

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. 198/52/17, 198/55/17, 198/56/17,
198/57/17, 198/63/17, 198/64/17,
198/65/17, / 16 of 5

Date of Issue:- 03.03.2021

ORDER NO. 116 - 122 /2021-CEX (SZ) /ASRA/MUMBAI DATED 26.02.2021 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.	198/52/17-RA	05/2017-TRY(CEX)(R) dtd. 11.01.2017	Commissioner of Central Excise & Service Tax, Tiruchirappalli- 620 001	M/s Sanmar Foundries Ltd. Viralimalai - 621316
2.	198/55/17 -RA	18/2017-TRY(CEX)(R) dtd. 16.03.2017	---do---	---do---
3.	198/56/17-RA	19/2017-TRY(CEX)(R) dtd. 16.03.2017	---do---	---do---
4.	198/57/17-RA	20/2017-TRY(CEX)(R) dtd. 16.03.2017	---do---	---do---
5.	198/63/17-RA	21/2017-TRY(CEX)(R) dtd. 16.03.2017	---do---	---do---
6.	198/64/17-RA	22/2017-TRY(CEX)(R) dtd. 16.03.2017	---do---	---do---
7.	198/65/17-RA	23/2017-TRY(CEX)(R) dtd. 16.03.2017	---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.	198/52/17-RA	4,05,492/-	01/2016-R dated 21.04.2016	05/2017-TRY(CEX)(R) dtd. 11.01.2017
2.	198/55/17 -RA	2,04,757/-	18/2016-17-R dated 03.06.2016	18/2017-TRY(CEX)(R) dtd. 16.03.2017
3.	198/56/17-RA	24,47,928/-	34/2016-17-R dated 17.08.2016	19/2017-TRY(CEX)(R) dtd. 16.03.2017
4.	198/57/17-RA	17,56,954/-	35/2016-17-R dated 17.08.2016	20/2017-TRY(CEX)(R) dtd. 16.03.2017
5.	198/63/17-RA	29,70,929/-	37/2016-17-R dated 17.08.2016	21/2017-TRY(CEX)(R) dtd. 16.03.2017
6.	198/64/17-RA	8,70,891/-	41/2016-17-R dated 31.08.2016	22/2017-TRY(CEX)(R) dtd. 16.03.2017
7.	198/65/17-RA	10,81,940/-	65/2016-17-R dated 24.10.2016	23/2017-TRY(CEX)(R) dtd. 16.03.2017

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, Meter / assembly components of various types & size 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. 4,05,492/-vide Order in Original No. 01/2016-R dated 21.04.2016 (Sl. No. 1 of the Table above) :-

- Omission of flight no. & date in the relevant Airway Bill
- Wrong mentioning of Case No. in the relevant Airway Bill
- Non mentioning of Case No. in the relevant Airway Bill
- Non mentioning of Shipping Bill Nos. in the relevant Airway Bill
- Wrong mentioning of Invoice No. in the relevant Airway Bill
- Wrong mentioning of Vessel Name in Bills of Lading.
- Wrong mentioning of description of goods in Bill of Lading
- Wrong mentioning of Case No. in the Bill of Lading
- Discrepancy in Chapter heading ND Description of goods mentioned in ARE-1 and relevant Shipping Bill.
- Wrong mentioning of Container No. in Bill of Lading.

3.2 Reasons for rejection of Rebate to the extent of Rs. 2,04,757/-vide Order in Original No. 18/2016-17-R dated 03.06.2016 (Sl. No. 2 of the Table above):-

- Non mentioning of vessel name, Voyage No. and Container No. in the relevant Shipping Bill.

3.3 Reasons for rejection of Rebate to the extent of Rs. 24,47,928/- vide Order in Original No. 34/2016-17-R dated 17.08.2016 (Sl. No. 3 of the Table above) :-

- In respect of all ARE-1s the description of the goods not matched with relevant Shipping Bills and Bills of Lading.

3.4 Reasons for rejection of Rebate to the extent of Rs. 17,56,954/-vide Order in Original No. 35/2016-17-R dated 17.08.2016 (Sl. No. 4 of the Table above):-

- In respect of all ARE-1s the Description of the goods not matched with relevant Shipping Bills and Airway Bills and also Shipping Bill Nos. are not mentioned in the Air Way Bills.

3.5 Reasons for rejection of Rebate to the extent of Rs. 29,70,929/- vide Order in Original No. 37/2016-17-R dated 17.08.2016 (Sl. No. 5 of the Table above) :-

- Description of the goods not matched with relevant Shipping Bills and Airway Bills and also Shipping Bill Nos. are not mentioned in the Air Way Bills.

