



::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 / फाइल नम्बर/ Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक/ Date
	V2/1/GDM/2019	05/Rebate/2018-19	25-09-2018

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

KCH-EXCUS-000-APP-059-2020

आदेश का दिनांक / Date of Order:	03.07.2020	जारी करने की तारीख / Date of issue:	07.07.2020
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri. Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ मंयुक्त आयुक्त/ उपायुक्त/ महायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूलित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s Ashland India Pvt. Ltd Plot No. 17-18 Sector-30A Vashi,navi Mumbai-400705,

इस आदेश (अपील) में व्यथित काइ व्यक्ति निम्नलिखित तरिके में उपयुक्त प्राधिकरण / 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) मामला शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलान्य न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B क अन्तर्गत एवं विन अधिनियम, 1994 की धारा 86 क 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) वार्धिकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलान्य 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 ब्रताण गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलान्य न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमानवी भवन अमर्वा अहमदाबाद- 380016 का 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) अपीलान्य न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति मंलग करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलान्य न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम से किमी भी मार्जिनित श्रव के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलान्य न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय 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) अपीलान्य न्यायाधिकरण के समक्ष अपील, विन अधिनियम, 1994 का धारा 86(1) क अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) क तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में मंलग करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति मंलग करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलान्य न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम से किमी भी मार्जिनित श्रव के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलान्य न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय 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) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ 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 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) मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, वरतें कि: इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दम करोंड रूप में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - मेनवेट जमा की ली गई गलत राशि
 - मेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- वरतें यह कि: इस धारा के प्रावधान विनियम (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, समद 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:
- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने में भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह में 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
 - भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिवेट) 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.
 - 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.
 - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं 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.
 - उपर्युक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रपण 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 अदायगी के माध्यम 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 O/O 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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रूपये 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.
 - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त दंग में किया जाना चाहिए। इस तथ्य के होने हूए भी की लिखा पट्टी कार्य में वचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case if the order covers various umbers 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.
 - 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 टिकिट 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.
 - मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित 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.
 - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने में संबंधित व्यापक, 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 ::

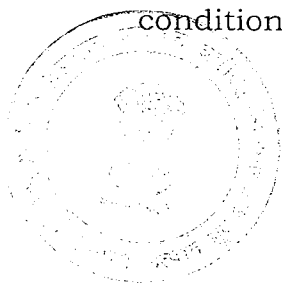
The present appeal has been filed by the **Assistant Commissioner, CGST, Anjar Bhachau Division** on behalf of the Commissioner, Central GST & Central Excise Gandhidham (hereinafter referred to as **“the Appellant Department”**) against the Order-in-Original No. 05/Rebate/2018-19 dated 25.09.2018 passed by the Assistant Commissioner, CGST, Anjar Bhachau Division (hereinafter referred to as **‘the refund sanctioning authority’**) in the case of **M/s Ashland India Pvt. Ltd.**, Plot No. 17-18, Sector-30A Vashi, Navi Mumbai-400705 (hereinafter referred to as **‘the Respondent’**).

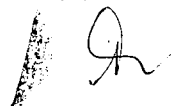
2. The brief facts of the case are that the respondent, a merchant exporter filed a rebate claim on 26.06.2018, claiming refund of duty of Rs. 1,32,92,598/- in respect of goods cleared for export on payment of duty under various ARE-1s under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as **‘CER’**) read with Section 11 B of the Central Excise Act, 1944 (hereinafter referred to as the **‘Act’**). The refund sanctioning authority vide the impugned order sanctioned an amount of Rs. 1,26,92,156/- under Rule 18 of the CER and Section 11 B of the Act and rejected the remaining amount of Rs. 3,00,442/-.

