SPEED POST
REGISTERED 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.198/01/WZ/2020 /7223
F. No.198/01/WZ/2021

Date of Issue: 09.12.2022

ORDER NO.\१७०-११७\/2022-CX (WZ) /ASRA/Mumbai DATED ०८.12.2022 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.

Applicant : Commissioner of GST & Central Excise, Surat Commissionerate, GST & Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat – 39500, Gujarat.

Respondent : M/s Kanha Internationale (Prop. Purushottam Somani), C/o L.P. Shetty (Advocate), B-2/501, 5th floor, Sarthak Residency, Behind CNG Pump, in front of SMC Community Hall, Pal, Surat – 395 009.

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. CCESA-SRT (APPEALS)/PS-543/2019-20 and No. CCESA-SRT (APPEALS) /PS-121/2020-21 dated 26.12.2019 and 24.11.2020, respectively, both passed by Commissioner (Appeals), CGST & Central Excise, Surat.

ORDER

The subject Revision Applications have been filed by the Commissioner of GST & Central Excise, Surat (here-in-after referred to as 'the applicant/Department') against the subject Orders-in-Appeal dated 26.12.2019 and 24.11.2020, both passed by the Commissioner (Appeals), CGST & Central Excise, Surat. The issue involved in both the applications being common, the subject Revision Applications are being taken up for decision together.

2. Brief facts of the case are that the respondent had filed rebate claims in respect of the Central Excise duty paid on the raw material viz., 'grey fabrics' used in the goods exported by them under Rule 18 of the Central Excise Rules, 2002. The chronology of the litigation that followed thereafter is as under: -

- The said rebate claims were rejected by the jurisdictional Assistant Commissioner vide Order-in-Original dated 28.05.2004;
- The respondent filed appeal against the same before the Commissioner (Appeals) who vide Order-in-Appeal dated 19.05.2005 upheld the Order of the original authority and rejected the appeal;
- The respondent challenged the said Order-in-Appeal before the Joint Secretary (Revision Application), Government of India, New Delhi who vide Order No.1143/2006 dated 29.12.2006 rejected the said revision application;
- Thereafter, the respondent filed Special Civil Application No.11576 of 2008 before the Hon'ble High Court of Gujarat, however, on their plea that they were in possession of information obtained under the Right to Information Act and hence wanted to approach the Joint Secretary with a representation, the Hon'ble Court vide Order dated 24.07.2009 permitted them to withdraw the said petition with the liberty to make such representation; the information so procured was a letter written

by the Commissioner to the JAC, which apparently was sympathetic to the respondent's cause;

- The respondent then made a representation to the Joint Secretary on 08.08.2009 seeking to reconsider the Order dated 29.12.2006 in light of the said letter of the Commissioner; the same was disposed of by the Senior Technical Officer (RA) on 09.12.2009 stating that there was no provision under Section 35EE of the Central Excise Act, 1944 for the Revisionary Authority to reconsider an earlier Order passed by the Revisionary Authority itself;
- Thereafter, the respondent preferred Special Civil Application No.2053 of 2010 before the Hon'ble High Court of Gujarat against the Order dated 29.12.2006 of the Revision Authority and also the letter dated 09.12.2009; the said application was dismissed by the Hon'ble Court by its Order dated 24.02.2010 and the appeal of the respondent against the same was dismissed by the Supreme Court vide its Order dated 08.07.2010;
- The respondent then approached the jurisdictional Assistant Commissioner (JAC) once again on 28.07.2010 with a request to reconsider their claims; the JAC, in response to the same, informed them vide letter dated 16.08.2010 that the said claims could not be re-processed in view of the Order dated 29.12.2006 passed by the Revisionary Authority and the subsequent communication dated 09.12.2009 by the Senior Technical Officer (RA);
- The respondent filed appeal against the said letter dated 16.08.2010 of the JAC before the Commissioner (Appeals), who vide Order-in-Appeal dated 24.01.2011 rejected the same and upheld the views expressed by the JAC in the communication dated 16.08.2010;
- The respondent in the meanwhile filed Special Civil Application No.10329 of 2013 before the Hon'ble High Court of Gujarat seeking to quash the earlier Orders in the issue, including the Order dated 29.12.2006 of the Revision Authority. The same was dismissed by the Hon'ble Court vide its Order dated 26.07.2013. The respondent filed

SLP (Civil) No.2630 of 2014 before the Hon'ble Supreme Court against the said Order dated 26.07.2013 which was dismissed by the Apex Court vide its Order dated 17.02.2014.

- Thereafter, the respondent vide letter dated 11.07.2016 requested the Assistant Commissioner, Central Excise & Customs, Division – II, Surat- I (JAC), to decide their rebate claims in light of the Order No. A/11795-11796/2015 dated 08.12.2015 of the Hon'ble Tribunal which had set aside the Order-in-Original dated 30.07.2005 which had confirmed the demand raised on M/s Holy Creations P. Limited, the supplier of grey fabrics to the respondent;
- The JAC vide letter dated 17.10.2016 and other subsequent letters informed the respondent that the issue had attained finality and hence their claims could not be re-processed;
- On change of jurisdiction, the respondent vide letter dated 13.11.2019 once again made a similar request to the JAC, Division – I, Surat, who vide letter dated 15.11.2019 informed the respondent that reply to their letter dated 11.07.2016 was already given; the claims have been disposed and have attained finality in terms of the Order dated 29.12.2006 of the JS (RA); and hence no action was pending or warranted in the matter;
- The respondent filed appeal against the said letter dated 15.11.2019 before the Commissioner (Appeals) which was decided by Order-in-Appeal dated 26.12.2019 wherein the Commissioner (Appeals) set aside the letter issued by the JAC and allowed the appeal of the respondent by remanding the same to the original authority for passing a speaking Order;
- One of the subject Revision Applications has been filed by the applicant/Department against the Order-in-Appeal dated 26.12.2019;
- In the meanwhile, the JAC in terms of the Order-in-Appeal dated 26.12.2019, passed Order-in-Original dated 06.10.2020 rejecting the submission made by the respondent vide their letter dated 11.07.2016;

