

ANTI THE COUNTRIBUTIONER LITTERAL SI, US PARTENTED ACCUSE

द्वितीय सल,जी एस टी **भवन** (2'' Floor, GST Bhavar

केस कोसे विंग रोड : Raca i mine Ring Road



<u> सुजन्तीर / एक्टब्स – 560 वर्ष ।</u>

Tele: Fax No. (1891 – 242 (1822) 142 <u>Generic censoperisms</u>konfigurations

रजिस्ट<u>ई ग्राप्त ए.मी.दवसा</u>ः-

<u> जुल्ला । सम्बद्धानं स्थ</u>ार 丏 Appropriate to

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समीत आदेश समजार्थिकान-अनुस्था ५०।:

<u>KCH-EXCUS-800-APP-089-TO-92-2019</u>

मार्केश का दिवस्य 🖰

Date of Order.

23.14,2019

वारी करने की लेतेखें हैं

Den of ware

23.10.3014

संबंधी सक, अश्वत (अभैज्य)। सतनीर द्वार पनित 🕹

Passed by Stirt, Gopf Nath, Commissioner (Appends) Rolling

प्राप्त प्राप्तकारः समुक्ता प्राप्तकारः करानुकारः सङ्गाका असुकातः,भैननीय १८४४, हेन्याः संस्थानने स्थानने स्थान रक्तां, । क्राफ्यवेट । पांधीपामा दुवस अस्टिस्स वसी भून महिल से स्थिति ।

Arterio min in above mentanes (NO count) by Administratival attributorist and Contractions: Cantral Facilities

Auka: / Jarenagar / Genahldirare :

क्रवीक्रमाते हैं, पृष्टिचारी का क्रीम एवं पूरी होते ,165 cm है. धर्मकान्यत को तीन अनुकारिकार के किल्पालय किए। 🕞

Bagardiya Beachers Pot. 166., C/O Մեծի Օգիրորո Warehome Pec. Ltd. Bervey Ro. 63/3, Kharpara, Midana. Mt pane-Milpur, Talkaka-Gandlafflows - Սախան 39°905 Հուսին ըրդար է ավելում Հայներ ինչանից ինչանի մեր ըրդաց գ Մերին անՄերը հետոն Հայաստում և արևեր ինչանից այլ հանագահանի հետոնի մեր արևեր արևեր արևեր արևեր արևեր հետում և ար

सोता कुल्ल (केरहीय आगत कुल्ल एवं सेवाका अधिकीन स्थानकिकाम के मोते अभीत, केरहीय आगत कुल्ल अधिकी गा। 1944 की गार (1915 के अंतरीत रूप रिन क्रिकेटियम, 1994 की भार 96 के अंतरीत विकासिक्षित जनत के जा उन्हों।? ।! 141

Appeal in Customa, Excles & Service Tex Appellers Tiffernal under Section 355 of CEA, 1944 7 Coder Service 95, of the Finance Art, 1994 on appeal fee or -

यादिनमा सून्यक्ता से सन्बंदिया बारी सम्बद्ध सीमा बुट्य, रेस्ट्रीय असदन सून्य एवं संख्या अस्ट्रीय स्वयाधियस्य की देशीय शेल, केल करीय र 2, जर, केल्पुल, स्ट्री किसी, को की अन्ते अस्टिश (ű.

The special hearth of Cosmone, Excise to Service Top Appellore Tribution of Word Ricck No. (), P.M. Parour, New In the Englishmentary of exceptions and naturalists.

ш हार्तकः परिश्वेतः ।(द्रोतं के बताय गर इसोली के तरहक रोग छन्। जनीतं चीमा रूपकारेशोय उत्पाद गुम्क एन चीमार उपोसीय स्थानादित रण विकटेदारी परिवास रोजेस परित्या,,हरितेना हमा क्यूनानी क्षेत्रन भुक्तको अर्थादक्ष है, आरथ्याको की आंधी सु(्रिया)

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अपीतीं के त्या कि तम कि स्थान के कि अभिनिष्ठ कि अभिनिष्ठ के लाग हैं। के अलगा रेक्टन कि स्थान के किन का। अन्य कि स्थान के किन का। अन्य कि स्थान के किन का। अन्य कि सिंग के अपीतीं के अलगा रेक्टन कि सिंग के अपीत का। अन्य कि सिंग का अपीत की कि सिंग की कि अपीत का कि सिंग का अपीत की कि अपीत का अप ш

