

REGISTERED SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 198/12/17, 198/13/17, 198/14/17, 198/15/17,
198/22/17, 198/29/17, 198/30/17,
198/31/17, 198/32/17, 198/33/17, 11654

Date of Issue:- 03.03.2021

ORDER NO. 104-113 /2021-CEX (SZ) /ASRA/MUMBAI DATED 25.02.2021 OF THE
GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-
OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF
THE CENTRAL EXCISE ACT, 1944.

Subject :- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against
the Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals-II),
Trichirappalli.

Sl. No.	Revision Application No.	Order in Appeal No. & Date	Applicant	Respondent
1.	198/12/17-RA	66/2016-TRY(CEX)(R) dtd. 21.09.2016	Commissioner of Central Excise & Service Tax, Tiruchirappalli- 620 001	M/s Sanmar Foundries Ltd. Viralmalai - 621316
2.	198/13/17-RA	67/2016-TRY(CEX)(R) dtd. 21.09.2016	---do---	---do---
3.	198/14/17-RA	68/2016-TRY(CEX)(R) dtd. 21.09.2016	---do---	---do---
4.	198/15/17-RA	69/2016-TRY(CEX)(R) dtd. 21.09.2016	---do---	---do---
5.	198/22/17-RA	84/2016-TRY(CEX)(R) dtd. 01.11.2016	---do---	---do---
6.	198/29/17-RA	83/2016-TRY(CEX)(R) dtd. 01.11.2016	---do---	---do---
7.	198/30/17-RA	82/2016-TRY(CEX)(R) dtd. 01.11.2016	---do---	---do---
8.	198/31/17-RA	81/2016-TRY(CEX)(R) dtd. 01.11.2016	---do---	---do---
9.	198/32/17-RA	79/2016-TRY(CEX)(R) dtd. 01.11.2016	---do---	---do---
10.	198/33/17-RA	80/2016-TRY(CEX)(R) dtd. 01.11.2016	---do---	---do---

ORDER

These Revision Applications have been filed by the Commissioner of Central Excise & Service Tax, Tiruchirappalli (hereinafter referred to as the "applicant") against Orders-in-Appeal passed by the the Commissioner of Central Excise (Appeals-II), Trichirappalli shown at column 5 of Table shown below:

-:TABLE:-

Sl.No.	Revision Application No.	Rebate claim Amount rejected/ disallowed (Rs.)	Rejected vide Order in Original (OIO) No.	OIO set aside vide Order in Appeal (OIA) No.
1	2	3	4	5
1.	198/12/17-RA	1,12,355/-	137/2015-R dated 14.12.2015	66/2016-TRY(CEX)(R) dtd. 21.09.2016
2.	198/13/17 -RA	80,709/-	139/2015-R dated 22.12.2015	67/2016-TRY(CEX)(R) dtd. 21.09.2016
3.	198/14/17-RA	1,43,650/-	110/2015-R dated 26.10.2015	68/2016-TRY(CEX)(R) dtd. 21.09.2016
4.	198/15/17-RA	87,292/-	124/2015-R dated 30.11.2015	69/2016-TRY(CEX)(R) dtd. 21.09.2016
5.	198/22/17-RA	1,01,326/-	144/2015 dated 22.01.2016	84/2016-TRY(CEX)(R) dtd. 01.11.2016
6.	198/29/17-RA	11,05,729/-	133/2015-R dated 10.12.2015	83/2016-TRY(CEX)(R) dtd. 01.11.2016
7.	198/30/17-RA	17,528/-	132/2015-R dated 10.12.2015	82/2016-TRY(CEX)(R) dtd. 01.11.2016
8.	198/31/17-RA	47,229/-	131/2015-R dated 10.12.2015	81/2016-TRY(CEX)(R) dtd. 01.11.2016
9.	198/32/17-RA	3,90,632/-	125/2015-R dated 03.12.2015	79/2016-TRY(CEX)(R) dtd. 01.11.2016
10.	198/33/17-RA	8,39,727/-	130/2015-R dated 10.12.2015	80/2016-TRY(CEX)(R) dtd. 01.11.2016

2. The brief facts of the case are that the respondent, i.e. M/s Sanmar Foundries Ltd. Viralimalai, manufacturers of Industrial Valves of various types and sizes, Stainless Steel Castings, Non-Alloy Steel Castings and machined castings falling under Chapter 73, 84 and 90 of the First Schedule to Central Excise Tariff Act, 1985. The respondent had filed rebate claims under Rule 18 of Central Excise Rules, 2002 on various dates being the duty paid on goods cleared for export from the factory of manufacture viz. Stainless Steel Castings & Non-Alloy Steel Castings, Meter parts, Valves, Actuators and Pipes and Tube Fittings (Swivel), "Identifiable ready to use MCD Parts made wholly of Carbon steel manufactured through casting process", "Valve Accessories" and "Industrial Valves (Cast / Forged body)", exported during 2014.

3. The rebate sanctioning authority rejected rebates claims for the amounts shown at column 3 of above table on the following grounds:

3.1 Reasons for rejection of Rebate to the extent of Rs. 1,12,355/-vide Order in Original No. 137/2015-R dated 14.12.2015 (Sl. No. 1 of the Table above):-

- Wrong mentioning of Case No. in the Airway Bill and Omission of flight No. and date in Part B certification by the Customs Officer in the ARE-1.
- Wrong mentioning of Vessel Name in Bills of Lading.
- Non Mentioning of case Nos in relevant Airway Bills (In 3 ARE-1s)
- Discrepancy in mentioning shipping Bill No. & Date, vessel name, date of shipment and the description of goods & Chapter heading in ARE-1 and in the relevant shipping Bills.
- Wrong mentioning of vessel name in shipping Bill.

3.2 Reasons for rejection of Rebate to the extent of Rs. 80,709/-vide Order in Original No. 139/2015-R dated 22.12.2015 (Sl. No. 2 of the Table above):-

- Invoice No. not mentioned in the Airway Bill.
- Discrepancy in Chapter heading and Description of goods mentioned , the relevant chapter heading is shown as 73259930 Stainless Steel Castings in the ARE-1 but the shipping Bill it was mentioned as 73259999-Non alloy Steel Castings.
- Discrepancy in container No. between Shipping Bill and Bill of Lading.
- Wrong mentioning of Case No. in the Bill of Lading.