3. The impugned order was reviewed by the Appellant-Department and appeal was filed by them on the grounds, inter-alia, as below:-

3.1 That the impugned order has been passed without taking into consideration the relevant statutory provisions for exemption in payment of Central Excise duty in terms of para 3(b) of the Notification No. 19/04-C.E. (N.T.), dated 06.09.2004 issued under Rule 18 of the CER and para 2.1 to 8.4 of Chapter 8 Part-I of the CBEC Manual of Supplementary Instructions.

3.2 That the instant refund claim was submitted without actually enclosing the supporting documents including original and duplicate copy of respective ARE-1s duly certified by the Customs authorities; that the file was returned in original to the respondent on the basis of contravention of condition mentioned in para 3(b)(i) of the Notification No. 19/2004-CE(NT)



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dated 06.09.2004.


3.3 That the subject rebate claims under Section 11B of the Act read with Rule 18 of the CEA was filed for rebate of Central Excise duty paid in respect of the goods cleared to SEZ unit under various ARE-1s; that as per Rule 18 rebate of duty paid on excisable goods would be as per the Notification issued under Rule 18; that Notification No. 19 of 2004 dated 06.09.2004 prescribes conditions, limits and procedures; that para 3 (b) of the Notification and para 2.1 to 8.4 of Chapter 8 Part-I of the CBEC Manual of Supplementary Instructions clearly stipulate that requirement of submission of original & duplicate copy of ARE-1, along with rebate claim as an essential requirement.

3.4 That the rebate claim was filed on the basis of quadruplicate copies of ARE-1s; that the refund sanctioning authority has sanctioned the rebate claim without the original and duplicate copies of respective ARE-1s pertaining to the rebate claim; that the rebate claim can be filed either by the manufacturer or merchant exporter with the Maritime Commissioner or jurisdictional Assistant Commissioner, Central Excise, and there are chances of filing duplicate rebate claim if the claim is accepted without original and duplicate ARE-1.

3.5 In support to their claim, the Appellant-Department relied upon the judgement in the case of **Competent Authority Vs. Barangore Jute Factory & others [2005(13)SCC477]**, **State of Jharkhand & others Vs Ambay Cements & another [2005 (1) SCC 368]** and M/s Enkay Containers [2013(295) E.L.T. 165 (G.O.I.)]. Thus, the Appellant requested to set aside the Order passed by the Refund Sanctioning Authority.

3.6 That the adjudicating authority held that the respondent had submitted the subject rebate claim on 29.12.2017 along with all necessary documents but the claim was returned without a deficiency memo/query memo for non-compliance of 3(b)(i) of Notification no. 19/2004-CE(NT) dated 06.09.2004; that the respondent submitted that since the claim can be submitted at the office of the Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer i.e M/s Natural Petrochemicals Pvt. Ltd., the claim has been rightly submitted; that since



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the respondent was regularly filing various rebate claims prior to filing of the subject rebate claim, it was clear that the department as well as the respondent were well aware of the jurisdiction, thus it is clear that the said claim was not returned due to jurisdictional dispute but for non-submission of the required documents.

3.7 That the respondent filed the quadruplicate copies of ARE-1s alongwith Indemnity Bond and according to the Indemnity Bond the original and duplicate copies of the ARE-1s had been misplaced in transit; that the rebate claim appeared to have been filed on 26.06.2018 after the expiry of one year prescribed under Section 11 B of the Act; that the rebate claim was submitted without the supporting documents in original within the limitation period, therefore the claim cannot be treated as filed; that as all the ARE-1s are prior to 28.05.2017, therefore, rebate claim submitted on 26.06.2018 is barred by limitation; therefore the impugned order passed by the refund sanctioning authority is not legal and proper and is required to be set aside.

