



आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्कः
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
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रजिस्टर्ड ट्राक ए. डी. द्वारा :-

क अपील / फाइल संख्या /
Appeal / File No.
V2/81/RAJ/2017

मूल आदेश सं /
O.I.O. No.
50/R/AC/2016-17

270
253
254

दिनांक /
Date
30.12.2016

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

RAJ-EXCUS-000-APP-207-2017-18

आदेश का दिनांक /
Date of Order: 29.01.2018

जारी करने की तारीख /
Date of issue:

02.02.2018

Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या 26/2016-के.उ.शु. (एन.टी.) दिनांक 18.10.2016 के साथ पठे बोर्ड ऑफिस आदेश सं. 04/2016-एस.टी. दिनांक 16.11.2016 के अनुसरण में, श्री गोपी नाथ, उपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम 1994 की धारा 29, केन्द्रीय उत्पाद शुल्क अधिनियम 1988 की धारा 24 के अंतर्गत दर्ज की गई अपीलों 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 Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad 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 उपर 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 Amul Industries P Ltd., Opp : ESI Hospital Road, B/H Sahayog Rajkot-360003

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. परम, नई दिल्ली, को की जानी चाहिए। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Param, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बतल गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहमाली भवन असावा 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

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 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, ब्याज 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 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 नियमावली, 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, ब्याज 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/-.

- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 परित 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.

- (iii) 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, बशर्ते 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

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते 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 :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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 मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, 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 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 an 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 इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 पट्टी कार्य से बचने के लिए यथास्थिति अपील 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 filled 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-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर 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.

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ORDER IN APPEAL


This order arises out of an appeal filed by M/s Amul Industries Pvt. Ltd. (Unit-V), Opp. Saral Stove, Plot No. 16, Opp. ESI Hospital Road, Behind Sahayog Rajkot (hereinafter referred to as "the appellant") against the Order In Original No. 50/R/AC/2016-17 dated 30.12.2016 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Central Excise, Division-I, Rajkot (hereinafter referred to as the "Adjudicating Authority").

2. The relevant facts of the case are that-

(i) the appellant, engaged in manufacturing/exporting of the excisable goods, had filed the rebate claim for Rs. 26,250/- on 01.08.2016 in respect of goods viz. Connecting Rods which were exported vide ARE-1 No. 028/15-16 dated 30.06.2015. However, on scrutiny of the Rebate claim documents Viz. ARE-1 No. 028/15-16 dated 30.06.2015, Shipping Bill No. 8117323 dated 07.06.2016 and Bill of Lading No. 956964135 dated 28.06.2016, it was found that the subject goods were shipped on board on 27.06.2016. However, on scrutiny of these documents, it was observed that the goods were cleared from the factory for export on 30.06.2015 but the same were physically exported on 27.06.2016.

(ii) In terms of the Notification No. 19/2004-(CE) (NT) dated 06.09.2004, as amended (herein after referred to as "the said notification"), issued under Rule-18 of the Central Excise Rules, 2002, the excisable goods should 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. However, on scrutiny of these documents, it was observed that the goods were cleared from the factory for export on 30.06.2015 but the same were physically exported on 27.06.2016 as per Bill of Lading No. 956964135 dated 28.06.2016. The said goods should have been exported on or before 29.12.2015 in term of the provisions of the said notification but were physically exported only on 27.06.2016 and thus, after a period of six months and hence, the rebate claim filed by the appellant has become liable to be rejected for not following the procedure as laid down under the said notification in as much as the export of the said goods was delayed beyond six months from the date of its clearance from the factory. Further, it was also observed that the appellant did not obtain permission for extension of time limit for export from the competent authority as per the said notification.

(iii) These facts culminated into issuance of Show Cause Notice



dated 20.10.2016. The Adjudicating Authority under the impugned order has rejected the said rebate claim as the appellant had exported the goods after the expiry of six months period and thus, for violation of the condition prescribed under the said notification issued under Rule, 18 of the Central Excise Rules, 2002.

3. Aggrieved, the appellant filed an appeal on the grounds interalia mentioned as under.

(i) The Adjudicating Authority had erred in rejecting the rebate claim on the ground that the appellant had exported the said goods beyond the period of limitation as prescribed under the said notification in as much as the limitation prescribed is not absolute as the Adjudicating Authority has powers to condone the delay in export of the consignment and thus, by exercising the said powers, the rebate claim ought to have been sanctioned.

(ii) The Adjudicating Authority had ignored the settled law that once goods are exported and the rebate claim submitted within period specified under Section 11B of the Central Excise Act, 1944, the same should have been entertained.

4. Hearing was held on 27.12.2017 wherein Shri Paresh V. Sheth, Advocate appeared on behalf of the appellant and reiterated the submission of the appeal memorandum and requested to allow the appeal. Two Judgements –reported at 2015(321) ELT 45 (Mad.) and at 2015(326) ELT 265 (P&H) have been submitted in support of their contention.

5. I have carefully gone through the facts of the case on records, grounds of the appeal memorandum and oral submission made and two citations placed at the time of hearing. I take up the appeal for the final decision.