3.3 Reasons for rejection of Rebate to the extent of Rs. 1,43,650/- vide Order in Original No. 110/2015-R dated 26.10.2015 (Sl. No. 3 of the Table above) :-

- Different container number appearing on Shipping Bill and corresponding Bill of Lading.
- In 1 ARE-1, the description of goods is mentioned as "Pipes and Tube Fittings" (Swivel) with CETH No.73072200 but in the relevant shipping Bill (CETH No 84818090) & Bill of lading the same is given as "Industrial Valves (Cast / Forged Body)".

3.4 Reasons for rejection of Rebate to the extent of Rs. 87,292/-vide Order in Original No.124/2015-R dated 30.11.2015 (Sl. No. 4 of the Table above):-

- Flight No. omitted in Airway Bill.
- The description of goods is mentioned as Non alloy Steel Castings instead of Stainless steel castings in the Airway Bill.
- The ARE-1 mentioned 13 cases whereas Bill of Lading mentioned 5 cases.

3.5 Reasons for rejection of Rebate to the extent of Rs. 1,01,326/- vide Order in Original No. 144/2015 dated 22.01.2016 (Sl. No. 5 of the Table above) :-

- Wrong mentioning of Case No. in the Bill of Lading.

3.6 Reasons for rejection of Rebate to the extent of Rs. 11,05,729/- vide Order in Original No. 133/2015-R dated 10.12.2015 (Sl. No. 6 of the Table above) :-

- Non Mentioning of Invoice Nos in the relevant Airway Bills.
- Wrong mentioning of Vessel Name in Bills of Lading.
- Discrepancy in Shipping Bill Date in the relevant ARE-1
- Discrepancy in the Description of goods.
- The description of goods is mentioned in the ARE-1 as "Pipes and Tube Fittings" (Swivel) with CETH No.73072200 but the same was mentioned in the relevant shipping Bill as "T'dble R to

use M/P / Compts made wholly/predominantly of Stainless Steel Mfd thro Casting Process” with CETH No 73079990.

- The description in the ARE-1 was given as Non alloy Steel castings’ with Chapter heading 73259999 but the same was mentioned in the shipping Bill as Stainless steel castings with chapter heading as 73259999.
- Non Mentioning of ARE-1 No. in the shipping Bill Nos in the relevant Airway Bills.
- The description of goods is mentioned in the ARE-1 as “Pipes and Tube Fittings” (Swivel) with CETH No.73072200 but the same was given in the shipping Bill as Non alloy Steel castings” with CETH No 73259999.
- The description of goods in ARE-1 was given as Actuator with chapter heading 84799090 but the same was mentioned in the shipping bill as Cast Articles including parts/components of Aluminium actuator assembly with chapter heading 76169990.

3.7 Reasons for rejection of Rebate to the extent of Rs. 17,528/- vide Order in Original No. 132/2015-R dated 10.12.2015 (Sl. No. 7 of the Table above) :-

- Discrepancy in the Description of goods as well as chapter heading is not matching with relevant shipping bill.
- Omission of flight No. date Shipping Bill No. and case No. in the relevant Airway Bill.

3.8 Reasons for rejection of Rebate to the extent of Rs. 47,229/- vide Order in Original No. 131/2015-R dated 10.12.2015 (Sl. No. 8 of the Table above) :-

- Discrepancy in the Description of goods as well as chapter heading.
- Due to non submission of collateral evidences.

3.9 Reasons for rejection of Rebate to the extent of Rs. 3,90,632/- vide Order in Original No. 125/2015-R dated 03.12.2015 (Sl. No. 9 of the Table above) :-

- The Vessel name, Voyage No. and container No. not mentioned in the relevant Shipping Bills and Bill of Ladings.

3.10 Reasons for rejection of Rebate to the extent of Rs. 8,39,727/-vide Order in Original No. 130/2015-R dated 10.12.2015 (Sl. No. 10 of the Table above) :-

- The Vessel name, container No. not mentioned in the relevant Shipping Bills..
- Wrong mentioning of Vessel Name in Bills of Lading.
- Omission of flight No. date Shipping Bill No. in the relevant Airway Bill.
- Discrepancy in container No. between Shipping bill and Bill of Lading.
- The Vessel name, Voyage No. and container No. not mentioned in the relevant Shipping Bills.
- Wrong mentioning of Case No. in the Bill of Lading compared with ARE-1.
- Discrepancy in description of goods mentioned in ARE-1 Nos. and relevant shipping Bills.

4. Being aggrieved with the said orders, rejecting rebate claims for the reasons mentioned above, the respondent filed the appeals before Commissioner (Appeals). Commissioner (Appeals) vide Orders in Appeal mentioned at column No. 5 of Table at para 1 supra, set aside these Orders in Original and allowed the appeals filed by the respondent.

5. Being aggrieved, the applicant department filed present revision applications against the impugned Orders in Appeal mainly on the following common grounds:

5.1 The orders of Commissioner (Appeals) appear to be not legal and proper as the appellate authority failed to consider the following points:-

(a) In all the ARE-1s and export documents based on which the export incentives are claimed by the assessee, many discrepancies with reference to the description of goods with wrong classification, vessel name, flight details, gross weight net weight, etc., were wrongly declared.

(b) The rebate claims are being an export incentive scheme and the Notification provides for filling of rebate claims by the exporter/claimant which envisages proving that the goods declared in the ARE1s were indeed exported and the onus is not on the department for granting, presumptively.

(c) The decision of the Revisionary Authority, in the case of M/s.Electro Steel Casting Ltd., as reported in 2015(321) ELT150 (GOI) not applicable to the facts and circumstances of the case as in the instant case goods were not cleared under physical supervision of Central Excise Authorities. Export was done by the assessee and no physical supervision was done by the Central Excise Authorities.