3.6 Reasons for rejection of Rebate to the extent of Rs. 8,70,891/- vide Order in Original No. 41/2016-17-R dated 31.08.2016 (Sl. No. 6 of the Table above) :-

- Description of the goods not matched with relevant Shipping Bills and Bill of Ladings/Airway Bills

3.7 Reasons for rejection of Rebate to the extent of Rs. 10,81,940/- vide Order in Original No. 65/2016-17-R dated 24.10.2016 (Sl. No. 7 of the Table above) :-

- Wrong mentioning of description of goods in the relevant Bill of Lading
- Wrong mentioning of description of goods in the relevant Shipping Bills and Bill of Lading

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 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:-

RA No. 198/52/17-RA against OIA No. 05/2017 dated 11.01.2017

(a) The claimant has wrongly mentioned the Case No. In the Air Way Bill in respect ARE-1 No,100937; Wrong mentioning of Invoice number in the relevant Air Way Bill in respect of ARE-1 No.100963/17.10.2014 and 100964/17.10.2014; Wrong mentioning of Vessel Name and the description of goods in Bill of Lading in respect of ARE-1 No.101029/14-15 dated 31.10.2014; In respect of ARE-1 No.101030/14-15 dated 31.10.2014 the vessel name were inadvertently mentioned as MAERSK DHAHRAN in Bill of Lading instead of CRILLON which was mentioned in both the Part--B column of ARE-1 and Shipping Bill; In respect of ARE No.200493/14-15 dt.09.10.2014 the Chapter Heading and the description of goods were inadvertently mentioned as "73259930" and "Stainless Steel Castings" in Shipping Bill instead of "73259999" and "Non Alloy Steel Castings" which was mentioned in both the ARE-1 and Invoice ; Wrong mentioning of Vessel name & Container No. In Bill of Lading in respect of ARE-1 No.200530/14-15 dated 20.10.2014.

RA No. 198/55/17-RA against OIA No. 18/2017 dated 16.03.2017

(a) The claimant did not mention the Vessel Name, Voyage No. and Container No. in the relevant Shipping Bill in respect of ARE-1 No. 101323,101324, 101325, 101266 and 101267. The container No. in Shipping Bill is essential to correlate the export details. No justifiable reason given by the claimant for its omission. Further the details like vessel name and voyage number also were not mentioned in the Shipping Bill and hence the correlatability could not be established as they have not produced the amended Shipping bill incorporating the required details. Therefore the rebate sanctioning authority rightly decline to condone the discrepancy raised in this regard and reject the claim of rebate of Rs.2,04,757/- involved in the above impugned ARE-1s.

RA No. 198/56/17-RA against OIA No. 19/2017 dated 16.03.2017

(a) The description of goods mentioned in ARE-1 as "Non alloy Steel Castings" and "Stainless Steel Castings" and the same was mentioned in Shipping Bill and Airway Bills as defined by Central Excise and Customs Tariff as "Other Cast articles of Iron or Steel N.E.S" & "Other Cast Articles of Stainless Steel Malleable".

RA No. 198/57/17-RA against OIA No. 20/2017 dated 16.03.2017

(a) The description of goods mentioned in ARE-1 as "Non alloy Steel Castings" and "Stainless Steel Castings" whereas the description were mentioned in Shipping

Bill and Airway Bills as "Other Cast articles of Iron or Steel N.E.S" & "Other Cast Articles of Stainless Steel Malleable".

RA No. 198/63/17-RA against OIA No. 21/2017 dated 16.03.2017

(a) The description of goods mentioned in ARE-1 as "Non alloy Steel Castings" and "Stainless Steel Castings" whereas the description were mentioned in Shipping Bill and Airway Bills as "Other Cast articles of Iron or Steel N.E.S" & "Other Cast Articles of Stainless Steel Malleable". In respect of ARE-1 Nos.100290, 100291, 1000292 and 100293 Vessel Name, Voyage Nos. and Container Nos were not mentioned in the relevant Shipping Bills.

RA No. 198/64/17-RA against OIA No. 22/2017 dated 16.03.2017

(a) The description of goods found in ARE1s do not tally with Shipping Bills and/or Bills of Lading in respect of ARE-1 No.500154, 500155,500169, 500170,500178, 500179, 500183, 500189, 500192, 500193, 500208, 500209, 500057, 500060 and 500061.

RA No. 198/65/17-RA against OIA No. 23/2017 dated 16.03.2017

(a) The claimant in respect of ARE-1 Nos.500199 & 500205 the description of goods not matched with relevant Bill of Ladings and also in respect of ARE-1 Nos 500045, 500046, 500047, 500053 and 500054 the description of goods not matched with relevant Shipping Bills and Bill of Ladings.

(Common Grounds of all Revision Applications above)

(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 statute- 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-ls. 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-is cannot conclusively prove that the goods cleared from factory and exported were one and the same.

