

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

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



<u>राजकोट / Rajkot – 360 001</u> Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

## रजिस्टर्ड डाक ए. डी. द्वारा :-

अपील / फाइल संख्या / Appeal / File No. V2/87/RAJ/2017

मूल आदेश सं / O.I.O. No. 55/R/AC/2016-17

दिनांक / Date 02-01-2017

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

# RAJ-EXCUS-000-APP-054-2018-19

आदेश का दिनांक / Date of Order:

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20.04.2018

जारी करने की तारीख / Date of issue:

01.05.2018

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

अधिसूचना संख्या २६/२०१७-के.उ.श्. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ 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 17.10.217 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.

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

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

1.M/s Eco Innovative Industries, Plot No. G-1871/1, Near Shri Ram Hospital, Kishan Gate, Metoda GIDC Kalavad Road, Lodhika, Rajkot

इस आदेश(अपील) से व्याथित कोई व्यक्ति निम्नोलेखित तरीके में उपय्क्त 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.

- 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 (A) 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:-
- वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के पुरम, नई दिल्ली, को की जानी चाहिए ।/ The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation. (i)
- उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्ट्रेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा (ii) अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

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

अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्त्त करने के लिए केन्द्रीय उत्पाद श्ल्क (अपील) नियमावली, 2001, (iii) के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्जे किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग 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 क्रमुशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भ्गतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench 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/-. अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अतगेत सेवाकर नियमवाली, 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 माँग ,ब्याज की माँग 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 शल्क का भगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के (B) संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार नाम से किसी भी सार्वजिनक 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 आर्देश (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/-.

वित्त 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 शुक्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुक्क 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 For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) <sup>ै</sup>सीमा श्ल्क, केन्द्रीय उत्पाद श्ल्क 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 श्ल्क" मे निम्न शामिल है

- धारा 11 डी के अंतर्गत रकम (i)
- सेनवेट जमा की ली गई गलत राशि (ii)
- 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 अर्ज़ी एवं अपील को लागू नहीं होगे।/

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

Under Central Excise and Service Tax, "Duty Demanded" shall include : amount determined under Section 11 D;

(ii) amount determined under Section 11 D;
(iii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- (C) श्रारत सरकार को पुनरीक्षण आवेदन:
  Revision application to Government of India:
  इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो 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 केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है।

  In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
  In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट 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 है।/
  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 प्रपन्न संख्या EA-8 में, जो की केन्द्रीय 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 केन्द्रीय 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये 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.
- (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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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, not withstanding 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-I 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.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से 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 ::

M/s. Eco Innovative Industries, Plot No. G-1871/1, Near Shree Ram Hospital, Kishan Gate, Metoda GIDC, Kalawad Road, Lodhika, Rajkot.(hereinafter referred to as 'the appellant') has filed the present appeal against the Order-In-Original No. 55/R/AC/2016-17 Dated. 2.1.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Division-I, Rajkot (hereinafter referred to as "the Rebate Sanctioning Authority)

- 2. The appellant filed their rebate claims of Rs.1,98,377/- and Rs. 1,62,144/- for the goods viz. HDPE Twisted Twine Hanks Packets (CETSH-5607400), exported vide ARE-1 No. 2/31.7.2015 & 3/8.8.2015 through their Merchant Exporter M/s Anjali International, on dated. 11.11.2016. On Scrutiny of the both the rebate claims documents viz. ARE-1, Shipping Bill, Bill of lading & Mate's Receipt, it was observed that the goods were shipped on board on 13.8.2015 and the above said 2 rebate claims were filed on 11.11.2016 i.e. beyond the prescribed time limit of one year. The late filing of the claims resulted in the claim being time barred. Therefore, Show Cause Notice dated. 2.12.2016 was issued to the appellant proposing rejection of their rebate claims being time barred in terms of Section 11B of Central Excise Act, 1944. The aforesaid Show Cause Notice was adjudicated vide impugned order dated. 2.1.2017, wherein the Rebate Sanctioning Authority rejected the rebate claims of Rs.1,98,377/- & Rs. 1,62,144/- under Rule 18 of Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944.
- 3. Being aggrieved by the impugned order, the Appellant filed the present appeal, inter alia, mainly on the following grounds;
  - Rebate Sanctioning Authority has grossly erred in rejecting their two rebate claims as time barred on absolutely unlawful grounds as both the rebate claims were duly received in the office of the Rebate Sanctioning Authority on 10.8.2016 along with all the required documents establishing physical export of the goods and accordingly, the actual date of filing of application of rebate claims would be 10.8.2016 not dated.11.11.2016 as contended by the rebate sanctioning