(d) The decision of the Revisionary Authority, in the case of M/s.Ran's Pharma Corporation, as reported in 2014(314) ELT953 (GOI) is also not applicable as in the case the goods were procured from a different manufacturer. In the above said decision, the issue in dispute was that the goods cleared from the manufacturer's premises and the goods that were exported by the merchant-exporter from the Air Cargo Complex, Ahmadabad were one and the same. In the issue on hand the goods were manufactured and cleared by the assessee and hence the decision it not applicable to the present case.

(e) In the case of Bhavnagar university vs. Politana Sugar Mills Pvt Ltd., as reported in (2003) 2 SSC 111, the Hon'ble Apex Court has held that "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision." The Hon'ble Supreme Court in the case of CCE Bangalore Vs Srikumar Agencies 2008(232)ELT 577(SC) held that Court decision not statue- Reliance thereon without discussion of facts- Decision not to be relied upon without discussing similarity of facts- Judgements of courts not to be construed as statutes- Circumstantial flexibility, additional or different fact may make a world of difference between conclusions in two cases-DisPOsal of cases by blindly placing reliance on a decision not proper". As the facts of the case referred by the appellate authority are different from the present dispute, the decisions rendered therein are not squarely applicable to the case on hand.

(f) The Revisionary authority, CBEC, New Delhi in their order No.103-141/14 CX. Dated 31.3.2014 in respect of appeal of M/s Sanmar Foundries, Viralimalai, against the order of rebate sanctioning authority rejecting rebate claims in respect of ARE1s where description of goods varies between excise documents and export documents held that;

"while preparing ARE 1, the applicant was fully aware that the goods required to be exported and export documents like shipping bill and bill of landing, etc., are to be filed for export. Under such circumstances, it cannot be justified as to how there can be mismatch of description between excise document and export documents. Applicants as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation which he failed to do. Under such circumstances, the rebate claim are rightly held inadmissible."

The above said decision of the Government of India mutandis mutatis applicable to the instant case on hand under dispute and the decision of the Revisionary Authority dated 31.3.2014 is of recent one and the same should have been considered by the appellate authority while deciding the issue.

(g) The mere fact of receipt of foreign exchange is only for corroborative evidence and receipt of the foreign exchange alone does not in any way prove the goods cleared from the factory and exported are one and the same.

(h) The rebate of duty is an export incentive scheme extended to the manufacturers and all safeguards and conditions mentioned in the Notifications are to be scrupulously complied with for sanction of rebate, Further, the Central Excise Rules, 2002 prescribes the details to be available in the Excise invoice and ARE-1s. The description of goods in both must be the same. The shipping bills are filed by the assessee and at the time of preparation of the same they must aware of the description of goods. Assessee cannot mention one description in excise invoice and another description in shipping Bill, when both the documents are prepared by them.

(i) The consignment was not opened for physical examination as evident by the remarks in the Shipping Bills, endorsement by the Customs Officers in the ARE-1s cannot conclusively prove that the goods cleared from factory and exported were one and the same.

5.2 Additionally, the applicant also made following grounds in the Revision Applications shown below:-

RA No. 198/22/17-RA against OIA No. 84/2016 dated 01.11.2016

(a) In all ARE-1s and Export documents based on which the export incentives are claimed by the assessee, many discrepancies noticed in the claim with reference to omission as discussed. In the ARE-1 No. 101336/14-15, dated 08.01.2015, the goods were cleared for export in case Nos.18790 to 18794 and 19440 to 19441 whereas in the relevant Bill of Lading, the case numbers were mentioned as 10790-18794 and 19940-19941 respectively.

RA No. 198/29/17-RA against OIA No. 83/2016 dated 01.11.2016

(a) In all the ARE-1s and export documents based on which the export incentives are claimed by the assessee, many discrepancies noticed in the claim with reference to omission as discussed above. In the ARE-1

No.100368/16.06.2014, the packing list No.1052016887 was wrongly mentioned instead of Invoice No.1053015294 in Airway Bill. The correlation could not be established in the Airway Bill as it did not contain any details of shipping bill No. or Invoice No. and the relevant shipping bill also did not have cross reference of HAWB; Discrepancies in the Description of goods in respect of ARE-1 Nos. 200197/27.06.2014, 300043/20.06.2014, 300044/20.06.2014, 300046/20.06.2014, 300048/20.06.2014, 300052/27.06.2014, 300053/27.06.2014, 300063/29.06.2014, 300070/30.06.2014, 300065/30.06.2014, 300066/30.06.2014, 300067/30.06.2014, 300068/30.06.2014, 300069/30.06.2014, 200193/09.06.2014 and 300050/27.06.2014;

Similarly, the discrepancy in shipping bill No. in respect of ARE-1 No.200223/20.06.2014; Non-mentioning of ARE-1 No.200230/20.06.2014 in the relevant shipping bill No.; Wrong mentioning of Vessel name in Bills of Lading in respect of ARE-1 Nos.200222/20.06.2014 and 200226/20.06.2014.

RA No. 198/30/17-RA against OIA No. 82/2016 dated 01.11.2016

(a) Omission of flight number & date and shipping bill number, case number, and Airport of departure in the Airway Bill in respect of ARE-1 No.100367. The correlation could not be established in the Airway Bill as it did not contain any details of shipping bill No. or Invoice No. and the relevant shipping bill; Similarly, the discrepancy in respect of description of the goods as well as the Chapter heading number in respect of ARE-1 No.300027 is not matching with the relevant export documents.

RA No. 198/31/17-RA against OIA No. 81/2016 dated 01.11.2016

(a) The claimant did not furnish the original and duplicate copies in respect of ARE-1 No.100018-14-15, dated 10.04.2014. It is also noticed that Let Export Order was issued on 11.04.2014 and the Mate Receipt/Bill of Lading indicates that the date of shipment on board as 15.04.2014. therefore, in the absence of original/duplicate copies of ARE-1, no proof was adduced to confirm the date of shipment is on or after 17.04.2014 so as to verify the time limit as prescribed under Section 11 B of the Central Excise Act, 1944; Omission of flight number & date and shipping bill number in the relevant Airway Bill /Bill of Lading in respect of ARE-1 No.100053, 100079, 200067 and 200068, and also omission of shipping bill number in the relevant Airway Bill in respect of ARE-1 No.100079; Discrepancies in description of goods as well as Chapter heading number in respect of of ARE-1 Nos.300000 and 300001 is not matching with the relevant export documents.