4. The Respondent vide letter dated 18.09.2019 and 14.02.2020 submitted Memorandum of Cross Objections, inter alia, submitting as under:

4.1 That the rebate claim was filed on 29.12.2017 with the Assistant Commissioner, Anjar Division for Rs. 1,32,92,598/- in respect of goods cleared by them to APSEZ (Atchutapuram, AP) under cover of 50 ARE-1s alongwith Central Excise invoices cleared directly from the factory of M/s Natural Petrochemicals Private Limited, between February, 2017 to May, 2017; that as they had not submitted the original ARE-1s, they forwarded a list of ARE-1s to the Assistant Commissioner, APSEZ, Atchutapuram (AP) and Ramibili Vishakhapatnam for verification of the genuineness/proof of receipt of goods by M/s Pokarna Engineered Stone Limited, Vishakhapatnam; that the Authorized officer had submitted his verification report dated 11.07.2018 wherein he verified the receipt of all goods except for 3 ARE-1s amounting to Rs. 3,00,442/- and the same was rejected by the refund sanctioning authority.

4.2 That they had submitted all the required documents on 29.12.2017; that the Division office vide letter dated 29.12.2017 had returned the files

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stating 'in original' taking the basis of non-compliance of condition 3(b)(i) of Notification no. 19/2004-CE(NT); that since the present claim was submitted on 29.12.2017 there was no time limit dispute; that in support of their claim they relied upon the decision of APAR Industries (Polymer Division) Vs UOI reported at 2016(333)ELT246(GUJ.).

4.3 That they had originally submitted the original and duplicate ARE-1 at the time of original submission of rebate claim; that at the time the files were returned to the respondent, they were shifting the corporate office from Mumbai to Hyderabad, they misplaced the ARE-1s; that they had resubmitted the rebate claim on the basis of the quadruplicate copies of ARE-1s alongwith all other necessary documents and declaration; that they had produced an indemnity bond with the Adjudicating authority that in case of any loss of revenue to Government due to the missing ARE-1s, they will indemnify the same to the Central Government.

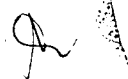
4.4 The respondent relied upon the ruling of the Bombay High Court in the case of M/s Zandu Chemicals reported at 2015 (315) E.L.T. 520(Bom.) wherein the Hon'ble High Court had ruled that condition of submission of original as well as duplicate copies of ARE-1 was only directory/procedural, and not mandatory; that for any lapses in the procedural conditions are condonable and therefore the refund sanctioning authority had rightly sanctioned the rebate claim by accepting the indemnity bond. Therefore, they requested to reject the present appeal filed by the department.

5. The Appellant-department did not appear for the personal hearing.

5.1 In Hearing, Shri Abhishek Darak, Chartered Accountant and authorized representative of the Respondent appeared on behalf of the respondent for the personal hearing. He reiterated the submissions already made and requested to reject the impugned order and disallow the appeal filed by the Department.

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum of the Appellant-department and cross objections filed by the Respondent. The limited issue to be decided in the present appeal is whether the impugned order passed by the refund

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sanctioning authority is legal, correct and in order or not.

7. I find that the respondent, a merchant exporter filed a rebate claim, claiming refund of Service Tax of Rs. 1,32,92,598/- in respect of goods cleared for export on payment of duty under various ARE-1s under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944. The refund sanctioning authority vide the impugned order sanctioned an amount of Rs. 1,29,92,156/- and rejected an amount of Rs. 3,00,442/-. On examination of the impugned order, the appellant-department was of the view that it is not proper and legally correct.

7.1 In this regard I first proceed to examine the statutory position with regard to the documents required for sanction of a rebate claim.

7.2 I note that Rule 18 of CER, 2002 provides that Central Government may by notification grant rebate of duty on goods exported subject to conditions and limitations if any and subject to fulfilment of procedure as specified. Notification 19/2004-C.E. (N.T.), dated 06.09.2004 as amended issued under Rule 18 provides that the rebate sanctioning authority will compare the original copy of ARE-1 submitted by exporter with the duplicate copy received from Customs authorities and triplicate from the Excise authorities.