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П ित अधिनितमः...994 का पास्तवेश विकास समान्ति (2) पने 1855 का दूशारीत कहाती मही समान, सेवक्क मियनकारी, 1964, के विकास स्थान का अध्या के उत्तर निर्धाति प्राप्त शहर के की का उन्तर वह उत्तर है। अ बुक्त, केन्द्रिय उत्तरत सुन्य अवसाओं बुक्त (अरोह), केन्द्रिय प्रतिक के का स्थान परित अरोज की मनियाँ बनाया की (कामी शिक्ष परी अपनिता होती वाहिए) और अ बुक्त क्वाय का मुक्त अस्य अभ्यक्त, केरहेल अन्यह कुम्बर भेटमक, अं अभिनेष न्यानगिकरण की आकेल हैं। उनमें का लेकन की नाले ग्राहेक की धीन हैं। उनके अं गहरू करते होते । ८

الغا

केन्द्रीय दलका कुरक एवं सदस्यत् २ २५ ते १८ १८ १५ । किन् दल दुवका में जिस्स स्वासित है। भारत ११ है के अनुसरित स्वया

भक्तीय करण की जी जो गठता भी है।

के के उस निवम बती ने हिम्मू है के उत्तवन हेनु स्वस् 1HI

ं अपने पह कि कर नमा के सरपाल किरीय .a. शें. अकिशिया 2012 के उद्धार में पूर्व किसी को तीर प्रतिकारी के समान

में बहु करका के प्रमुख्यान करिया : Anders application in department of major : अस के अस कि मिर्मुख्यान कि विश्व कर्मा के स्थान के कि क्षेत्र के अस कि क्षेत्र के कि क्षेत्र के अस क्षेत्र के अस्ति के कि अस कि क्षेत्र के कि अस क ur J

बहें तोत्र के दिनों कुम्पूरण के गामणे में, बहु पुरुषाय करते रहत हैंहें हैंहिंग अस्तादें हैं किए बहु के पाएकण के बीमर का दिनी जनत कारकों का दिन दिनों पर क्षेत्र कुए हैं एक्ट्रे कहा था। पाकरण के बीद के किया जाता हुए में भी क्षक्रण में सन के अस्ताद के हैंह ने, किया कारकों के बिनों नाहर कहा गामल के बुक्का के महत्त्र हैंहें In greet in any responding officer कि bose or que i begand bout to be pay to a constitution or or market descrip of the most supplied out to the large supplied of processing of the goods to a souther to the supplied of the goods to a souther to the souther to be facility or in a souther to !1

দমন ক্ৰিক্ত টিনটা কেই বংগ্ৰিক কি জিলান ৮৮ ব) তুলন ও প্ৰিনিপ্ৰিক গ' জুকত কৰে পালা কে কমা আৰ্থিককোৰ কৰেছে প্ৰকাশ ক্ষম (মিইছে। ও μ'n ामध्ये हैं, जो भारत के बहुत कियाँ पान, जानीर की में जीया ही जाते हैं। Ex case of receptive dutie of recent on general or one control or technics of Apole Endo of Equipment of the first of the model College of the control of the control of the model College of the control of

मित्र हुन। यह कर का प्रशासक किए किए प्राथमित के आहर, के उस का पूर्वमान्य आहा लेकिन के बात कर है। है En unan of goods Scott as our and in our expect to Scott कर Bhother, actions not the most through ıhtl

Jie.

.सहै कि अधेरन की है पहिलां एक संस्थे। ऐसे 5 के एक की किया उत्तर कर एक (अधिन्निक्तिकार) 2012, के निवस के के अस्ति विकेशिक है, इस बहुत के शर्किक के 8 सह के 27 कि उपने पाएँ के 25 किया कि तर मून अधिक अधिक अधिक के दिन की के किया केरिया की किया के समाहित के दिन के उपने के अपने की हैं. उसे 19 किया के 19 के दिन के शिक्ष के अस्ति के अस्ति के अस्ति के 19 को किया के अस्ति करिया þ. even di che lange 1990 più con le la greco e Comer 1992 di chi apper de la gracia dell'apper de graphica greco elle in 1200 di Chi della di sella la graphica di presenta della con 1900 più con della profesione della Carre di Rui se la graphica di Chi anno di montra di contra di contra