RA No. 198/32/17-RA against OIA No. 79/2016 dated 01.11.2016

(a) The claimant did not mention container nos in shipping Bill and Bill of Lading in respect of ARE-1 Nos.101534/25.02.2015, 101535/25.02.2015 and 101536/25.02.2015. As the details like vessel name, voyage number and container number was not mentioned in the Shipping Bill, and container No. was not mentioned in the Bill of Lading, the correlatability could not be established as they

have not produced sound justification for non-mentioning of container number. Also the claimant could not justify the variation realisation as appeared in eBRC.

RA No. 198/33/17-RA against OIA No. 80/2016 dated 01.11.2016

(a) The claimant did not furnish the Vessel No. and Container No. in the relevant shipping bill in respect of ARE-1 No.100199/16.05.2014 which results in not to adduce correctable evidence to verify with other export documents; Discrepancy in container number between shipping bill and bill of lading for ARE-1 No.100281/30.05.2014 and 100283/30.05.2014. When the goods stuffed in the Container No. HDMU 4656386 had passed the customs clearance under shipping bill no. 3050481 and 3052744 both dated 31.05.2014, this container should have been exported. Instead, in the relevant Bill of Lading container No.DFSU6621591 was said to have been exported; In respect of the discrepancy in description of goods mentioned in ARE-1 No. and relevant Shipping Bill - ARE No.300017/14-15 dt.14.05.2014, 300019/14-15 dt.14.05.2014, 300020/14-15 dt.14.05.2014 300024/14-15 dt.30.05.2014, 300025/14-15 dt.30.05.2014, 300026/14-15 dt.30.05.2014, 300037/14-15 dt.31.05.2014 and 300039/14-15 dt.31.05.2014. The discrepancy in the description of goods as "Pipes and Tube Fittings (Swivel)" with CETH No.73072200 in the ARE-1 No.300024, 300025 & 300026 all dated 30.05.2014 and 300039 dated 31.05.2014 and in the relevant Shipping Bill and Bill of Lading as "Industrial Valves (Cast/Forged body)" with CETH No.84818090, leads to the raise of two questions as (i) where the "Pipes and Tube Fittings (Swivel)" with CETH No.73072200 removed vide the ARE-1 was supplied or sold? and (ii) From where the "Industrial Valves (Cast/Forged body)" with CETH No.84818090 Shipped vide the shipping bill No. 2732340 dt.15.05.2014 and relevant Bill of Lading were originated? Like-wise in the ARE 1 Nos.300017, 300019, 300020, 300021 & 300037 the description of goods were different from the one shown in the relevant Shipping Bills; Wrong mentioning of Vessel name in Bill of Lading in respect of ARE-1 No. 100150/14-15 dated 08.05.2014 and No. 100151/14-15 dated 08.05.2014; Non-mentioning of Vessel nos. Voyage No. and container nos. in shipping bill in respect of ARE-1 Nos.100292, 100293 and 100294.As the details like vessel name, voyage number and container number is not mentioned in the Shipping Bill and the correlatability could not be established as they have not produced the amended Shipping bill incorporating the required details; Wrong -mentioning of Case no. in the Bill of Lading compared with ARE 1 in respect of ARE-1 Nos. 100295 and 100296. Discrepancy in description of goods

6. Personal hearing in this case was held on 08.01.2021 through video conferencing and Ms. Sharanya Vijay. K, Advocate duly appointed by the respondent company appeared online for hearing. She re-iterated their written submissions dated 06.01.2021 and stated that Commissioner (Appeals) has rightly allowed their benefit of rebate as minor errors cannot take away their substantive claim when duty payment, export and all other documentation is in order. Nobody from the applicant department appeared for the personal hearing. In their written submissions dated 06.01.2021 the respondent company submitted as under:-

6.1 All the cases the goods have been actually exported; goods have left the country and the foreign exchange has also been realised. There is no dispute on any of these aspects.

6.2 The Commissioner (Appeals) had gone into all aspects and has clearly recorded the finding that the rebate has to be allowed since;

(i) Value of goods and description in Shipping Bill and ARE-1 match.

(ii) Value in USD matches across all documents in export invoice, excise invoice, ARE-1 and Shipping Bill.

(iii) Goods have been exported and export proceeds have been received and relevant BRC's are available.

(iv) Even if there is any minor procedural lapses in the documents, that cannot take away the beneficial provisions.

6.3 The alleged defects are only minor and technical in nature. The fact that goods have been exported is never in dispute in respect of these matters.

6.4 The objective of excise rebate under Rule 18 is to ensure that only the goods are exported and the taxes are not exported. Even though there is no requirement for receipt of convertible foreign exchange in Rule 18 this receipt has also been demonstrated. They have already produced all relevant documents establishing the genuineness of the transaction and the same stands well accepted by the Commissioner (Appeals) vide its order. Moreover, the adjudicating authority while passing the Order-in-Original has made a clear observation to the effect that the respondent has exported its goods. That being the case, the department cannot approbate and reprobate as laid down by the Tribunal in the case of Griffin Laboratories Ltd Vs. CC (1989) 41 ELT 613 & Laxindco Steel Pvt Ltd Vs. CCE (2008) 10 STR 527.

6.5 They have satisfied all the conditions specified under the Notification No.24/2011 dated 05.02.2011 issued under Rule 18 which deals with the rebate of duty on export of goods and the same remains undisputed. That being the case, they are rightly eligible for the refund. Also, the relevant documents were endorsed by the proper officer of Customs. The decision of the Hon'ble GOI in Ran's Pharma Corporation case (2014) 314 ELT 953 (G01) & Electro Steel Casting Ltd (2015) 321 ELT 150 (G01) is squarely applicable to their case as the operative portion of the said decision reiterates the well settled POsition of law that rebate cannot be denied for minor procedural infractions.