- The respondent filed appeal against the said Order-in-Original dated 06.10.2020 before the Commissioner (Appeals) resulting in Order-in-Appeal dated 24.11.2020 wherein the Commissioner (Appeals) once again remanded the case back to the original authority with directions to re-examine the issue and taking appropriate decision after examining all aspects of the case;
- The applicant/Department has filed Revision Application against the Order-in-Appeal dated 24.11.2020, which is now being taken up for disposal along with the Revision Application against the Order-in-Appeal dated 26.12.2009, mentioned above.

3. As stated, the applicant Department has filed the subject Revision Applications against the above-mentioned Order-in-Appeal dated 26.12.2019 and Order-in-Appeal dated 24.11.2020. The applicant has also filed a Stay application along with the Revision Application seeking stay on the operation of the Order-in-Appeal dated 26.12.2019. Further, the applicant/ Department also filed a Misc. Application dated 29.05.2020 on 26.06.2020, seeking condonation of the delay in filing of the Revision Application preferred by them against the Order-in-Appeal dated 26.12.2019.

3.1 The applicant vide their Misc. Application dated 29.05.2020 seeking condonation of delay, submitted as under:-

(a) The Order-in-Appeal No. CCESA- SRT(APPEALS)/PS-543/2019-20 dated 26.12.2019 was received by them on 08.01.2020; that as per the provisions of Section 35EE(2) of the Central Excise Act, 1944, the application should have been made within three months from the date of communication of the Order of the Commissioner (Appeals) and accordingly, the last date for filing the present revision application was 07.04.2020; however, the revision application could not be submitted by 07.04.2020 due to the lockdown declared by the Government of Gujarat and Government of India for containment of the COVID-19 Epidemic;

(b) The applicant submitted that as per clause 6 (Chapter-V) of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020

No.2 of 2020, the time limit specified in or prescribed or notified under the Central Excise Act, 1944 which fell during the period from 20.03.2020 to 29.06.2020 for the completion or compliance of any action such as filing of any appeal, reply or application etc., stood extended to the 30.06.2020; they submitted that the last date for filing the present revision application was 07.04.2020, which fell within the period mentioned in the above provisions for which the time limit had been extended to 30.06.2020;

(c) The applicant therefore prayed for condonation of the delay in filing the said Revision Application and consider the revision application filed against Order-in-Appeal dated 26.12.2019 as the same was filed within the extended time limit.

3.2 The Revision Application against Order-in-Appeal dated 26.12.2019 has been filed on the following grounds: -

(a) The Commissioner (Appeals) had erred in not considering the fact that the subject rebate claims had already been disposed of vide Order-in-original No. Surat-1. Div-11 / Adj-09/2004/R dated 28.05.2004; that the appeal filed by the respondent against the said Order-in-Original had also been rejected by the Commissioner (Appeals), Central Excise & Customs, Surat vide Order-in-Appeal dated 19.05.2005; in view of this, the Order dated 26.12.2019 in the same matter as passed by the Commissioner (Appeals) was not correct and is required to be set aside in the interest of justice;

(b) The Commissioner (Appeals) failed to consider that a further appeal was filed by the respondent before the Joint Secretary (Revision Application), Govt. of India, New Delhi who vide Order No.1143/2006 dated 29.12.2006 rejected respondent's application. In the said Order, the Joint Secretary to Govt. of India had observed and held –

> *"6.2 It is admitted fact that the applicants have filed the rebate claims for the duty paid input used in manufacturing of goods exported by the applicant. The Commissioner (Appeals). has given categorical findings that quantity and description of the goods*

mentioned in the excise invoice of the supplier of the goods have been found not to tally with those mentioned in export documents, such as export invoice, shipping bill, bill of lading, etc. It is further facts on records that the applicants have not followed the procedure for claiming rebate claims under Rule 18 of the Central Excise Rules, 2002 read with relevant Notification issued there under. In these facts and circumstances, there is no clinching evidence to prove that the applicants have manufactured the export goods out of Central excise duty paid input and for amount they are claiming rebate. Hence, Govt. upholds the impugned Order-in-Appeal, in this regard.

6.3 The second ground for rejection of the rebate claims has been that supplier of the said input was allowed 6% as transitional credit only on the subject goods whereas the supplier of the said input has shown the duty @10% Govt., would agree with the findings of the Commissioner (Appeals), that transitional credit was allowable @6% to the supplier of goods and consequently the applicants were entitle to rebate @6% in case the rebate claims was found in Order. However, in the instant case no rebate is admissible to the applicants in view of the facts mentioned in sub para 6.2 above."