<u>''</u> сия паме моговерова соот откольности и стору и достову и достову и достова и достова и стору и стору и стору и В вой 1500 г. бы брания Педили. В не стору обор и доброва и при предоставать не в бого и достову предости и предоставления и почетов и предост части и брания выблика 2006 учествення в применя и достов и почет в применя и почетов и предоставления и пре

नके इस अर्थन में कहा मून कारण के अन्तर्भ के तो किये हैं हैं अर्थ किया है कि अर्थ के स्थान का से किया साम काहिये। इस मध्य के होते हैं की निर्देश की पार्ट के किया साम काहिये। इस मध्य के होते हैं की निर्देश की पार्ट के किया का काहिये। इस मध्य की निर्देश की पार्ट के किया का काहिये। इस काहिये के काहिया की काहिय **7.**1

त्रकारणीयित स्थानकः मुख्याशीरविद्यातः । १८१५, के १.२१ हु है १.५१ हु कर हुन उद्देश कर समझा आदेश की वृत्ति का सिधारिक हु हुन १८५ वर्ष कर स्थानक १८५६ हिन्दी स्थानक १९६५ हुन १९६५ हुन १९५५ १९५५ हिन्दी करनारिक १९५५ हुन -5

South (PE Martic) (PS 2) (PS

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ANNEXURE-A

Sr.	Name of	Appeal No.	OlO No.
No.	the	1	
	Appellant		•
1	Bagadiya	V2/51/GDM/2018-19	GRD/REBATE/C.EX./01/2018-19
	Brothers		DE:12.09.2018
	Pvt. Ltd.		I
2	Bagadiya	V2/52/GDM/2018-19	GRD/REBATE/C.EX./02/2018-19
	Brothers		DL:17.09.2018
	Pvt. Ltd.		
3	Bagadiya	V2/53/GDM/2018-19	GRD/REBATE/C.EX./03/2016-19
	Brothers		Dt.:17.09.2018
	Pvt. Ltd.		
4	Bagadiya	V2/54/GDM/2018-19	GRD/REBATE/C.EX./04/2018-19
	Brothers		Dt.:17.09.2018
	Pvi. Ltd.		



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25 ORDER OF APPEAL 21

The present four appenis have been filed by M/s. Ragadiya, Brothers Pvr Ltd., Adipur, District Kutch (hereinafter rejected to as "Appeniant") against Orders-in-Original as detailed in Table below (hereinafter referred to as impugned orders) passed by the Assistant Commissioner of COST, Rural Division. Cancillation (hereinafter referred to as frafing sanctioning authority);-

Şt No.	Appeal No.	OTO No.	QIO Tiago
1	V2/51/(2061/2018-19	GRD/RRHATR/C Ex./01/2016-19	13.09.2019
7		GRD/REB/TE/C.EX./D2/7016-19	17 09 2018
] 3			17.09,2018
4	V2/54/GDM/2018-19	GRD/REBATE/C Ex /04/2016-19	17.09.2018

The brief facts of the case are that Appellant, a merchant exporter. had filed four reparts chalms under Rule 18 of the Control Carise Rules, 2002 [hardinaller referred to an "Rules"] for refund of Contral Excise duty. of (D. Rs. 1,93,780): in respect of ARE I. No. 02/2016-17 dated 25.03.2017, (II) H2. 33.56.032/- in respect of ARE-1 No. ((2/20))/-18dated 02.04.2017, [BB] Rs. 1,33,291/- in respect of ARE 1 No.01/2016-17. dated 24 03:2017 and [FV] Rs. 4:87.830/- in respect of ARR-1. No.01/2017-18 dated U1.04.2017. During simuling of dominants, the refund sanctioning authority observed that the Appellunt did not file necessary documents as per procedure prescribed under Rule 18 of the Rules and Notification No. 19/2004-CE (NT) dated 06.09.2004; that the Appellant did not follow the procedure as prescribed under clause: [3||a||üi]. (iv) & (v) of Nacification No. 39/2004 CE (NT) dared 00,09,2004; that the Appellant failed to file triplicate copy of the soid ARE is within twenty four hours from the date of export before the Range Office; that the Appellant had submitted triplicate and quadropticase cosics of the said. ARE is after 28 days for refund aloim I & Bt and after 18 days. & 20 days for refund claim II & IV respectively for endorsement and verification of ditty particulars and there were no duty verification done by the Contral Excles Officers: that the said goods i.e. Mill Scale were required to be cleared and experted under expervision of Central Excise. officer vide Circular No. 294/10/97-CX dated 30.01.1997 as well as: Notification No. 41/94-CE (NT) & 44/94- CE (NT) dated 22,09,1994, which with plane; that the Appellant had produced goods from various.