6.6 A number of decisions of the Government of India in revision proceedings and the decisions of the Supreme Court on export benefits are relevant to the issue and given below:-

1. In Re. Electro Steel Castings (2015) 321 ELT 150 (GOI),
2. In Re. Socomed Pharma Pvt. Ltd. (2014) 314 ELT 949 (GOI),
3. In Re. Aventis Pharma Ltd (2012) 285 ELT 151 (GOI)
4. In Re AG Enterprises (2012) 276 ELT 127,
5. Suksha International Vs. UOI (1989) 39 ELT 503 (SC),

6. Formica India Vs. Collector of Central Excise (1995) 77 ELT 511 (SC),
7. Mangalore Chemicals and Fertilizers Ltd. Vs. Dy. Commissioner — (1991) 55 ELT 437 (SC),
8. Ford India Pvt. Ltd. Vs. ACCE (2011) 272 ELT 353;
9. Shasun Pharmaceuticals Vs. IV (2013) 291 ELT 189;
10. Union of India Vs. Farheen Texturisers (2015) 323 ELT 104 — Bom SLP Dismissed by Supreme Court in (2015) 323 ELT A23;
11. Zandu Chemicals Ltd. Vs. UoI (2015) 315 ELT 520 (Bom.)
12. Shree Ambika Sugars Ltd. V/s JS (2019) 368 ELT 334-Mad.

The excise duty has been duly paid and rebate was legitimately claimed in accordance with law. Therefore, the application filed by the department against the Order of the Commissioner (Appeals) may be dismissed.

7. Government has carefully gone through the relevant case records and perused the impugned Orders-in-original and orders-in-appeal as well as written submissions dated 06.01.2021 filed by the respondent. As the issue involved in these Revision Applications are common, they are taken up together and are disposed off vide this common order.

8. Government notes that in all the above cases the adjudicating authority rejected the Rebate Claims filed by the applicant on the grounds specified at paras 3.1 to 3.10 supra due to which it could not be established that the same goods which were manufactured and cleared by the applicant were ultimately exported.

9. Commissioner (Appeals) while allowing the appeals filed by the respondent company on verification of the records observed as under :-

(i) Order in Appeal No. 66/2016-TRY(CEX)(R) dtd. 21.09.2016 (RA No. 198/12/17-RA)

*05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant had exported their goods and received their export proceeds in time. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from **Annexure enclosed**. In the instant case, (1) the department contended that the case number omitted in Air Way Bill, whereas the case number clearly mentioned in ARE-1 and also the number of cases mentioned*

in ARE-1, Shipping Bill, Airway Bill and Invoice. (2) The department contended that the flight No. omitted in the Air Way Bill, whereas the flight number was clearly mentioned in ARE-1. (3) The department contended that the vessel Name wrongly mentioned in Shipping Bill and in the Bill of Lading, whereas the vessel name clearly mentioned in the relevant ARE-1 and Bill of Lading and Shipping Bill. (4) The department contended that description of goods and chapter heading mismatched between Excise and Export documents. Whereas the item description and item code were mentioned in Excise invoice and Shipping Bill. Even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(ii) Order in Appeal No. 67/2016-TRY(CEX)(R) dtd. 21.09.2016 (RA No. 198/13/17-RA)

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant had exported their goods and received their export proceeds in time. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from **Annexure enclosed**. In the instant case, (1) the department contended that the flight number and date, case no. and shipping bill No. omitted in Air Way Bill, whereas the flight number and date, case number and shipping bill number were mentioned in respective ARE-1. (2) The department contended that, the container number was wrongly mentioned in B/L. Whereas the container number is clearly mentioned in Shipping Bill. (3) The department contended that the case number was wrongly mentioned in Bill of Lading, whereas the case number was clearly mentioned in ARE-1 and also the number of cases mentioned in the ARE-1, Shipping Bill, Bill of Lading and Excise Invoice and (4) The description of goods mismatched between Excise and Export documents. Whereas the item item number for the said goods were mentioned in POs, S/B, Ex-invoice/ Commercial Invoice/Bill of Lading/ Stock Register. Further the Range Officer has certified that even though the description of goods was mismatched, there is the uniformity of item No. maintained by the assessee in the POs, S/B, Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register. In the case of clearance made in the above mentioned ARE-1s even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(iii) Order in Appeal No. 68/2016-TRY(CEX)(R) dtd. 21.09.2016 (RA No. 198/14/17-RA)

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. I also find that the value in USD and description is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds vide BRC No. YESB0000001000059322 dated 05.01.2015. On verification of said BRCs with other related documents, it is clearly established that the appellant had exported their goods and received their export proceeds in time. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from **Annexure enclosed**. While the department contended that the container number was wrongly mentioned in shipping bill, whereas the appellant has subsequently produced the corrected copy of the Shipping Bill wherein the correct container number was mentioned in the shipping Bill which was duly attested by the Customs Authority. (2) With respect to the ARE-1 No. 300018/14-15 dated 14.05.2014 the LAA held that the description of goods mismatched between Excise and Export documents. Whereas the item number for the said goods were mentioned in the POs, S/B, Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register. Further the Range Officer in para 16(iii) of the said OIO has certified that even though the description of goods was mismatched, there is the uniformity of item no. maintained by the assessee in the POs, S/B, Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register in case of clearance made in the above mentioned ARE-1 Annexure enclosed. Even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(iv) Order in Appeal No. 69/2016-TRY(CEX)(R) dtd. 21.09.2016 (RA No. 198/15/17-RA)

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant has exported their goods and received their export proceeds in time. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from **Annexure enclosed**. In the present appeal (1) the department contended that the Flight No. & date, omitted in Air Way Bill, however the same was mentioned in ARE-1. (2) The department contended that the case number is wrongly mentioned in the Bill of Lading. But the Case Number was

clearly mentioned in ARE-1 and (3) The description of goods mismatched between Excise and Export documents. Whereas the description of goods matched in the relevant ARE-1, Shipping Bill and Excise invoice. Even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(v) Order in Appeal No. 84/2016-TRY(CEX)(R) dtd. 01.11.2016 (RA No. 198/22/17-RA)