It was submitted that thus, the Government of India had rejected the subject rebate claims not only on the grounds of credit of duty @10% instead of 6% but also on other grounds and hence the respondent was not entitled for any rebate, even if the transitional credit @10% was allowed to the supplier of the input, i.e. M/s. Holy Creations Pvt. Ltd. in pursuance of CESTAT Order No. A/11795-11796/2015 dated 08.12.2015; that the Commissioner (Appeals) had failed to consider this important aspect and hence the said Order-in-Appeal was not correct and is required to be set aside;

(c) The Commissioner (Appeal) had failed to consider that the respondent had again approached the JAC vide their letter dated 28.07.2010 for re-consideration of their claims and that the JAC vide letter dated 16.08.2010 informed to the respondent that the said claims could not be reprocessed in view of the Order dated 29.12.2006 passed by RA and letter dated 09.12.2009; that against the Order/letter dated 16.8.2010, the respondent had filed an appeal with Commissioner (Appeals) who vide Order-in-Appeal dated 24.01.2011 had rejected the appeal filed by the respondent and upheld the

communication dated 16.08.2010 of the JAC; that while deciding the appeal it was observed by the Commissioner (Appeals) that these nine claims were rejected by the original authority by quasi-judicial Order dated 11.02.2004 and that in appeal, the said Order-in-Original was upheld by his predecessor vide Order-in-Appeal dated 19.05.2005 and the appeal of the respondent was rejected and that thereafter the Revision Application of the party was also rejected by the Government of India vide Order No.1143/2006 dated 29.12.2006 passed by Joint Secretary (RA). In view of these proceedings, it was submitted that the Order-in-Original had merged with the Order passed by appellate authority and the Joint Secretary (RA); and hence as the matter now stood the Order of rejection of refund/rebate claim was the Order of the Government of India; that neither the Original authority nor the Commissioner (Appeals) could jump over the Order of Government of India and reconsider the refund claims; that any such act by the lower authority would be improper; thus, in view of the above, the Order passed by the Commissioner (Appeals) was not correct and is required to be set aside;

(d) The Commissioner (Appeal) had failed to observe/consider that the respondent had filed Special Civil Application No.2053 of 2010 & No.10329 of 2013 before the Hon'ble High Court of Gujarat against the Order dated 29.12.2006 and Order dated 09.12.2009 passed by the Joint Secretary & Sr. Technical officer (RA), respectively; that the said SCAs were dismissed by the Hon'ble High Court vide its Orders dated 24.02.2010 & 26.07.2013, respectively; that the respondent had filed SLP (Civil) No.2630 of 2014 before the Hon'ble Supreme Court and the same was also dismissed by the Hon'ble Supreme Court vide its Order dated 17.02.2014; and hence the subject rebate claims have already been disposed in terms of the relevant statutory provisions of Section 11B of the Central Excise Act, 1944 and has attained finality; hence the Order passed by the Commissioner (Appeals) was not correct and is required to be set aside;

(e) It was further submitted that thereafter, the respondent had submitted a letter dated 11.07.2016 to JAC enclosing therewith copy of CESTAT Order dated 08.12.2015 vide which the Hon'ble CESTAT had set aside the Order-in-Original No.12/MP/2005 dated 30.07.2005, which had confirmed the demand of transitional credit taken by M/s. Holy Creations P. Ltd. @10% instead of 6%; that the respondent requested the JAC to finally decide their rebate claims on the basis of said CESTAT Order; that the then JAC vide their letter dated 17.10.2016 and other letters of subsequent dates informed the respondent that the issue had attained finality and hence his office could not re-process the said claims; that on change of jurisdiction, the respondent made correspondence with new JAC, who vide letter dated 15.11.2019 informed the respondent that reply to their letter dated 11.07.2016 had already been given, the refund claims had already been disposed of and the matter had attained finality and hence, no action was pending or warranted in the matter; that the respondent had filed appeal against the said letter/Order dated 15.11.2019, before Commissioner (Appeals), Surat who vide Order-in-Appeal dated 26.12.2019 set aside the Order/letter dated 15.11.2019 issued by JAC and allowed appeal by way of remand to the adjudicating authority; that the Commissioner (Appeals) had failed to consider that the subject rebate claims were rejected not only on the ground of credit of duty @10% instead of 6% but also on the other grounds, as discussed in para 6.2 of Revisionary Authority Order dated 29.12.2006; that in this case the issue had already travelled up to the Apex Court of India and the respondent had not succeeded at any forum; that the Commissioner (Appeals) overlooked the fact that the respondent was trying again and again to get erroneous refund by hook or crook without any legal basis which was not allowed to them and hence the Order passed by the Commissioner (Appeals) was not correct and was required to be set aside.

In view of the above, the applicant/Department has prayed that the impugned Order-in-Appeal 26.12.2019 be set aside.

3.3 The applicant/Department, in addition to the grounds mentioned in the Revision Application against Order-in-Appeal dated 26.12.2019 which have been stated above, have made a few more submissions in the Revision Application to the preferred by them against Order-in-Appeal dated 24.11.2020. They have also filed a Corrigendum dated 10.03.2021 to the said Revision Application, wherein it was submitted as follows "*In the said revision application in Review Order F.No.X/679/2020 dated 29.01.2021 word "quality" appearing in quote of para 6.2 of para 13 and 19 may please be read as "quantity"*. The said additional submissions are as follows:-

(a) The Commissioner (Appeals) had erred in not considering the fact that the Department had filed a Revision Application under Section 35EE of the Central Excise Act, 1944 for review of Order-in-Appeal No. CCESA-SRT(APPEAL)PS- 543/2019-20 dated 26.12.2019 before the Principal Commissioner (RA) & Ex, Officio Additional Secretary to the Govt. of India, Mumbai which was pending decision;