Page 2 of 15.

manufacturors located in different jurisdiction and duty payment by such manufacturors could not be serified.

- 2.1 The Appellant was insuled Show Cause Notices for all four relate claims with above observations calling them to show cause as to why their relate claims should not be rejected. The Refund sanctioning authority rejected all the relate claims vide impugned Orders.
- 3. Apprieved, the Appeliant reclimes these appeals on the various grounds, as under:
- (i) The refund sanctioning authority cured in rejecting release delications the grounds that the procedure prescribed under respective nutilizations was not followed.
- (ii) The Appellant expured products in bulk, which were initially stored in their premises after charance from factory. Since the duty paid goods were being discrete for expurts, intimations were filled with the Department before such removal and after export, they field expires of ARE-1 with Ronge office; that one to mixisse, their dealing eleric foiled to file ARE-1 within 24 hours. 'Ose Appellant hast filled all the required documents along with rebase claims bits easy of ARE-1 duty endorsed by thistoms Authorities of part of exports, altipolity bill, Customs invoices etc. which proved beyond docust that goods were exported.
- The returnd sanctioning cushosity excels in observing that the goods under consideration were not expected variety the period of limitation, in as much as the limitation as prescribed to the said notification, is not applicable to the instant case: that the dut, gaid goods were expected after receipt in the premises of the appellant and ofter filing necessary unumation with the Department Fourther, such expect is covered under clause (in) of Para J of notification on, 19/2004(NT) def. 06-09-2004; that the concerned Range Superintenders did not acknowledge the duty payment, on the expected rander the decline decline evidences submitted proves hepmad doubt the object supplies and the decline assertion and the respective supplies and such duty in the department.
- (iv). The refund samplesming α . Figure , we write the rejecting the refund on the

ground that the appellant is not eligible for refund of duty paid on goods exported, inasmuch as evidences submitted proves beyond doubt that the supplier recovered duty from the appellant and also discharged the same; that in any way it is not the case of the department that the suppliers did not pay duty and action should be initiated to recover such thirty, therefore, the relate as claimed ought to have been allowed. Further the department also did not object on such clearance for export, therefore, the relates as claimed are liable to be sanctioned.

- 4. Hearing in the matter was attended by Shri Parcah Shoth, Advicate on benefit of the Appellant who reiterated the aubmissions of oppeal memorands, and also submitted CBEC Circulars and case lowe during hearing and requested to allow their appeals.
- 5. I have carefully gone through the facts of the case, the impugned orders, the Appeal Memorande and written submissions made by the Appellant. The issue to be decided is as to whether rejection of rebate claims filed by the Appellant is correct, legal and proper or otherwise.
- On going through the records, I find that the refund sanctioning authority rejected rebate claims on the ground that Appellant failed to life. traplicate copy of the said ARR-19 within twenty four hours from the date. of export before the Range Office; that the goods exported in bulk were required to be cleared and exported under supervision of Control Exclasofficer as per Circular No. 294/10/97 CX dated 30.01.1997; that the Appellant had procured goods from various manufacturers located in different jurisdiction and duty payment by such manufacturers could not be verified. On the other hand, the Appellant pleaded that they had Bledall the required documents along with reheat claims which proved beyond doubt that goods were expurted: that due to mistake of their dealing clock, ARE-' could not be filed within 24 hours; that the documentary. evidences submitted by them proved beyond doubt that the duty leviable. on exported goods was pead to the respective manufacturer and the respective manufacturer must have paid such duty to the Department; that it is not the case of the Department that the manufacturers (light of pay duty.