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant has exported their goods and received their export proceeds in time. Further the factum of Export is established. (1) the LAA contended that the case number is wrongly mentioned in Bill of Lading. But the Case Number was clearly mentioned in ARE-1. The ARE-1 wise findings by the undersigned are enclosed to the OIA. Even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(vi) Order in Appeal No. 83/2016-TRY(CEX)(R) dtd. 01.11.2016 (RA No. 198/29/17-RA)

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant has exported their goods and received their export proceeds in time. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from **Annexure enclosed** to this OIA. In the instant case, (1) the LAA contended that the flight number and date was omitted in the Air Way Bill, whereas the flight number and date were clearly mentioned in ARE-1 by the Customs Authority themselves. (2) The LAA contended that the invoice number was omitted in Air Way Bill, whereas the said invoice number was mentioned in ARE-1 and Shipping Bill. (3) The LAA contended that the Shipping Bill date was wrongly mentioned in ARE-1 whereas the Shipping Bill number and date was clearly mentioned in Bill of Lading and also the said

ARE-1 number was mentioned in the concerned Shipping Bill. (4) The LAA contended that the Shipping Bill number and date wrongly mentioned in ARE-1, whereas the ARE-1 Number and date was clearly mentioned in Shipping Bill. (5) The LAA contended that, the ARE-1 number was omitted in Shipping Bill, whereas the Shipping Bill number was mentioned in the relevant ARE-1. (6) The LAA contended that the Vessel name wrongly mentioned in Bill of Lading, whereas the Vessel name clearly mentioned in ARE-1 as well as in the Shipping Bill and (7) The description of goods mismatched between Excise and Export documents. Whereas the item number for the said goods were mentioned in the POs, S/B, Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register. Further, the Range officer has certified that even though the description of goods was mismatched, there is the uniformity of item no. maintained by the assessee in the POs, S/B, Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register in case of clearance made in the above mentioned ARE-1s. Even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(vii) Order in Appeal No. 82/2016-TRY(CEX)(R) dtd. 01.11.2016 (RA No. 198/30/17-RA)

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant has exported their goods and received their export proceeds in time. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from **Annexure enclosed** to this OIA. "In the instant cases, (1) the LAA contended that the flight number and date, Shipping Bill no. case no. and Air port of departure were omitted in Air Way Bill. Whereas the said Flight number and date, Shipping Bill Number, Case Number was clearly mentioned in ARE-1 and Air Port of departure were clearly mentioned in the said Shipping Bill, and (2) the LAA also contended that the description of goods mismatched. Whereas the Range Officer himself has certified that the said description were matched and the item number was also maintained by the assessee in the POs, S/B, Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register. The remarks of the undersigned ARE-1wise are given in the enclosure to the OIA. Even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(viii) Order in Appeal No. 81/2016-TRY(CEX)(R) dtd. 01.11.2016 (RA No. 198/31/17-RA).

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. Even though the Original and Duplicate copy of ARE-1 could not be produced by the appellant, however they have produced the EP copy of the Shipping Bill wherein the concerned ARE-1 number was mentioned and also mentioned in the Excise Invoice. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant has exported their goods and received their export proceeds in time. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from **Annexure enclosed** to this OIA. In the instant case, (1) the LAA contended that the appellant has not produced the Original and Duplicate copies of ARE-1 for verification, whereas the appellant in their reply to the query has stated that the said Original and Duplicate copy of ARE-1 was misplaced, however, they have produced the EP copy of Shipping Bill, further Bill of Lading and Excise Invoice mention the said ARE-1 number (2) The LAA also contended that the description of goods mismatched between Excise and Export documents. Whereas the item number for the said goods were mentioned in the POs, S/B, Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register. Further, the Range Officer in para 14(iii) of the said OIO has certified that even though the description of goods was mismatched, there is the uniformity of item no. maintained by the assessee in the POs, S/B, Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register in case of clearance made in the above mentioned ARE-1s. Even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(ix) Order in Appeal No. 79/2016-TRY(CEX)(R) dtd. 01.11.2016 (RA No. 198/32/17-RA).

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization of the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant has exported their goods and received their export proceeds in time. Further the Vessel name is clearly mentioned in the ARE-1 to establish correlation as seen from the **Annexure enclosed** to this OIA. In the instant case, the assessee have cleared

their goods as loose cargo through the ICD. Hence at the time of preparation of Shipping Bill, it may not be known which container and Vessel the goods have been exported. Hence it is not POSSible to mention the container No. and Vessel name in the Shipping Bill. However, the Shipping Bill No. & date, vessel name and sailing date were mentioned in the relevant ARE-1. Even if any minor procedure lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions as long as there is substantial compliance.

(x) Order in Appeal No. 80/2016-TRY (CEX)(R) dtd. 01.11.2016 (RA No. 198/33/17-RA).

05.Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between the excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz. export invoice, excise invoice, ARE-1 and Shipping Bill. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization on the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant has exported their goods and received their export proceeds in time. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from the findings in the Annexure enclosed to this OIA. Whereas in the present case (1) The LAA contended that, flight No. & date, omitted in Air Way Bill, whereas the Flight No. & date is mentioned in the ARE 1. (2) The LAA contended that, the container No. wrongly mentioned in Shipping bill, but the container no. clearly mentioned in Bill of Lading. Subsequently the assessee have corrected the Container No. In Shipping Bill with respect to ARE 1 No. 100283/14-15 dt.30.05.2014 by Customs Officers. (3) The LAA contended that, the Case no. wrongly mentioned in Bill of lading, but the case number was clearly mentioned in ARE 1 and also the number of cases matches between ARE 1, Shipping Bill, Bill of Lading and Excise Invoice. (4) The LAA contended that, the Container number and Vessel name were omitted in the Shipping Bill. Whereas the said goods exported were in loose condition which were exported through ICD only. Therefore the Container number and Vessel name were not mentioned in the said Shipping Bill as the said goods were exported through the ICD. However the Vessel name was mentioned in the concerned ARE 1. (5) The LAA contended that, the Vessel Name wrongly mentioned in Bill of Lading, but the vessel name clearly mentioned in the relevant ARE 1 and Shipping bill and (6) The LAA contended that, there are mismatches in description between export documents and excise documents. Whereas the Range officer at the time of verification of the documents certified that the uniformity of item no. maintained by the assessee remains the same irrespective of different description mentioned in the POs)S.B/Ex-invoice/ Commercial Invoice/ Bill of Lading/ Stock Register in case of clearance made in the above mentioned ARE 1 s. Even if any minor procedure lapses is noticed in

the excise as well as export documents this cannot take away the beneficial provisions, as long as there is substantial compliance.