(b) The Commissioner (Appeals) had failed to consider that the subject rebate claims were rejected not only on the ground of credit of duty @10% instead of 6%, but also on the other grounds, as discussed at para 6.2 of Revisionary Authority Order dated 29.12.2006; that in this case the issue had already travelled up to the Apex Court of India and the respondent had not succeeded at any forum; that the Commissioner (Appeals) overlooked the fact that the respondent was trying again and again to get erroneous refund by hook or without any legal basis and hence the Order passed by the Commissioner (Appeals) was not correct and was required to be set aside;

(c) that the Commissioner (Appeals) had erred in considering the refund claim dated 11.07.2016 as a fresh application as the facts of the case and ground of the rebate claims remained the same; that he also erred by not considering the facts which had been reiterated in all the Orders including Order-in-Original dated 06.10.2020 that the ground of rejection of claims was

not merely excess availment of credit by the respondent based on the documents issued by M/s Holy Creations Pvt. Ltd. but also that the quantity and description of the goods mentioned in the excise invoice of the supplier of the goods have been found not to tally with that mentioned in the export documents such as export invoice, Shipping Bill, Bill of Lading etc.; that the Commissioner (Appeals) also erred by not considering another ground for rejection of rebate claim that the respondent has not followed the procedure for claiming rebate claims, as mentioned in Rule 18 of the Central Excise Rules, 2002 read with the relevant Notification issued there under;

(d) The Order-in-Appeal dated 24.11.2020 passed by the Commissioner (Appeals), was not proper as the same had been passed without going into the merits of the case;

In view of the above, the applicant/Department has prayed that the impugned Order-in-Appeal 24.11.2020 be set aside.

3.4 The applicant/Department vide letter dated 25.05.2021 made additional submissions with respect to their Revision Application in the case of Order-in-Appeal dated 24.11.2020. The same, in addition to the facts of the case which had already been mentioned in the Revision Application, submitted the following:-

(a) The respondent on one pretext or other was submitting the claim which had been rejected at all forums; that the issue has been examined in detail at all forums but the respondent does not seem to agree with these decisions of quasi-judicial Authority/Judicial Authority; that he finds some discrepancy in the process like discrepancy in documents, intimation not received etc. to come up later on, to allege that due regard to natural justice has not been followed; that the respondent pointedly made references like 'Withholding of Refund', 'Non-Supply of document', to side track the issue instead of presenting the issue to the Authority where the issue was being examined; that the respondent keeps demanding documents from jurisdictional

authority, stating that documents are not legible, readable or not authenticated or not supplied etc.; that the respondent quotes cases that are not relevant and consistently makes plethora of communication, RTI's demanding details and documents and puts pressure on the officers to secure rebate by hook or by crook;

(b) That the chronological history of the case indicates that the entire issue had already attained finality by virtue of Hon'ble Supreme Court's Order dated 17.02.2014 wherein the doctrine of merger requires that all Orders of the lower authorities on the issue of nine rebate claims of Rs.34,89,352/- filed on 11.02.2004 stood merged with the Order of the Hon'ble Supreme Court Order; that the issue governing the rebate claims of Rs 34,89,352/ had attained finality vide Order dated 17.02.2014 of the Hon'ble Supreme Court on mainly three grounds which were as under:-

(i) Non following of the proper and mandatory procedure of filing the rebate claim in terms of Notification No.40/2001-CE(NT) to 42/2001-CE(NT);

(ii) Quality and description of the goods mentioned in the excise invoice of the supplier of the goods have been found to not tally with that mentioned in the export documents, such as export invoice, Shipping Bill, Bill of Lading etc. ;

(iii) The supplier of the said input was allowed 6% as transitional credit on the subject goods though he had shown the duty @ 10%;

They submitted that it was the contention of the respondent was that the grounds mentioned at Sl. No. (iii) above, wherein the Department had booked an offence case against their supplier has finally been settled in favour of the supplier; and that based on the CESTAT Order dated 08.12.2015, the respondent was attempting to revive the rejected claims which in any case were rejected on two other grounds wherein there is no change in the facts and circumstances till date;

(c) It was submitted that all these facts had been well narrated in the Jt. Secy (RA)'s Order dated 29.12.2006 which had already attained finality as the subsequent appeals by the applicant before Hon'ble High Court and Hon'ble Supreme Court stood rejected; they cited para 6.2 and 6.3 of the Order dated 29.12.2006 passed by the Revisionary Authority to submit that it was clear that the above mentioned grounds at Sl. No. (i) and (ii) would still hold good and could not be reopened in the garb of the ground mentioned at Sl. No.(iii) above; that the said ground could only have the effect of enhancing the rebate claim had it been sanctioned by considering the rate @ 6% instead of 10%, provided other grounds of rejection had not have existed at all, which was not the case here;

(d) Thus, in view of the above, it could be seen that the respondent was making futile attempts in reopening the entire claim of rebate particularly, when the rebate applications filed on 11.02.2004 were already found to be not admissible based on mis-match in quality and description of the goods mentioned in the excise invoice of the supplier of the goods vis-a-vis with those mentioned in export documents, such as export invoice, Shipping Bill, Bill of Lading, etc. and non-following of the procedure for claiming rebate claims under Rule 18 of the Central Excise Rules, 2002, read with the relevant Notification issued there under; that it was not in dispute that the CESTAT Order dated 08.12.2015 had no relevancy to the said grounds of rejection which already stood confirmed against the applicant vide Supreme Court's Order dated 17.02.2014.