7.3 I also note that the provisions specified in Chapters 8 (8.3) & (8.4) of CBEC Basic Excise Manual of Supplementary Instructions are applicable in this case, which reads as under :-

“8. Sanction of claim for rebate by Central Excise

8.3 *The following documents shall be required for filing claim of rebate :-*

(i) *A request on the letterhead of the exporter containing claim of rebate, ARE-1 nos. dates, corresponding invoice numbers and dates amount of rebate on each ARE-1 and its calculations.*

(ii) *Original copy of ARE-1*

(iii) *invoice issued under Rule 11.*

(iv) *self-attested copy of shipping bill and*



(v) self-attested copy of Bill of Lading

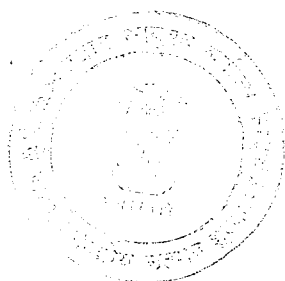
(vi) Disclaimer Certificate in case where claimant is other than exporter]

8.4. After satisfying himself that the goods cleared for export under the relevant ARE-1 application mentioned in the claim were actually exported, as evident by the Original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are of duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office) the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued.”

7.4 From the above, I note that the Original copy of ARE-1 and Excise invoices among other documents are essential documents for claiming rebate. Any non-submission of documents in the manner prescribed thus imparts a character of invalidity to the rebate claim. Also in the absence of the Original copies of ARE-1 duly endorsed by the Customs, the export of the same duty paid goods which were cleared from the factory cannot be established which is a fundamental requirement for sanctioning the rebate under Rule 18 read with Notification 19/2004-C.E. (N.T.), dated 06.09.2004.

7.5 I find that in the absence of main document ARE-1, original and duplicate containing certification of the Central Excise as well as Customs authorities, it cannot be established that the same goods which were cleared from the factory were actually exported. Also, I note that Para 2.4 of Chapter 9 of CBEC's Excise Manual stipulates that the claim without supporting documents shall not be allowed.

Further, I observe that in case of export of goods under bond in terms of Rule 19 of CEA, there is a provision under Chapter 7 of CBEC Excise Manual on Supplementary Instructions for accepting proof of export on the basis of collateral evidence if original/duplicate ARE-1 is missing. In case of exports on payment of duty under rebate claim in terms of Rule 18 of CEA, 2002, there is no such provision under the relevant Chapter 8 of CBEC Excise Manual on Supplementary

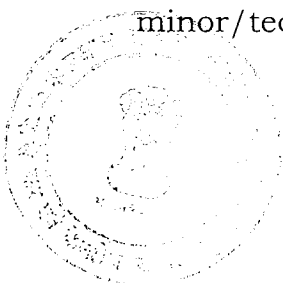


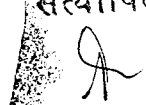
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Instructions. Therefore, I find that the claim was not in order as required in terms of conditions contained at Para 3(b)(i) of Notification no. 19/20004-CE(NT).

8. Further, I note that it is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfilment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of *Government of India Vs. Indian Tobacco Association -2005(187) E.L.T. 162 (S.C.)*; *Union of India Vs. Dharmendra Textile Processors - 2008(231) E.L.T. 3 (S.C.)*. Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of *Collector of Central Excise v. Parle Exports (P) Ltd. -1988(38) E.L.T. 741 (S.C.)* and *Orient Weaving Mills Pvt. Ltd. v. Union of India - 1978 (2) E.L.T. J 311 (S.C.) (Constitution Bench)*.