10. The Commissioner (Appeals) in all the Orders in Appeal mentioned at Column 5 of the Table at para 1 supra has commonly observed as under:-

06. *I find that the LAA has placed reliance on the order of the Revisionary Authority Central Board of Excise and Customs, New Delhi in their Order No. 103-141/14-CX dated 31.03.2014 which held that "In respect of revision applications mentioned in SI.No.31, 32, 35, 36, 38 and 39 part of the rebate claims were rejected for the reason amongst other reasons, amongst other reasons that there is a mismatch in description of goods between ARE-1, Shipping Bill of Lading, Government finds that the applicant is a manufacture-exporter. While preparing ARE-1, the applicant was fully aware that the goods required to be exported and export documents like shipping bill and bill of lading, etc. are to be filed for export. Under such circumstances, it cannot be justified as to how there can be mismatch of description between excise documents and export documents. Applicants as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation which they failed to do. Under such circumstances, the rebate claims are rightly held inadmissible." However I find that the orders of the Revisionary Authority subsequently have continued to uphold the principle of correlation between excise documents and export documents. **The Hon'ble Revisionary Authority in the case of M/s. United Phosphorus Ltd reported in [2015 (321) E.L.T. 148 (G.O.I.)] has held that " Export rebate claim - Proof of export -Original/duplicate copies of ARE-1 - Non-submission of - Proof of export may be examined on the basis of collateral evidences - Cross reference of impugned ARE-1 with shipping bill tallies with quantity/weight and description mentioned in export Invoices/shipping bills - ARE-1 endorsed by Customs officer to effect that goods actually exported - Correlation established between export documents and Excise document, hence, export of duty paid goods may be treated as completed - Appellants eligible for rebate claim - Rule 18 of Central Excise Rules, 2002", which is squarely applicable to these cases also. This condition is satisfied as seen on perusal of the documents.***

- (i) *Description of the goods covered in A.Nos.15/2016-TRY(CEX)(R), ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill and Bill of lading is given as an **Annexure** and correlation between the description, Case No. Flight No. Vessel name in Excise & Export documents is established;*
- (ii) *Description of the goods covered in A.Nos. 16/2016-TRY(CEX)(R) , ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill and Bill of lading is given as an **Annexure** and correlation between the description, Flight No. & date, Case No., Shipping Bill No. and Container No. in Excise and Export documents is established;*

- (iii) Description of the goods covered in A.Nos. 92/2015-TRY(CEX)(R) dated 04.12.2015, ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill and Bill of lading is given as an **Annexure** and correlation between the description and Container No. in Excise and Export documents is established;
- (iv) Description of the goods covered in A.Nos. 6/2016-TRY(CEX)(R), ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill and Bill of lading is given as an **Annexure** and correlation between the description, Flight No. & date, Case No., in Excise and Export documents is established;
- (v) Case numbers covered in A.Nos. 20/2016-TRY(CEX)(R), ARE-1, export invoice, Shipping Bill is given as an **Annexure** to OIA and correlation between the Case No., in Excise and Export documents is established;
- (vi) Description of the goods covered in A.Nos. 14/2016-TRY(CEX)(R) , ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill and Bill of lading is given as an **Annexure** to OIA and correlation between the description, Flight No., Invoice No. Shipping Bill No. & date, ARE-1 No. and Vessel Name in Excise and Export documents is established;
- (vii) Description of the goods covered in A.Nos. 13/2016-TRY(CEX)(R) , ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill and Bill of lading is given as an **Annexure** to OIA and correlation between the description, Flight No. & date, Shipping Bill No. Case No., in Excise and Export documents is established;
- (viii) ARE-1 wise findings on the grounds raised by LAA are given as an **Annexure** to this OIA and correlation between the description in Excise and Export documents is established; [(A.No.12/2016-TRY(CEX)(R)];
- (ix) ARE-1 wise findings is given as an **Annexure** to this OIA correlation between the Vessel name and Container No.in ARE-1 is established; [(A.No.09/2016-TRY(CEX)(R)];
- (x) Description of the goods covered in A.Nos. 11/2016-TRY(CEX)(R) , ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill and Bill of lading is given as an **Annexure** to this OIA and correlation between the description, Flight No. & date, Case No., Vessel Name and Container No. in Excise and Export documents is established.

Further in these cases the appellants have exported their goods and received the export proceeds also. Shri. S.Natarajan, Vice-President Business Accounts vide their letter Ref. SFL/1617/Comm.Appeal declaration/060034 dated 12.09.2016 has certified that all the goods covered in the said appeals have been duly exported and they have received 100% export proceeds in time also. Further the Department has not put forth any documentary evidences to prove that the said goods have not been exported by the appellant and no export proceeds were received. In the absence of any such evidences the appellants

are eligible for the rebate as mentioned in the said orders. Therefore I find no merits in the orders passed by the LAA which are liable to be set aside.....

11. Government observes that as regards mismatch in description, CETH, other omissions /mismatches in Flight No. & date, Case No., Vessel Name and Container No. etc., the basic ingredient of co-relatability have been duly examined by the Appellate Authority in all the instant cases (para 10 (i) to (x) supra) who has found a sufficient correlation in Excise and Customs documents to suggest that duty paid goods removed vide ARE-1s, document-wise stand exported under relevant Shipping Bills (Annexure to each Order in Appeal). In addition to the above, as corroborative evidence, Appellate authority has also noticed that the appellants in all these appeals have received 100% export proceeds in time also. Government also observes that the Commissioner (Appeals) in the impugned Orders his rightly observed that

“Further the Department has not put forth any documentary evidences to prove that the said goods have not been exported by the appellant and no export proceeds were received. In the absence of any such evidences the appellants are eligible for the rebate as mentioned in the said orders”.....