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 approve 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 3.7 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. 05/2017-TRY(CEX)(R) dtd. 11.01.2017 (RA No. 198/52/17-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 factum of Export established as seen from the Annexure enclosed. In the instant case, (1) the LAA contended that the Flight No. and date, omitted in Airway Bill, but the Flight No. clearly mentioned in ARE 1 by the Customs Authority (2) The LAA contended that, the Case Number omitted in Air Way Bill, but the Case Number clearly mentioned in ARE-1. (3) The LAA contended that the Shipping Bill No. omitted in Air Way Bill but the Shipping Bill No. clearly mentioned in ARE 1 by the Customs authority and also the Air Way Bill mentioned in Shipping Bill. (4) The LAA contended that, the Invoice number wrongly mentioned in Air Way Bill but the Invoice number matches with ARE 1 and Shipping Bill. (5) The LAA contended that, the Vessel Name wrongly mentioned in Bill of Lading, but the Vessel Name clearly mentioned in ARE 1 and Shipping Bill. (6) The LAA contended that, the description of goods wrongly mentioned in Bill of Lading but the Chapter heading matches with ARE 1, Shipping Bill, Bill of Lading and Invoice. Also the Description matches with ARE 1 and Shipping Bill. (7) The LAA contended that the container number wrongly mentioned in Bill of Lading, but the Container Number clearly mentioned in Shipping Bill. Out of 10 ARE 1 Nos. 200493/14-15 dated 09.10.2014, 100963/14-15 & 100964/14-15 both dated 17.10.2014, 100937/14-15 dated 19.10.2014, 200530/14-15 dated 20.10.2014, 101021/14-15 dated 31.10.2014, 101029/14-15 & 101030/14-15 both dated 31.10.2014, 100961/14-15 dated 16.10.2014 and 101022/14-15 dated 31.10.2014, the BRC towards the realisation of Export proceeds for the said 8 ARE 1 s except ARE 1 Nos. 100961/14-15 dated 16.10.2014 and 101022/14-15 dated 31.10.2014 were received by the appellant. For the said two ARE 1 Nos. 100961/14-15 dated 16.10.2014 and 101022/14-15 dated 31.10.2014, the goods have been duly exported. However the export proceeds of Rs.4,734/- has not been received by the appellant as the same were adjusted towards accumulation of bank charges as well as other deductions for the other exports. However the goods vide the said two ARE 1 Nos. 100961/14-15 dated 16.10.2014 and 101022/14-15 dated 31.10.2014 were exported and ICEGATE tracking Sheet of shipping Bills were also obtained by appellant wherein the Duty drawback Rs.189/- and Rs.538/- were also been credited in appellant's account. The relevant BRCs were not issued by the bank for adjusting the accumulation of bank other charges and deductions charges for the other exports and also non uploading by the banker. 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. 18/2017-TRY(CEX)(R) dtd. 16.03.2017 (RA No. 198/55/17-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 Vessel name is clearly mentioned in the ARE-1as seen from **Annexure enclosed**. 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 and Voyage No. in the said Shipping Bill. However, the vessel name and Voyage number were mentioned in the relevant ARE-1 & Bill of Lading. 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. 19/2017-TRY(CEX)(R) dtd. 16.03.2017 (RA No. 198/56/17-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 Vessel name is clearly mentioned in the ARE-1as seen from **Annexure enclosed**. In the instant case, (1) The department contended that the 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.

(iv) Order in Appeal No. 20/2017-TRY (CEX)(R) dtd. 16.03.2017 (RA No. 198/57/17-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 instant case (1) The department contended that the 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.*

(v) Order in Appeal No. 21/2017-TRY(CEX)(R) dtd. 16.03.2017 (RA No. 198/63/17-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 instant case (1) The department contended that the Shipping Bill number omitted in Air Way Bill, whereas the Air Way Bill number clearly mentioned in Shipping Bill. (2) The department contended that the Vessel name. Voyage number an container number omitted in the Shipping Bill, whereas the assessee have cleared their goods as loose cargo through the ICD. Hence at the time preparation of Shipping Bill, it is not known which Container and Vessel the said goods have been exported. Hence it is not possible to mention the Container no. and Vessel Name in the said Shipping bill. However the vessel name and Voyage number were mentioned in the relevant ARE-1. (3) The department contended that the 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.*

(vi) Order in Appeal No. 22/2017-TRY(CEX)(R) dtd. 16.03.2017 (RA No. 198/64/17-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 Vessel name is clearly mentioned in the ARE-1as seen from **Annexure enclosed**. In the instant case, (1) The department contended that the 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.

(vii) Order in Appeal No. 23/2017-TRY(CEX)(R) dtd. 16.03.2017 (RA No. 198/65/17-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 Vessel name is clearly mentioned in the ARE-1as seen from **Annexure enclosed**. In the instant case, (1) The department contended that the 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.