9. I also find that the nature of the above requirement is a statutory condition. The submission of application for removal of export goods in ARE-1 form is must because such leniencies lead to possible fraud of claiming an alternatively available benefit which may lead to additional/double benefits. For example - a rebate claim can be filed by the manufacturer or merchant exporter with the Maritime Commissioner or jurisdictional Assistant Commissioner, Central Excise, so there can be a possibility of duplicate filing of rebate claim, if the claim is accepted without original and duplicate ARE-1. This has never been the policy of the Government and it is in the spirit of this background that Hon'ble Supreme Court in case of *Sharif-ud-Din. Abdul Gani - AIR 1980 S.C. 303* and *2003(156) E.L.T. 168 (Bom.)* has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences then it would be difficult to hold that requirement as non-mandatory. As such there is no force in the plea of the respondent that this lapse should be considered on a procedural lapse of technical nature which is condonable in term of case laws cited by the respondent. I therefore hold that non-submission of statutory document of ARE-1 and not following the basic procedure of export goods as discussed above, cannot be treated as just a minor/technical procedural lapse for the purpose of granting rebate of



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duty. I note that the above view has also been followed by the Hon'ble High Court of Chattisgarh in a recent judgment in the case of M/s Tiruputi Steel Traders Vs. Assistant Commissioner of C.Ex., Nagpur decided on 25.07.2018 as reported in 2019 (365) E.L.T 497. Further the Government has already decided the said issue *vide* GOI Orders Nos. 246/2011-CX., dated 17-3-2011, 216/2011-CX., dated 7-3-2011, 835/2011-CX., dated 17-3-2011 and 736/2011-CX., dated 13-6-2011 holding the above said views.

10. From perusal of records, I observe that originally the rebate claim was filed by the respondent on 29.12.2017. However, the claim was returned to the respondent as the supporting documents said to have been enclosed were not enclosed with the claim. The refund claim was again filed by the respondent on 26.06.2018 after expiry of one year from the date of export of goods prescribed under Section 11B of the Act. Since the ARE-1s are prior to 28.05.2017, the rebate claim filed on 26.06.2018 is barred by limitation in terms of Section 11 B. Further, I find that a claim is said to have been filed from the date on which the claim is complete in all respect. Therefore, the plea of the respondent is not acceptable and the decision relied upon by them is also of no help to them.

11. I note that the respondent relied on the various judgments regarding procedural relaxation on technical grounds. I would like to emphasize that when the respondent seeks rebate under Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 *ibid*, the respondent should have ensured strict compliance of the conditions attached to the said Notification. I further place reliance on the Judgment in the case of *Mihir Textiles Ltd. Vs. Collector of Customs, Bombay, 1997(92) E.L.T 9 (S.C.)* wherein it is held that :

“concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory.”



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12. I further observe that the respondent has contended that the claim was returned to them on the ground of jurisdictional dispute. In this regard, since the respondent has been regularly filing various rebate claims prior to filing of the subject rebate claim and they have also filed various rebate claims after filing of the subject rebate claim, therefore the department as well as the respondent were well aware about the jurisdiction of the case. Therefore, I agree with the appellant-department that the jurisdiction dispute does not arise in the present case.

13. In view of the above discussion supported by the judicial pronouncement of the Apex Court, all the submissions/ reliance placed by the respondent do not hold good.

14. In view of my above, I set aside the impugned order and order the respondent to pay the entire amount of Central Excise duty as sanctioned by the refund sanctioning authority vide the impugned order along with applicable interest.

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

14.1 The appeal filed by the Appellant is disposed off as above.

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अ. अ. अय्यर
अधीक्षक (अपीलिया)

(Gopi Nath)
Commissioner (Appeals)
03/17/2020

By Regd. Post AD
To,

1. The Deputy Commissioner, CGST & Central Excise,
Division-Anjar-Bhachau.
2. **M/s Ashland India Pvt. Ltd.**, Plot No. 17-18, Sector-30A Vashi,
Navi Mumbai-400705

Copy to:

- 1) The Principal Chief Commissioner, CGST & Central Excise,
Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, CGST & Central Excise Commissionerate, Kutch-
Gandhidham.
- 3) The Deputy Commissioner, CGST & Central Excise, Division-Anjar-
Bhachau.
- 4) Guard file.