सत्यापितः प्रिक्रण पोपट

अधीक्षक (अपील्स)

authority. Reliance placed on the decision in the case of

- i) Dagger Forst Tools Ltd.:2011(271) ELT 471(G.O.I)s
- ii) Apar Industries Vs Union of India 2016 (333) ELT 246 (Guj.)
- iii) Shasun Pharmaceuticals Ltd. Vs Joint Secretary ,M.F.(D.R.), New Delhi-2013(291)ELT 189(Mad.)
- There was no deficiency; Deficiency pointed out by the rebate Sanctioning Authority itself was void as much as neither Rule 18 of CER, 2002 nor notification No. 19/2004-CE(NT) dated. 6.9.2014 does specify that the rebate claim documents should be attested by the merchant exporter.
- that in the Para 8.4 of Chapter 8 of the Manual, there is no provision of returning of the rebate claims unsanctioned to the claimant. There was no reason for the Rebate Sanctioning Authority to issue deficiency memo, particularly when all relevant documents, duly attested by the appellant; establishing export of goods were submitted by the appellant. Reliance placed on the decision in the case of Vinergy International Pvt. Ltd., 2012(278) ELT 407(GOI) & Sanket Industries 2011 (268) ELT 125 (GOI).
- There is no provision to return the rebate claims unsanctioned.
- The decision in the case of M/s Indian Oil Corporation Ltd v/s Union of India-2016(342) ELT48 (Guj) & Vikram Knittex Pvt. Ltd.,Vs Union of India 2014-TIOL-333-HC-AHM-CX (2014(304) ELT344 (Guj) relied upon by the Rebate Sanctioning Authority clearly distinguishable to their case.
- 4. Hearing in the matter was held on 27.2.2018, which was attended by Shri P. D. Rachchh, Advocate, who reiterated the submissions of appeal memo and made available the copies of Judgments ,which are forming the part of appeal memo for consideration.
- 5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and written as well as oral submissions made by the appellant including at the time of personal hearing.

5.1 I find that the core issue to be decided in the present appeal

Page No. 5 of 9

प्रवीण पोपट

# is whether the adjudicating authority has rightly rejected the rebate claims on the ground of limitation.

- The undisputed fact of the case is that on 9.8.2016, appellant filed rebate claims of Rs. 1,98,377/- & Rs. 1,62,144/- for the goods exported vide ARE-1 No. 2/31.7.2015 & 3/8.8.2015 respectively. The Goods were exported/shipped on Board on 13.8.2015. As the copies of Shipping Bill, Bill of Lading, Mate Receipt and Customs Invoice annexed with the Rebate claim were not self-attested by the Merchant Exporter, a deficiency memo dated 4.10.2016 and reminder on dated. 19.10.2016 were issued to the appellant. As the appellant did not submit the required documents attested by the Merchant Exporter as pointed out in the deficiency memo, the above said 2 rebate claims were returned un-sanctioned to the appellant along with all the relevant documents on dated 4.11.2016.After complying with the deficiency pointed out vide deficiency memo dated 4.10.2016, the appellant submitted both the claims on dated 11.11.2016. The same were rejected under the impugned order.
- In this regard, I find that as per Para 8.3 of the Chapter 8 EXPORT UNDER CLAIM FOR REBATE the exporter was required to submit following documents for filing the claim of rebate.
  - A request on the letterhead of the exporter containing claim of rebate, ARE1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each ARE1 and its calculations,

  - (ii) Original copy of the ARE1,(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
- I find from the narration at Para 13 of the impugned order, rebate sanctioning authority found the claim deficient in terms of Para 2.4 Chapter 9 of CBEC's Excise Manual of Supplementary Instruction, 2005 and returned the claims unsanctioned in terms of Para 3.2 of Chapter 9 of CBEC's Excise Manual of Supplementary Instruction, 2005 for non-compliance of the deficiency Memo.