6. The issue for decision before me is whether or not the appellant was eligible for rebate claim for Rs. 26,250/-/- filed on 01.08.2016 under the provisions of Rule-18 of the Central Excise Rules,2002 read with the Notification No. 19/2004-(CE) (NT) dated 06.09.2004. I find that the Adjudicating Authority under the impugned order has rejected the said rebate claim as the appellant had exported the goods after the expiry of six months from the date of clearance for export from the factory and thus, for violation of the condition prescribed under the said notification issued under Rule- 18 of the Central Excise Rules, 2002. I find that there is no dispute that the subject goods have been exported on 27.06.2016 which



were originally cleared from the factory for export on 30.06.2015. There is also no dispute that the said goods cleared for export were exported after the expiry of the period of six months from the date of clearance for export from the factory and thus, there is a violation of the condition as laid down under the said notification. For better appreciation of the issue, the relevant provisions of the Rule-18 of the Central Excise Rule, 2002 and of the said notification are reproduced 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 fulfilment of such procedure, as may be specified in the notification.

[*Explanation.* - For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.]

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; "

On plain reading of the said Rule-18, it clearly transpires that rebate is allowed subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification. Thus, for admissibility of the rebate under the said Rule-18, conditions or limitations and procedure as may be specified under the notification are required to be complied. Further, I find that as per 2(b) of the said notification, the excisable goods should have been 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. Thus, I find that there is a clear violation by the appellant of the conditions 2(b) of the said notification read with the provisions of the Rule-18 *ibid*.

6.1 The appellant contended *inter alia* mentioned at foregoing para-3. With regard to their contention that the limitation prescribed under the said notification is not absolute as the Adjudicating Authority have powers to condone the delay in

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export of the consignment, I find that as per conditions 2(b) of the said notification, the excisable goods should have been 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. The underlined phrases of words clearly stipulate that if the excisable goods are not exported in any particular case within six months from the date on which they were cleared for export from the factory of manufacture or warehouse, then the Commissioner of Central Excise may in any particular case within such extended period, may allow the same. However, I find that the Adjudicating Authority has very categorically observed at para-9 of the impugned order that "I also find that the claimant has not produced any documentary evidence which shows that they obtained permission for extension of time limit for export from the competent authority as stipulated in Notification No. 19/2004-CE(NT) dated 06.09.2004, as amended. Therefore, the claimant has not fulfilled the required condition for condonation for delay export". Thus, in absence of any request for extension of time limit for export of the goods and in view of the facts that the said goods exported after six months from the date of clearance for export from the factory of manufacture, I find that this contention of the appellant is not sustainable. During hearing too, appellant could not produce any evidence to that effect.

6.2 Further, with regards to their contention that the Adjudicating Authority had ignored the settled law that once goods are exported and the rebate claim submitted within period specified under Section 11B of the Central Excise Act, 1944, the same should have been entertained, I find that herein in the present case, the rebate claim is filed under the separate set of provisions and procedure as laid down under Rule-18 of the Central Excise Rule, 2002 read with the conditions and procedure as laid down under the said notification. Hence, in violation of the said Rule -18 ibid and said notification, the benefit can not be allowed though the goods are exported and rebate claim is filed within time limit specified Section 11B of the Central Excise Act, 1944. Hence, I reject this contention of the appellant being not sustainable in the eyes of law.

6.3 Further, The appellant has placed reliance on the decisions/judgements in the case of Dy. Commissioner of C.Ex., Chennai V/s Dorcas Market Makers Pvt. Ltd- 2015(321) ELT 45 (Mad.) and in the case of JSL Lifestyle Ltd V/s UOI reported at 2015(326) ELT 265 (P&H), in support of their contention. However, I find that the issue in the aforesaid cases was relating to non filing of the claim/documents within the time limit prescribed under Section 11B of the Central Excise Act, 1944 whereas



the issue in the present case is of non- exporting the goods within six months from the date of its clearance for export from the factory, which is governed separately under the separate set of provisions and procedure as laid down under Rule-18 of the Central Excise Rule,2002 read with the conditions and procedure as laid down under the said notification. Hence, reliance placed on these judgements by the appellant is of no help to them.

7. In view of the facts and discussion herein above, I find no fault in the impugned order rejecting the rebate claim of Rs.26,250/-. Accordingly, I uphold the impugned order rejecting the said rebate claim filed by the appellant under the provisions of Rule-18 of the Central Excise Rules,2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004.

8. The appeal filed by the appellant is thus, rejected.


(Gopi Nath)
Commissioner (Appeals)/
Additional Director General (Audit)

BY R.P.A.D.

To,
M/s Amul Industries Pvt. Ltd, (Unit-V),
Opp. Saral Stove, Plot No. 16,
Opp. ESI Hospital road, Behind –Sahayog,
Rajkot.

Copy to:-

1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST, Rajkot.
3. The Commissioner (Appeals) Rajkot.
4. The Assistant Commissioner of CGST, Division-I, Rajkot.
5. The Assistant Commissioner (Systems), CGST, Rajkot.
6. Guard File.
7. P.A. File.