In view of the above, it was submitted that the respondent was not entitled to any rebate claim based on the Hon'ble CESTAT's Order dated 08.12.2015 as claimed by them in the fresh application filed on 17.10.2016.

4.1 The respondent vide their letter dated 18.09.2020 submitted their "Preliminary Objections cum Defense reply" with respect to the Revision

Application with respect to the Order-in-Appeal dated 26.12.2019. Further, vide their letter dated 19.09.2020 they submitted copy of their appeal before the Commissioner (Appeals) which resulted in the Order-in-Appeal dated 26.12.2019. The submissions made by them vide reply dated 18.09.2020 are as follows:-

(a) The RA against the impugned Order-in-Appeal dated 26.12.2019 has not sought any prayer or relief from the Revision Authority and thus is no RA/ Appeal in the real sense and thus not maintainable; that though vide para 15 of the said RA , the appellant speaks about the points for ascertainment by Revision Authority, nowhere in the said RA or memorandum of RA has the appellant in direct & clear terms and in legitimate manner sought any relief or prayer from the Revision Authority; that in view of the same, the said RA needs to be dismissed as mis-filed at this very stage; that every plaint/appeal shall state specifically the relief which the plaintiff/appellant claims either simply or in the alternative and in absence of any prayer clause, the plaint/appeal fails; the respondent relied on para 19 to 26 of the Hon'ble Supreme Court judgement dated 21.04.2011 in Civil Appeal No. 6409 of 2002 in Dr. Shehla Burney & Ors. Vs Syed Ali Mossa Raza (dead) by Lrs. & Others;

(b) The respondent had filed a RTI Application dated 04.07.2020 in the office of the Commissioner of CGST & Central Excise to know the process followed by the office of the applicant while passing the Review Order dated 17.03.2020 on the basis of which the said RA has been filed; that the CPIO & Joint Commissioner of CGST & Central Excise, Surat had vide reply dated 27.07.2020 made certain startling disclosures/admissions; that the CPIO had confirmed that both, the impugned Order-in-Appeal dated 26.12.2019 and the draft copy of the said Review Order dated 17.03.2020 were both put up for the first time for the perusal of Hon. Commissioner of CGST & Central Excise Surat on the same day and vide common office note; that the CPIO had confirmed that the said draft copy of the Review Order was approved & signed on 17.03.2020 by the Commissioner without asking for any alterations;

(c) That the NSP No. IV of the Office File No. X/223/2020 vide which the said Review Order dated 17.03.2020 was signed by the Commissioner of GST & Central Excise, Surat shows the casual and mechanical manner in which the said review Order had been passed; that the said Office Noting shows some scribbling at its bottom and there is no approval of said review Order from any second Commissioner; that all these all documents prove that the Commissioner of GST & Central Excise had approved and signed the said Review Order dated 17.03.2020 in a very casual and mechanical manner by acting as a rubber stamp as he had no occasion to apply his mind and opinion;

(d) That the preamble of the Review Order dated 17.03.2020 passed by the Commissioner of GST & Central Excise, Surat, interalia mentions/ declares/ claims that "*.....In exercise of powers vested under section 35EE of Central Excise Act, 1944, the undersigned has examined the records of the proceedings in which the commissioner (Appeals), CGST & Central Excise Surat has passed Order-m-Appeal No. CCESA-SURAT (APPEALS) PS-543/2019-20 dated 26/12/2019 in case of M/s. Kanha Internationale.....for the the aforesaid Order-in-appeal.....*"; that the respondent had filed an RTI Application dated 04.07.2020 wherein they had raised the question – *"were the records of the proceedings in which the hon. Commissioner (Appeals), CGST & Central Excise Surat has passed the said above referred OIA No. CCESA-SURAT (APPEALS) /PS- 543/2019-20 dated 26/12/2019 were ever put up for the perusal and examination of the Reviewing Authority Shri Rajendra Singh, the jurisdictional Commissioner of CGST & Central Excise Surat.... ?..*", in response to which the CPIO had vide reply dated 27.07.2020 informed that - "*the records of proceedings in which the honourable Commissioner (Appeal) passed the OLA dated 26/12/2019 are not available this office* "; in light of the same the respondent raised the question - "Thus, how could have hon. Commissioner of GST & Central Excise, Surat had examined the records of the proceedings when its Office CPIO categorically confirms that the said records of proceedings were not available in his office."

(e) That the Commissioner of GST & Central Excise Surat vide Authorisation dated 17.03.2020 had claimed/declared that he had called and examined the records of the proceedings covered Order-in-Appeal dated 26.12.2019 passed by the Commissioner (Appeals), CGST & Central Excise Surat in the case of M/s. Kanha Internationale, Surat , however the above discussion of facts and documents proves that the Commissioner had seen the said Order-in-Appeal dated 26.12.2019 for the first time on 17.03.2020 only and he had signed the draft copy of Review Order and Authorization also on the same day and thus there was no occasion when the Commissioner-cum-Reviewing Authority could have called for any records of proceedings; and also that the discussion of facts and documents proved that there was also no occasion for examining the said records of proceedings by the Commissioner-cum-Reviewing Authority as the said records were not available in his office;