2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary Instruction, 2005

Page No. 6 of 9

"It may not be possible to scrutinize the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund......."

# Para 3.2 of Chapter 9 of CBEC's Excise Manual of Supplementary Instruction, 2005

"The Divisional Office will scrutinize the claim, in consultation with Range, where necessary and check that the refund application is complete and is covered by all the requisite documents. This should be done at the time of receipt of refund claim and in case of any deficiency, the same should be pointed out to the application with a copy to the Range Officer within 15 days of receipt"

5.5 I find that as per para 2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary Instruction, 2005 It may not be possible for the Rebate Sanctioning Authority to scrutinize the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, which may cause delay in sanction of the refund. In the present case, it is admitted on either side that appellant have attached all the requisite documents but the documents in questions were merely not self-attested by their Merchant Exporter. I do not find the above lapse as substantive in view of Para 8.3 of the Chapter 8 of CBEC's Excise Manual of Supplementary Instruction, 2005; which may hamper the work of the Rebate Sanctioning Authority for checking the Admissibility of the Rebate claims in question. If above lapse was substantive in nature, why the Rebate . the Sanctioning Authority did not reject the Rebate Claims for noncompliance of the Query Memo rather than returning the claim unsanctioned. My above contention also find force from the decision been given in the case of M/s Balmer Lawrie & Co. Ltd. Vs Commissioner of C.Ex. Kolkata-VI(2015(315)ELT100(Tri.Kolkata) wherein it is held that

Page No. 7 of 9

सत्यापितं,

्रिवीण पापट कारीशस (अपील्स) the Asst. Commissioner should accept it in full or in part or may reject it. However, instead of rejection of the claim, it was directed by the Department on 5-3-2003, to file more documents/removal of defects, which the Appellant had carried out the said direction by removing the defects. In such circumstances, it cannot be said that the refund claim was filed for the first time on 12th June, 2003 and hence, barred by limitation. In our view, the date of claiming the refund of duty paid in excess, be the date when the claim was launched with the department i.e. on 11th December, 2002."

8

5.6 In view of the discussion in the foregoing paras, the lacuna been pointed out in the deficient memo in question is not substantive in nature and the action of the rebate sanctioning Authority is not justifiable, I hold that though the rebate claim papers were re-submitted on dated.11.11.2016 after due compliance of the lacuna been pointed out, the relevant date for filing rebate člaims in the present case would be the date on which the claim was initially filed with the Rebate Sanctioning Authority i.e. 9.8.2016 and hold that the rebate claims in question were filed within the prescribed time limit of one year as per Section 11B of the Central Excise Act, 1944.

- In view of my observation in the preceding paras, I set aside the impugned order and allow the appeal.
- ቒ. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 6. The appeal filed by the appellant stands disposed off in above terms.

अपर महानिदेशक ऑडिट / आयुक्त (अपील्स)

#### By Regd. Post A.D. /Speed Post

F/NO.V2/87/RAJ/2017

Dated 20.04.2018

M/s. Eco Innovative Industries,

"Nilkanth",

6, Rajhans Society,

Opp. Sojitra Nagar Water Tank,

B/H Nirmala School,

Rajkot-360007

#### Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner (Appeals), Central Taxes, Rajkot.

Page No. 8 of 9

- 3) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- 4) The Assistant Commissioner, GST & Central Excise, Division....., Rajkot.
- 5) The Superintendent, Range-....., GST & Central Excise, Division.....,Rajkot
- Guard File.
  - 7) Guard File for O/o the Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.