- 7. I find that in the present case the appellant submitted the rebate claims under Rule 18 of the Rules claiming rebate of duty on the ground that they in fact exported the goods from a rented premises where they stoud their goods after payment of thety. As per Rule 18 which reads as under, where any exported goods are exported, the Central Government may, by notification, great robate of duty paid on such excisable goods or duty paid on materials used by the manufacture or possessing of such goods and the rebate shall be "object to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.
 - **RULE 18. Retracte of duty.** Where any exported goods are exported, the Central Government may, by notification, grant returns of duty paid on sectionable goods or duty paid on materials used in the manufacture of processing of such goods and the returns shall be subject to such conditions or limitations, if any, and fulfilment of such procedure as may be specified in the notification.
- 7.1 That the Central Covernment has been sed the notification under Rule 18 of the Rules for rebate of constant on expect of goods to all the countries other than Nepal and Bhutain. The sold notification also provides for conditions and limitations on fulfillment of which they shall be granted rebate of whole of the duty paid on excitable gabds.

Therefore, as such and we got the same notification on fulfillment of the conditions and limitations, we expected who has expected the excisable goods after payment of outplace of relevant them a factory or warehouse as such shall be entitled to grow in relevant the whole of the duty paid. The albressid motification which is thereof to do the Rules also provides for procedure to the inflormating expecter as well as the Department while considering the object show that under Rule 18 of the Rules. As per the procedure procedure to state the factor and notification and as per Paras 8.2, 3.3 and 8.4 of Para of Chapter 8 of Chapter 8 having Manual of Supplementary instructions made provides to the expecter to the control of ASCO at the time of removal of expect goods, the office and the control of ASCO at the time of removal of expect goods, the office and the control of Sach 8.3, the expecter is required to submit the paint of Johate sach to the Capter Sach the Expecter is required to submit the paint of Johate sach to the fact 8.3, the expecter is required to submit the paint of Johate sach to the fact 8.3, the expecter is required to submit the paint of the parameter as the fact of a chapter of schote.

- (i) A request on the letterhead of the exporter containing claim of retain, ARE-1 rembers and dates, corresponding invoice numbers and dates amount of rehate on each ARE 1 and its calculations.
- (ii) Original Copy of the ARK-1,
- (iii) Invoice sasurd ander Rule 1%,
- [[v] Self attested copy of shipping bill, and
- (v) Self attested copy of Bill of lading.
- [vi] Disclaimer Certificate fin case where claiment is office than exporter;

Thus, as per the aforesaid procedure, exporter claiming robate of duty poid is required to submit the aforesaid documents which includes the original copy of ARE-1. It ratingt be disputed thus the aforesaid. discurrents are required to be submitted along with the relate claim so as: to satisfy the concerned Authority considering the relate claim whether in fact the conditions and limitations as mentioned in the aforesaid. notification for grant of rebote are satisfied or not i.e. whether the excisable goods have in fact been expuried after payment of duty, directly from the factory or warehouse or not and that the excisable goods have been exported within six months from the date on which they word desired for expost from the factory or warehouse or within such extended period as the Commissioner of Excise may in any particular case allow and whether all other conditions and limitations mentioned in Clause (2) of the norifications are satisfied or not. Therefore, even in a case where one of the doctinum. Though required to be produced as per the procedure is: missing due to some reason if from the other supporting and corresponding documents produced it can be satisfied that the excisable goods have been in fact exported after payment of duty and directly from the factory or warehouse in that case, despite non submission of one of the document, exporter shall be entitled to the rebute of duty. In the present rase, as stated berein above, as such the respective appellant/exporters could not submit the ARE-1s within 24 hours from the date of export but delayed to file it, as their concerned employee had errod in filing the same on time. However, the appellant submitted other dorsoments like shipping bills, bills of lading, loveloce, Bank Realization.



Statement etc. at the time of filing of the religion claim. After considering other documents as stated above, I find that the goods for which the reliate of duty is claimed were in fron experted against the same ARE-1s and substantial condition of payment of duty and export of duty paid goods are satisfied as the ARE-1s have been duly stamped and agreed by the Customs authorities and the statement of Bank Realization of goods exported duly stamped and attested by the Appellant. Thus, I find that it is established that the goods egainst the same ARE-1s were exported after payment of duty and when the conditions and limitations mentioned in Clause [2] of the notification issued under Central Excise Rule 18 and Notification No. 19/2004—CE (NT) daied 96.09.2004 are satisfied, merely because the exporter could not produce the ARE-1s on time, the Appellant cannot be decided the relate of daity.