(f) The authorization dated 17.03.2020 clearly says that the RA was required to be filed as per directions of the Reviewing Authority stipulated in its Review Order dated 17.03.2020 and that the said Review Order directed the Asst. Commissioner of Central Excise Div-I, Surat to file the RA within stipulated time; that the said Authorization dated 17.03.2020 was forwarded to the said A.C. by the Addnl. Commissioner vide letter dated 18.03.2020 wherein the last date of filing RA had been stipulated as 07.04.2020; and thus, the said Authorisation dated 17.03.2020 has in actual terms expired on 07.04.2020; that the said RA appeared to have been filed on 26.06.2020; that the said RA was even dispatched by the appellant after 07.04.2020 by speed post and that since the said Authorisation dated 17.03.2020 had already expired on 07.04.2020, the RA filed after 07.04.2020 has been filed without any legitimate authorization;

(g) The covering letter dated 20.03.2020 vide which the said RA was forwarded to the RA office did not bear a valid 20 digit DIN Number; that the

declaration on it saying that the copy of memorandum of RA/ Appeal was already provided to the Respondent on that day was also incorrect as the said copy of RA/Appeal was admittedly sent by Speed Post dated 24.04.2020 to the Respondent; hence the said covering letter dated 20.03.2020 being bad in law, the RA submitted under the same was also bad in law and thus null and void;

(h) The RA has not been filed in accordance with the stipulated procedure for filing RA as per Central Excise (Appeal) Rules 2001 and that RA had neither been signed and nor been verified in accordance with the stipulated rules and format for Form EA8 for filing Revision Applications under Section 3 5EE of the Central Excise Act 1944 read with the applicable rules and formats;

(i) That as per the declaration in EA-8 Form by appellant, the said Order-in-Appeal dated 26.12.2019 was admittedly received by them on 08.01.2020 and thus last date of filing RA was 07.04.2020; that however, the said RA was sent by Speed Post much after that date and received by RA office on 26.06.2020; that even the RA was not accompanied with any Condonation of Delay Application;

(j) The respondent denied the averments made at para 9 of the Grounds of Appeal of the RA and submitted that the impugned Order-in-Appeal dated 26.12.2019 was not just legal and proper but also that the same was a well reasoned one which had discussed all the facts and merits of the case along with "the basis of judgement"; that since the said Order-in-Appeal dated 26.12.2019 had just allowed the appeal by way of remand by setting aside the letters without determining any duty or fine or penalty or refund, the Revision Authority may consider to refuse to admit this RA by invoking relevant provisions available under Section 35EE of the Central Excise Act 1944;

(k) The respondent denied the averments made at para 10 of the Grounds of Appeal of the RA and submitted that unlike as claimed by appellant, the Commissioner (Appeals) had not only considered but had also tested in depth about not only the passing of Order-in-Original dated 28.05.2004 and Order-in-Appeal dated 19.05.2005 but also of subsequent dismissals of further appeals of the respondent, SCAs and SLPs leading to the finality of the Order-in-Original dated 28.05.2004 at the relevant time; that para 6 and para 7 of the said impugned Order-in-Appeal dated 26.12.2019 states that -

" .... *6. It is true that Order-in-Original dated 28.05.2004 had attained finality as all the appeals, Ras, SCAs and SLPs fled by the appellant had been rejected but when the issue that more duty was shown to be paid by Ms. Holy Creations of which rebate was claimed by the appellant and for which the case booked against the said Ms. Holy Creations was one of the grounds raised for rejection of claims in the show cause notice and previous Orders , the appellant's re-claim of rebate cannot be faulted upon the favourable decision by the Hon'ble CESTAT in favour of Ms Holy Creations.....*
7. The JAC/ adjudicating authority had sent the same for verification to the JRO like other fresh rebate claims, who recommended rejection of claims on the ground that the case of Ms. Holy Creations was not directly related to the appellant and as such the claims cannot be revived for consideration .. This view was not correct as the case against Ms. Holy Creations was one of the major grounds for rejection of the claims earlier and till the rejection Order attained finality, the CESTAT Order was not issued...." .

The respondent submitted that since the appellant and the Authorisation holder had nowhere impeached or challenged this reasoning discussed by the Commissioner (Appeals) in the impugned Order-in-Appeal dated 26.12.2019; and that the averment of the appellant at para nine of Grounds of RA that Commissioner (Appeals) had not considered the said facts was misplaced and incorrect; and hence in light of above, the respondent requested to reject the said ground;

(l) The respondent denied the averments made at para 11 of the Grounds of Appeal of the RA and submitted that vide this para the learned appellant had tried to take advantage of errors/mistakes apparent on face of the ex-parte Order-in-Appeal dated 19.05.2005 mirrored on the face of subsequent

ex-parte RA Order dated 29.12.2006 by trying to just highlight that the said refund claims were rejected earlier on the ground of quantity mis-match between duty payment invoices and export documents;; that the facts on records and the documents filed by the appellant would show that –