Undoubtedly the above observations recorded by the Commissioner (Appeals) based on verification of documents, in the impugned order are irrefutable.

12. In the absence of any investigation carried out by the department to find out the reason/motive of the respondent in showing different CETH in Excise and Customs documents, there is nothing on record to show that by his acts of omission and commission, the respondent has simultaneously availed some other inadmissible export benefits, so as to outrightly negate claims of rebate. In the instant cases except for mismatch in CETH / Description, Flight No. & date, Case No., Vessel Name and Container No. etc. there is nothing to show that the goods which left the factory were not exported. In the absence of any evidence adduced by the Department to suggest that the goods exported were not the same goods and not duty paid, the respondent's submissions cannot be brushed aside.

13. Government further observes that there are many GOI orders subsequent to Order no.103-141/14-CX dated 31.03.2014 referred above wherein it is held that if on the basis of collateral evidences, the correlation stands established between export documents and excise documents, export of duty paid goods may be treated as completed. In RE : Gimpex Pvt. Ltd. [2020(372)E.L.T.745(G.O.I.) while rejecting

the Revision Application filed by the Department, GOI in its Order No. 102/2019-CX dated 18.10.2019 observed as under:-

There is a procedural lapse on the part of the respondent, since CETH on shipping bill has been mentioned wrongly due to oversight. The applicant has not challenged the Bank Realisation Certificate mentioning details relating to invoice no. and date, description of goods, customs authenticated shipping bill, bill of lading and FOB value realized in Foreign Exchange. The fact that the customs preventive officer has certified the export of impugned consignment and remittance has also been received against the said export has not been contested.

Reliance is placed on the judgment of Hon'ble High Court of Bombay in the case of Zandu Chemicals Ltd. v. Union of India wherein the court has held that interpretation of statutes, procedural requirement are capable of substantial compliance, and cannot be held to be mandatory 2015 (315) E.L.T. 520 (Bom.). Further, Government, in the case of Agio Pharmaceuticals Ltd. has held substantial condition of Rule 18 of Central Excise Rules, 2002 are complied with, therefore rebate cannot be denied for minor procedural infraction 2014 (312) E.L.T. 854 (G.O.I.).

14. In many of its previous Revision Orders, Government has observed that :-

Rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that, an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In many cases of rebate specifically, GOI has viewed that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. The core aspect or fundamental requirement for rebate is

its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned".

15. The only aspect which has remained proper verification in all these cases is in respect of ARE-1 No.100018-14-15, dated 10.04.2014 involving rebate claim of Rs.17,957/- (in Revision Application No. 198/31/17-RA filed against Order in Appeal No. 81/2016-TRY (CEX) dated 01.11. 2016) wherein due non submission of collateral evidences by the respondent proof of date of shipment (whether on or after 17.04.2014) could not be ascertained. It is the contention of the department that as the Let Export Order in r/o the said ARE-1 was issued on 11.04.2014 and the Mate Receipt/Bill of Lading indicates that the date of shipment on board as 15.04.2014, therefore, in the absence of original/duplicate copies of ARE-1, no proof was adduced to confirm the date of shipment so as to verify the time limit as prescribed under Section 11 B of the Central Excise Act, 1944. As there is no discussion on this aspect by the Appellate Authority in the Order in Appeal No. 81/2016-TRY (CEX) dated 01.11. 2016, nor the respondent has submitted before this authority any documentary evidence to show that the rebate claim in respect of ARE-1 No.100018-14-15, dated 10.04.2014 was filed within the limitation prescribed under Section 11 B of the Central Excise Act, 1944, the Order in Appeal No. 81/2016-TRY (CEX) dated 01.11. 2016 to the extent it allowed rebate claim of Rs.17,957/- is required to be modified and set aside.

16. In view of the above discussion and findings in foregoing paras,

- (i) Government sets aside Orders in Appeal No. No. 81/2016-TRY (CEX) dated 01.11. 2016 passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli mentioned at column 5 before Sl. No. 8 of the Table at para 1 supra, only to the extent it allowed rebate claim of Rs.17,957/- and directs original authority to verify rebate claim in respect of ARE-1 No.100018-14-15, dated 10.04.2014 to confirm that the said claim had been filed within the limitation period prescribed under Section 11 B of the Central Excise Act, 1944. The respondent is also directed to provide the collateral evidence available to the concerned original authority to show that their rebate claim for Rs.17,957/- is not hit by limitation period. The original authority is directed to pass appropriate order in accordance with law after following the principles of natural justice, within 8 weeks from the receipt of this order;
- (ii) Revision Application No.198/31/17. is disposed off in the above terms,

- (iii) Government does not find any reason to interfere with or modify the Orders-in-Appeal No. 66,67,68,69/2016-TRY(CEX)(R) all dtd. 21.09.2016 and 84,83,82,79,80/2016-TRY(CEX)(R) all dtd. 01.11.2016 (mentioned at column 5 before Sl. No. 1 to 7, 9 & 10 resp. of the Table at para 1 supra passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli and upholds the same.
- (iv) Revision applications Nos. 198/12/17, 198/13/17, 198/14/17, 198/15/17, 198/22/17, 198/29/17, 198/30/17, 198/32/17 and 198/33/17 are rejected being devoid of merits.

Shrawan
25/02/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

104-113
ORDER No. /2021-CEX (SZ) /ASRA/Mumbai Dated 25.02.2021

To,

The Commissioner of CGST & CX, Tiruchirapalli (Trichy),
No.1, Williams Road,
Cantonment, Tiruchirapalli 620 001.

Copy to:

1. M/s. Sanmar Foundries Ltd. 87/1, Vadugapatti Village, Viralimalai, Pudukottai District- 621316
2. The Commissioner of CGST & CX (Appeals) Tiruchirapalli [Trichy] No.1, Williams Road, Cantonment, Tiruchirapalli - 620001
3. The Deputy / Assistant Commissioner, of CGST & CX, Trichy I Division, No.1, Williams Road, Cantonment, Tiruchirapalli 620 001
4. S.L.P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.