- 7.2 Further, I find that if the intenions was only to submit the ARE-1s within the slipulated time to the percentitional Range Superintendent, then in that case, there is no expansional of production of other doctanions. Therefore, even if an associate and proved that all the conditions and lighthings for rehard civits are satisfied, the exporter shall be entitled to the relate of duty. Thus, I find that this condition is not the organization.
- 7.3 Purposer, in the case before the Hambay High Court in respect of U.M. Cables Mid as reported in 2013(393) E.L.T 641also, the exporter who claimed the relate of July would not eabnit the original and duplicate AREI's and his selve it estate and or Mid 18 came to be rejected on the ground of non-summassion of established and duplicate AREI's and to that the Hambay Haji Court 1. Forth 16 to 33 has observed and held as under:
 - 110 Role 18 of the Control Depth Tailes, 2002 empowers the Central Communication is introduction to grant a retinite of data people in the manufacture or processing of such 300,00, on at the manufacture or processing of such 300,00, on at the manufacture orbits under Taile 18 of all lies maked to such conditions or

limparions, if any, and the fulfillment of such procedure as may be specified in the notification. Abus TR, it must be noted at the orithm. malars a clear distinction between matters which govern the amditions or Smitations subject to which a rebate can be granted on the one band and the fulfillment of such procedure as may be prescribed on the other hand. The notification dated 6 September, 2004 that has been issued by the Central Government under Rule. 18 prescribes the conditions and limitations for the great of a rebute and matters of procedure separately. Some of the conditions and limitations are than the excisable goods shall be exported after the payment of duty directly from a factory or warshause, except as otherwise permitted by the CPDC; that the esmisable goods shall be exported within secreanths from the date. an which they were cleared for export from the flictory of manufucture or axcrehouse or within such extended period as may be allowed by the Commissioner; that the market price of the exclauble goods at the time of export is not less than the amount of rebate of duty claimed and that no rebate on duty poid on corrisable greats shall be granted where the export of the goods (s ranhibited rander any law for the time being in force. The procedure governing the grant of releate of central excise duty is specified in the same notification duted 6 September, 2004 separately. Broadly speaking the procedure envisages that the regerner has to Diesen) fixer copies of an application in form ARE! to the Superintendent of Central Excise. The Superintenders has to verify: the identify of the goods and the particulars of the duty poid and after sealing the packet or crimainer, he is required to return the original and duplicate copies of the application to the exponer. The wiplicate copy is to be sent to the officer with whom a rebate claim. is to be filed either by past or by handing it over to the exporter in a tumper proof scaled cover. After the goods arrive at the place of export, they are presented together with the original and duplicate. copies of the application to the Conumissioner of Customs. The Commissioner of Customs after committing the consignations with the particulars cited in the application is to allow the export if he figurity. Philipsyther provides have correct equal to consider on the copies of

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the application that the youds have been duly exported. The claim for rehate of duty is presented to the Assistant or Deputy Commissioner of Central Evens who has to compare the duplicate way of the application reveived from the affect of restons with the original rapy received from the exporter and the triplicate received from the exporter and the triplicate

- 1). The Manual of instructions that has been issued by the CBBC reposition the dominants which are required for filling a claim. for tebuts. Among them is the original copy of the ARRI, the immire and self attested excess of the chipping bill and the bill of Inding. Palagraph 6.4 specifies that the rebate sanctioning. moderates has to eathing himself in respect of essentially box requirements. The first requirement is that the goods cleared for export under the relevant ARET applications were actually exported as evident from the original and displicate copies of that AREI form duly certified by castoria. The second is that the quals are of a duty paid character as certified on the triplicate copy of the ARRI form received from the jurisalizational Superbinendent of Control Braise. The object and purpose underlying the procedure. which has been specified is to enable title authority to daily entisty. itself that the rebure of control exclass diely is abught to be claimed. in respect of goods which were proving and that the goods which were expanted were of a duty paid character.
- 12. The procedum colors has been laid down in the multiplication dated in September 2004 and in CBEC's Manual of Supplementary Instructions of 2005 is to familiate the processing of an application for rebute end it is made the multiprity to be duly earlighed that the two field requirement of the goods having been exported and of the years bearing a stray paid character is fulfilled. The procedure cannot be acted to the level of a mandatory requirement (River 10 heef) wholes a distinction between conditions and finitelying the procedure governing the grant of a rebute can be procedured out that procedure governing the grant of a rebute on the other level in White the conditions and limitations for the grant of the conditions and limitations for the grant of the conditions and limitations for the grant of the conditions and