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.47/2016-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 Case No. in Excise and Export documents is established.
- (ii) The Vessel Name and Voyage number covered in A.Nos.67/2016-TRY(CEX)(R), ARE-1 wise as per Bill of lading and container number mentioned in Bill of Lading are given as an **Annexure** and correlation between the Vessel Name, Voyage number and Container No. in ARE-1 is established;
- (iii) Description of the goods covered in A.Nos.76/2016-TRY(CEX)(R), ARE-1 wise as per excise invoice, ARE-1, export invoice, Packing List and Shipping Bill is given as an **Annexure** and correlation between the description in Excise and Export documents is established;
- (iv) Description of the goods covered in A.Nos.77/2016-TRY(CEX)(R), ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill is given as an **Annexure** and correlation between the description in Excise and Export documents is established;
- (v) Description of the goods covered in A.Nos.78/2016-TRY(CEX)(R), ARE-1 wise as per excise invoice, ARE-1, export invoice, Packing List and Shipping Bill is given as an **Annexure** and correlation between the

description, Case No. Flight No. Vessel Name in Excise and Export documents is established;

- (vi) Description of the goods covered in A.Nos.80/2016-TRY(CEX)(R), ARE-1 wise as per excise invoice, ARE-1, export invoice, Packing List and Shipping Bill is given as an Annexure and correlation between the description in Excise and Export documents is established;*
- (vii) Description of the goods covered in A.Nos.93/2016-TRY(CEX)(R), ARE-1 wise as per excise invoice, ARE-1, export invoice, Packing List and Shipping Bill is given as an Annexure and correlation between the description 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/Reb.Appeal- Certification/110077 dated 13.02.2017 & MCS/1617/Comm. App. Certification/110040 dated 13.02.2017 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 (vii) 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 (except in r/o 2 ARE-1 Nos. 100961/14-15 dated 16.10.2014 and 101022/14-15 dated 31.10.2014 referred to in Order in Appeal No. 05/2017-TRY(CEX) (R) dated 11.01.2017) 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, omission of 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 goods exported vide ARE-1 No.100961-14-15, dated 16.10.2014 and 101022/14-15 dated 31.10.2014 in which the respondent has not received export proceeds (as mentioned at para 6 of Order in Appeal No. 05/2017-TRY(CEX)(R) dtd. 11.01.2017). Government notes that as per condition at Para 2(g) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, rebate of duty paid on those excisable goods export of which is prohibited under any law for the time being in force, shall not be made. Regulation 3 of Foreign Exchange Management Act (Goods & Services) Regulations, 2000 requires that a declaration in form GR/SDF is to be submitted to the Customs, inter alia, affirming that the full export value of the goods or software has been or will within the specified period (under Regulation 9, *ibid*) be paid in specified manner. As per Section 8 of Foreign Exchange Management Act, 1999, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all steps to realize and repatriate to India, such foreign exchange within time period prescribed by RBI. Further, Section 13 of Foreign Exchange Management Act stipulates penalty provision for non-realization of foreign exchange. The provisions of Foreign

Exchange Management Act make it clear that the export of goods without realization of export proceed is not permitted. So in such cases, the rebate cannot be granted in terms of Para 2(g) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 cannot be said to be complied with and rebate can therefore, not be allowed under Rule 18 ibid. The Order in Appeal No. 05/2017-TRY (CEX) (R) dated 11.01.2017 to the extent it allowed rebate claim of Rs.3,607/- (amount verified from Annexure-III to Order in Original No.01/2016-R dated 21.04.2016 passed by the Assistant Commissioner of Central Excise, Central Excise-II Division, Trichy) 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. 05/2017-TRY (CEX) (R) dated 11.01.2017 passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli mentioned at column 5 before Sl. No. 1 of the Table at para 1 supra, only to the extent it allowed rebate claim of Rs.3,607/-.
- (ii) Revision Application No.198/52/17 is disposed off in the above terms,
- (iii) Government does not find any reason to interfere with or modify the Orders-in-Appeal No. 18,19,20,21,22,23/2017-TRY (CEX) (R) all dtd. 16.03.2017 (mentioned at column 5 before Sl. No. 2 to 7 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. 198/55/17, 198/56/17, 198/57/17, 198/63/17, 198/64/17 and 198/65/17 are rejected being devoid of merits.

Shrawan
26/02/21
(SHRAWAN KUMAR)

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

116-122
ORDER No. /2021-CEX (SZ) /ASRA/Mumbai Dated 26.02.2021

To,

The Commissioner of CGST & CX, Tiruchirappalli (Trichy),
No.1, Williams Road,
Cantonment, Tiruchirappalli 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.I.P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.