, which is not legally sustainable.
 3. It is not the case of the department that the goods are not exported. First fact that the goods have been cleared on payment of duty, for export under claim of rebate and second fact that the rebate claim has been filed within one year from the date of let export order, are not denied by the department.

4. The adjudicating authority proposed to reject the claim for rebate on the ground that it was barred by limitation, as the exports were made after six months from the date of clearance from the factory, even when the rebate claim is filed within one year from the date of export.

5. As per Rule 18 and 19 of the Central Excise Rules, 2002 read with Rule 5 of the Cenvat Credit Rules, 2004, they are entitled to export goods without payment of duty and they opted to pay duty on inputs and to export the goods on payment of duty and thereafter claimed rebate of duty paid in respect of the exported goods.

6. They rely on the provisions of Section 11B and Section 11A of the Central Excise Act, 1944 as well as Rule 18 of the Central Excise Rules, 2002. They also rely on erstwhile Rule 12 of the Central Excise Rules, 1944 which was similar to Rule 18 of the Central Excise Rules, 2002.

7. They rely on the case law of Raghuvar (India) Ltd. reported as 2000 (118) ELT 311 (S.C.), Dorcas Market Makers Pvt. Ltd. reported as 2015 (321) ELT 45 (Mad.), Everest Flavours Ltd reported as 2012 (282) ELT 481 (Bom.).

8. The rebate claim cannot be rejected as the goods have been finally exported which is not denied by the department. The effect of six months period is only to ensure that the goods are not diverted otherwise and hence, once it is proved that the goods are exported, then the rebate claim cannot be denied, when it is filed within one year from the date of exports.

6. Personal hearing was attended to by Shri R. Subramanya, Advocate and Apeksha Subramanya, Consultant wherein they reiterated the contention stated in their letter dated 05.12.2017 and submitted that they will file the detailed written submission but they failed to file any submission till date.

FINDINGS:

7. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and cross-objection filed by respondent. The issue to be decided in the present appeal is as to whether the rebate claim sanctioned by the lower adjudicating authority is erroneous due to condition (2)(b) of Notification No. 19/2004 dated 06.09.2004 or otherwise.

8. I find that respondent cleared the goods under ARE-1 No. 24 dated 21.08.2015 on payment of Central Excise duty. The Bill of Export No. 7860537 dated 25.05.2016 evidences the physical export of goods and hence the goods were exported after a period of nine months from the date of clearance from the factory. Rule 18 of Central Excise Rules, 2002 governs rebate of duty on export subject to the conditions stipulated under Notification No. 19/2004-C.E.(NT) dated 06.09.2004. I also find that the department contended that the amount of rebate sanctioned is not in accordance with the provisions of Rule 18 of CER and Notification No. 19/2004-CE (NT) dated 06.09.2004. I would like to reproduce Rule 18 of Central Excise Rules, 2002 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."

8.1 I would also like to reproduce the relevant portion of Notification No. 19/2004-CE (NT) dated 06.09.2004, which reads 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 Nepal and 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 Nepal and 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) that the excisable goods supplied as ship's stores for consumption on board a vessel bound for any foreign port are in such quantities as the Commissioner of Customs at the port of shipment may consider reasonable;

(d) the rebate claim by filing electronic declaration shall be allowed from such place of export and such date, as may be specified by the Board in this behalf;

(e) that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;

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

(g) that the rebate of duty paid on those excisable goods, export of which is prohibited under any law for the time being in force, shall not be made.

RR/ho

9. The above provisions stipulate that rebate of central excise duty paid on exported goods shall be granted, subject to conditions or limitations, and fulfillment of procedure, as may be specified in the notification. Therefore, the matter comes to limited issue regarding it's procedural aspect in as much as the goods actually exported by the respondent is very well established. It is not the case that the goods were not exported but a case that goods exported after 6 months of time stipulated in the Notification. Thus, this is a case of mere a procedural lapse and, due to that, Respondent cannot be deprived of substantive benefit available to them. The decision reported in 2006 (204) ELT 0632 (In Re : Modem Process Printers), fully supports above view. In the said decision it was, inter-alia, held as under:-

"In fact, as regards rebate specifically, it is now a trite law that the procedural infraction of Notification/Circulars etc, are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned".

10. In the case of Kosmos Healthcare Pvt. Ltd. reported as 2013 (297) ELT 345 (Cal.), the Hon'ble High Court observed that:

"26. In Ford India Pvt. Ltd. v. Assistant Commissioner of Central Excise, Chennai reported in 2011 (272) E.L.T. 353 (Mad.), the Madras High Court held that substantive compliance of procedural requirements would be sufficient where factum of export is not in doubt.

27. As held by the Supreme Court in Commissioner of Customs (Import), Mumbai v. Konkani Synthetic Fibres reported in 2012 (278) E.L.T. 37 (S.C.), a beneficial notification was required to be given a liberal interpretation. The notification in this case is a beneficial one.

28. When there is proof of export, as in the instant case, the time stipulation of six months to carry out export should not be construed within pedantic rigidity. In this case, the delay is only of about two months. The Commissioner should have considered the reasons for the delay in a liberal manner.

29. It would perhaps be pertinent to note that an exporter does not ordinarily stand to gain by delaying export. Compelling reasons such as delay in finalization and confirmation of export orders, cancellation of export orders and the time consumed in securing export orders/fresh export orders delay exports.

30. As observed above, the notification does not require that extension of time to carry out the export should be granted in advance, prior to the export. The Commissioner may post facto grant extension of time.

31. What is important is, the reason for delay. Even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed. If there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended. In my view, in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the

object of the duty exemption, which is encouragement of exports.

32. Of course, in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned."

(emphasis supplied)

11. In the case on hand, the factum of export is not in doubt. The respondent exported the goods within a period of nine months and the delay is for bonafide reasons. It is widely pronounced in many orders/ judgments that in respect of incentive oriented beneficial schemes, intended to boost export and where the substantive fact of export made is not in doubt, liberal interpretation is to be accorded, so that the very purpose of the scheme is not defeated.

12. In view of above, I am of the view that there is no justified ground to deny the refund already granted to the Respondent by the lower adjudicating authority and appeal filed by the department fails to sustain. Accordingly, I uphold the impugned order and reject the appeal filed by the Department.

१२.१ अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

12.1 The appeal filed by the Department is disposed of in above terms.

(कुमार संतोष)

आयुक्त (अपील्स)

By R.P.A.D.

To,

The Commissioner, CGST & Central Excise, Kutchh, "Central Excise Bhavan", Plot No. 82, Sector-8, Opposite: Ramlila Maidan, Gandhidham-370201.	कमिश्नर, सीजीएसटी एवं सेंट्रल एक्साइज़, कच्छ, "सेंट्रल एक्साइज़ भवन", प्लॉट संख्या 8, सेक्टर-८, रामलीला मैदान के सामने, गांधीधाम-३७० २०१.
M/s. AMW Motors Ltd., 34 Km. Milestone, Bhuj-Bhachau Road, Village: Kanaiyabe, Bhuj Kutch	मे. एएमडबल्यू मोटर्स लिमिटेड, ३४ किलोमीटर माइलस्टोन, भुज-भचाउ रोड, गाँव: कनईयाबे, भुज, कच्छ.

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
- 2) The Assistant Commissioner, GST & Central Excise, Division, Bhuj.
- 3) The Superintendent, GST & Central Excise, Range-II, Bhuj.
- 4) Guard File.