13. A distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Coart in Mangaline Chemicals & Pertilizars Ltd. v. Deputy Commissioner - 1991 (55) R.L.T. 437 (S.C.). The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter use way or the other". The Supreme Court held that noncompliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the class. On the miner hand, other requirements may merely belong to the area of procedure and it would be entitions to attack equal importance to the nonobservance of all conditions irrespective of the purposes which they were intended to serve (at Paragraph 11). The Supreme Court held as follows:

"The mere fact that it is statistical does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observence of all conditions irrespection of the purposes they were intended to serve."

- 7.4 (tonsidering the aforeseid facts and circumstances, it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and one of the grounds for rejecting the rebate claims for non-submission of the ARE1-1s on time is not correct. Thus, I find that the delay caused is nothing but procedural irregularity.
- 8. Further, I find that the refund senctioning authority has observed first goods which are not having numbers and marks cannot be exported under the procedure of self-sealing and self-certification in terms of Circular no. 294/10/97-CE dated 30.01.1997. In this regard. Use appellant has argued that goods which were procured under duly paid invoices, can be exported under aplf-sealing and self-certification.

In this regard. I find that the appellant has submitted copies of self—attested Statement of Bank Fealization of the goods exported generated from the website of the Directorate General Of Foreign Trade and attested copies of Bill of Lading etc. Thus, I find that the exporter has submitted enough proof that the goods having been actually exported and the goods were clearly identifiable and to-relatable with the goods cleared on payment of duty, then, pare 6 of the Creater issued by the Board enobles weiving of or rechnical departure from procedural requirements and the same can be condomed. My views are supported by the decision of the Hamble High Court of Mandowi in the case of Commissioner of Central Excise Vs Jubilant Organosys incl. decided on 22.12.2014 as reported in 2015 (322) E.L.T. 50 (Born | whereight was held that:

"4. With the assistance of the idented Counsel appearing for both sides, are have perceed the Writ Petition and all the three orders. While it is true that the issue was essentially one of the mandatory requirements being fulfilled, namely, whether the goods which have been removed from the warehouse have indeed k_{TD} exported at ant. The co-relation or the identity of the guads, if established, only then the daim for rebate could have been allowed, in that remark, the finding recorded by the Assistant. Commissioner is that the hard appointing of the goods having been expected and those elabriday in the expensive are matching with the once removed from the matcher, we required to be satisfied. In regard to this condition and which is right, j without the resolutions, the Order-in Original. records that there are no a spirit contacts and batch numbers mextioned. on the drame as lawfating? In marks of the consignments. The goods uriginally cleared on payment of f(d) floor the factory of the manufucturer and schozequerally from their hard gadinum at Winnandi have been claimed to be the goods to realize the which the claim arises. However, necleasury configences years not insuled according to the Order. in-Orlainal. This Appetitual indicato, juntation a permeal of the entire mount, that the warehouse from more the youth have been exported was a decimal graduum in $m_{i}(m_{i}) \in \mathbb{R}^{d}$ and decide were being stored and there is the anticonfined to $r_{ij} \sim r_{ij} \sim r_{ij} \sim r_{ij} \approx 100$ of Gentral Excise Rules, 2002. That was the invite $a=1,\ldots,N=-2N-(n-0)$ igned proceeds. After சூச்சுற்று நூக்கர் நிக்கீரது கொடர்கள் கொடிய கூறு செரு**ந்திகள் Authority** .

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independently scrutinised each of the ARE I numbers and annexed to the appeal paper back. The Jurisdictional Experintendent yet the duty payment verified from the Originating Range Superintendent. Thus, both were satisfied about the Mentity of the goods claimed totals the respective ARE-1. Merely because there are no identification marks and butch numbers does not mean that the goods were not identical. If the goods involved are "controlled substance" under the Narcutic Drugs and Psychotropia Substances Act, 1985 and subject to the Comital Order framed thereunder, then, the remainin dutails with regard to compliance of that Control Order have also been referred to. The capies of the contaignment notes in relation to the goods were submitted to the Normatics Control Bureau and the Central Bureau of Narcelies. Thus, there is complete material to establish the identity of the youds. Meaning thereby, there is no distinction or difference moted in the goods deared. from the werehouse and forwarded for navourd export. It is busically this record that has been carefully perused by the Recisional Authority. A reference to the C.H.E. & C. Circular relied by Mr. Jelly is to be found in para 9 of the order of the Revisional Authority. Parther, the Revisional Authority concludes that the C.E.B. \oplus C. (Fraular is not followed in regard: to some procedural part that does not mean that the goods have not been. eleared for export or their identity is not established. In such circumstances, the Revisional Authority distinguishes the judgments relied upon and which have been brought to our notice.