(i) Nine Separate Applications (all dated 11/2/2004) for refund of Central Excise Duty under Export of Goods were filed by them with the Original Authority on 11.02.2004; subsequently upon scrutiny of these nine applications, it appeared to the original authority that all the said nine separate refund applications were deficient on the following three counts: a) They had failed to fulfill various conditions and follow other procedures like filing of declaration, obtaining of permission, ARE2 procedure etc. as specified under notification no.40/2001-CE(NT) to 42/2001CE(NT) all dated 26.06.2001, b) the quantity and the description of goods mentioned in excise invoices did not tally with export documents and c) the transitional credit was allowable at the rate at 6% only whereas the supplier had shown duty @ 10 % which was not allowed under notification no.35/2003 dated 10.04.2003 as amended by notification no.47/2003 and accordingly a Show Cause Notice dated 26.04.2004 was issued to them on the above three grounds; that the said Show Cause Notice dated 26.04.2004 was duly replied vide letter dated 08.05.2004 by them on 11.05.2004; that subsequently, the original authority had rejected the said rebate claims vide Order-in-Original dated 28.05.2004 only on two grounds, i.e. non following of procedure as mentioned above and offence case on supplier Ms Holy Creations Pvt. Ltd.; that in fact, the quantity of goods mentioned in the excise invoices was in metres and the quantity of goods mentioned in the corresponding export documents was in yards and as per prevalent practice 914.40 metres was considered as 1000 yards in international trade; that when the yards are converted into metres or the vice versa, the quantity completely tallies; that similarly the description of the goods in export documents was as per the name of the product more popularly known in the country of export and as per DEPB manual whereas the description of goods mentioned in excise invoice is generally the local industry

name of the product; that moreover, the shipping marks and numbers of the packages containing the product as per excise invoices totally matches with those on the corresponding /respective export documents; that the adjudicating authority was also satisfied with the same and that's why he had not only produced a comparison table of quantity in yards and metres at paras above para 3 of the Order-in-Original dated 28.05.2004 but also has not mentioned this quantity/description mis-match as a ground of rejection in the findings recorded at para 10 and 11 of the Order-in-Original dated 28.05.2004;

(ii) Though, the Order-in-Original dated 28.05.2004 was challenged by the undersigned applicant firm before the Appellate Authority as well as the Revision Authority, ex-parte Orders were passed rejecting their appeal and the RA and the said Order dated 28.05.2004 was upheld with some mistakes apparent on the face of the said appellate and revision Orders; the mistake apparent on the face of both the said Order-in-Appeal dated 19.05.2005 as well as Revision Order dated 29.12.2006 was that both these Orders had erroneously mentioned that Original Authority had rejected the said claims on three grounds, without noting and realizing the fact that the third ground of non- tallying of the quantity and description was already dropped by the Original Authority in its above referred Order dated 28.05.2004 as discussed above; that the point of law remains that the Order-in-Appeal dated 19.05.2005 had upheld the Order-in-Original dated 28.05.2004 and subsequently the Revision Order No.1143/2006 dated 29.12.2006 had upheld the said Order-in-Appeal dated 19.05.2005; that even the writ petitions in the form of SCAs (being SCA Nos. 11576 of 2008, SCA No. 2053 of 2010 , SCA No. 10329 of 2013) challenging the same were dismissed by High Courts without going into merits and the SLPs (being SLP Nos. 16759 of 2010 & SLP No. 2630 of 2014) challenging the same were also dismissed by Hon. Supreme Court whereby the said Order-in-Original dated 28.05.2004 had attained its finality at the relevant time; they further submitted thus, despite the above facts on records, the applicant had tried to misuse the

mistakes apparent on the face of records of the said Order-in-Appeal and the Revision Order to question upon the admissibility of refund claims to baselessly allege that the Commissioner (Appeals) had failed to consider this aspect of admissibility of refund claims; the respondent submitted that the Commissioner (Appeals) had vide the Order-in-Appeal dated 26.12.2019 had only remanded the matter to the Original Authority for adjudication of the claims dated 11.07.2016 by considering all these aspects; that there was no decision on admissibility or inadmissibility of refund claims in the said impugned Order-in-Appeal dated 26.12.2019 and thus the said allegation of the appellant was totally misplaced, baseless and irrelevant and in view of the same it was requested that the said ground may be rejected;

(iii) They denied the averments made in the grounds wherein the applicant had tried to compare their present their refund claims dated 11.07.2016 filed on the basis of the CESTAT Order dated 08.12.2015 with claims filed prior to passing of the said CESTAT Order and had advocated that the present refund claims dated 11.07.2016 filed on the basis of the said CESTAT Order should meet the same fate as of when there was no such CESTAT Order dated 8/12/2015; that the Commissioner (Appeals) had clearly discussed vide para 6 and 7 of its impugned Order-in-Appeal dated 26.12.2019 about the role of the CESTAT Order dated 08.12.2015 in the claims dated 11.07.2016 filed by them in the following words:-".... *6. It is true that OIO dated 28.05.2004 had attained finality as all the appeals, Ras, SCAs and SLPs filed by the appellant had been rejected but when the issue that more duty was shown to be paid by M/s Holy Creations of which rebate was claimed by the appellant and for which the case booked against the said M/. Holy Creations was one of the grounds raised for rejection of claims in the show cause notice and previous Orders, the appellant's re- claim of rebate cannot be faulted upon the favourable decision by the Honourable CESTAT in favour of Ms. Holy Creations...*

7..... The .JAC adjudicating authority had sent the same for verification to the JRO like other fresh rebate claims, who recommended rejection of claims on the ground that the case of Ms. Holy Creations was not directly related to the

appellant and as such the claims cannot be revived for consideration.. This view was not correct as the case against Mis. Holy Creations was one of the major grounds for rejection of the claims earlier and till the rejection Order attained finality, the CESTAT Order was not issued...";

It was submitted that in view of the above facts on record and especially when the applicant had nowhere disputed/ impeached/ objected to the legitimacy of the said findings / discussion of the Commissioner (Appeals) in the Order-in-Appeal dated 26.12.2019, this ground of the applicant be rejected;