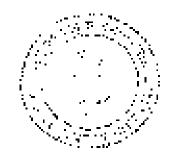
6. We find that this approach of the Revisional Authority rannot be said to be contrary to how or vitated by non-application of mind. In the case of Commissioner of Central Excise, Chambigath v. Indian Overseus Corporation reported in 2009 (234) E.L.T. 405 (II.P.) it is found that the Revenue has established that the goods were not exported from the factory, but from a branch office. That is why the 7,000 kgs. of cotton yarn sought to be exported to Bangladesh were found to be not so exported. The mandatury condition that there should be a claim for rebute based on export of excisable goods, after payment of day directly from the factory or wavehouse was not satisfied. That condition having been not satisfied on facts that the Division Bench of the High Court of Himschal Pradesh answered the Epsison reference in favour of the





Revenue and against the assesses. This judgment is clearly `chstingushable on fants. Stockerly, are do not find that the conditions, which are required to be satisfied in terms of a notification issued under Central Excise Rules, 2002 and particularly Rule 18 have not been satisfied in this case.

- 6. In these circumstances, we do not think any advantage can be derived from an order passed by the Government in the case of Philip Electronics India Ltd. 2011 273: 83.7. 161 (G.O.L). Once the exporter submits proof of the goods buring from actually reported to the sansfaction of the reliate sometioning extherity, the goods were clearly identifiable and co-relatable with the goods are factory on payment of duty, then, once it of the Orealar issued by the Board enables varining of or techniqui departure from procedural requirements. Those not having any revenue emplies from procedural requirements.
- 7. We have found that in the mosest wase all the statutory requirements enterging from Rule 18 of the Control Rusise Rules, 2002 are settisfied and neither the Commissioner set the Revisional Authority has controlled any error of law apparent on the past of the moord so also their orders equally by termed as purposed enabling as to interfere by our Writcheldiction. Consequently, there is no ment in the Writ Petition. It is anomalizably dismissed. He are in
- 9. Further, I find then six scheme distinct have been rejected on the ground that the Department is another in ventor whether the manufacturers have paid the duty or not, he dust report, a floor that if the manufacturer of the group have not paid the duty on the group department to take steps to become the duty from the manufacturer. However, there is nothing on the distance of the manufacturer has been taken and a provided that the manufacturer has been taken and a provided that the manufacturer has been taken and a provided also.
- 10. In view of above discount $\cos s = \sqrt{s} + \cos s$, 1 set aside the impugned order and allowable appeals $s^{(1)} = s + s + s$.



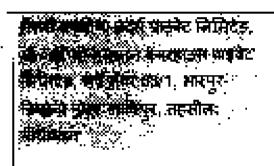
- १९. अपीलकर्ता द्वारा दर्ज की गई अपीक्षी का जिपटास उपरोक्त तरीके से किया जाता. है।
- 11. The appeals filed by the Appellant stand disposed off in above serms.

(Gopi Nalti) Commissioner (Appeals)

B⊀ RPAD

Ϊ'n

M/s Bagadiya Brothers Pvt Utd., C/o Shri Gajanan Warchouse Pvt. Ld., Burvey No. 63/1, Bharapar Kidana, ar post Adipur, Tal: Gandhidham.



Copy for information and necessary action to:

- I) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone.

 Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise. Gandhidhem (Kutch) Commissionerate, Bhavnagur.
- The Assistant Commissioner, GST & Central Excise Rural Division, Candhidhan.
- 74) Pilo No. Appeal No. V2/52/GDM/2018-19.
- Falo No Appeal No. V2/53/GDM/2018-19.
- 6) File No Appeal No: V2/54/GDM/2018 19.
- 7) Guard File.