(iv) It was submitted that the applicant had tried to dilute the pending refund claims dated 11.07.2016 by calling the same as a mere letter with the CESTAT Order dated 08.12.2015 and the like and had baselessly alleged that Commissioner (Appeals) had not considered that the said issue had already attained its finality; also that the applicant had repeated here the essence of all the earlier grounds that were already dealt above; that it appeared that the applicant had concealed several vital facts and documents from these proceedings, which were as follows:-

- Their letter dated 11.07.2016 vide which the refund claim applications dated 11.07.2016 were filed by them and copy of letter of the Original Authority which indicated that the same was received by them on 18.07.2016;
- Letter dated 03.08.2005 issued by the Commissioner of Central Excise & Customs , Surat -1 to the Deputy Commissioner of Div-IV with a copy to DC of Central Excise Div-II , Surat I, as discussed and mentioned by the Commissioner (Appeals) at para 7 of the Order-in-Appeal dated 26.12.2019;
- The RTI Reply dated 06.10.2017 admitting the relevance of the CESTAT Order dated 08.12.2015 of M/s Holy Creations Pvt Ltd. with the claims for refund which were earlier rejected vide Order-in-Original dated 28.05.2004; RTI Reply dated 09.10.2017 along with enclosures showing

that the said refund claims dated 11.07.2016 were not only considered as refund claims by the office of original authority at the relevant time but also that the same were sent to Range for verification vide letter dated 02.08.2016 by the same nomenclature and even the range office had sent its verification report dated 08.08.2016 by considering the same as refund claims; that it was only when the claims were not adjudicated with the period of three months, the same were re-labelled as resubmission of claims vide letter dated 17.10.2016 by the Original authority;

- That even the letter dated 26.08.2016 issued from the office of Original Authority to the Review Section showed that the adjudication process of the said refund claims dated 11.07.2016 was already going on;
- They claimed that they had filed a full fledged refund claim vide letter dated 11.07.2016 whereas the original authority said that it was a resubmission letter; that to legitimately unearth the truth, they filed several RTI Applications; that in reply to the same, the CPIO (AC/DC) , Div-II , Surat CGST & Central Excise vide letter dated 09.10.2017 had provided certain documents which proved that the applications dated 11.07.2016 of the respondent were not only refund claims but also that the same were considered as refund claims not just by the original authority but also by the concerned range office at the relevant time; that the following documents procured under RTI Act proved the same:

a. Letter dated 02.08.2016 issued from the Office of the A.C. of Central Excise, Div-II, Surat-I to the Superintendent of Central Excise, Range I, Div-II, Surat-I stated that : "Sub: Verification of Rebate Claim- m/r ... The rebate claim of Rs.34,89,352/- along with enclosures filed by M/s. Kanha Internationale, Surat on 18.07.2016 with this office is sent herewith for scrutiny as per prescribed checklist ..."; that this proved that their refund claims dated 11.07.2016 were admittedly received by the office of the Original Authority on 18.07.2016 and the same were considered as refund/rebate claims and were sent to the concerned range for verification vide letter dated 02.08.2016;

b. The verification report dated 08.08.2016 also showed that the said refund claims dated 11.07.2016 were considered and verified as rebate claims by the concerned Range Superintendent, who had recommended for rejection of claims; that this proved that the adjudication process had already begun and thus the same could not be over until a speaking Order-in-Original was passed in the matter by following the principles of natural justice;

c. The letter dated 26.08.2016 issued from the office of the A.C., Central Excise, Div-II, Surat-I was addressed to Superintendent (Review), Central Excise & Customs, Surat-I by clearly mentioning in its body that M/s. Kanha Internationale had filed rebate claims in the division on the basis of CESTAT Order dated 08.12.2015 in case of M/s Holy Creations Pvt. Ltd.; that this proved that not only were the refund claims dated 11.07.2016 which were received by the AC, Div-II, Surat-I considered as rebate claims but the adjudication process on the same had also begun considering the same as rebate claims; that as per law, refund/rebate claims could be adjudicated only by passing a speaking Order-in-Original and that no Order-in-Original had been passed till date in the issue;

d. The original authority had been claiming that the CESTAT Order dated 08.12.2015 had no legal meaning as the same had nothing to do with the refund claims of the respondent that were rejected vide Order-in-Original dated 28.05.2004 which was upheld by the appellate Authority and the said decision of Appellate Authority to uphold the Order-in-Original dated 28.05.2004 was also not interfered with by the Revision Authority and also the SCAs and SLPs challenging the same were dismissed, by virtue of which the Order-in-Original dated 28.05.2004 had become the Order of the Revision Authority and thus attained finality; that to unearth the truth the respondent had filed an RTI Application dated 04.09.2017 and in reply to the same the CPIO, i.e. the original authority (AC/DC), CGST & Central Excise, Div-II, Surat had vide letter dated 06.10.2017 had informed that the offence case in

the matter of Central Excise invoices of M/s Holy Creations P. Ltd., discussed and given as main ground of rejection in the Order-in-Original dated 28.05.2004, was finally adjudicated vide Order-in-Original dated 30.07.2005 and that the same was set aside vide CESTAT Order dated 08.12.2015;

e. It was further submitted that the Order-in-Original dated 28.05.2004 had rejected the rebate claims mainly on the ground of offence case (r/w some procedural lapse which alone cannot be a ground of rejection of any substantial benefit) that and the same had been set aside by the CESTAT vide Order dated 08.12.2015 and that in view of the same, the respondent had a bonafide reason to believe that after CESTAT set aside the said offence case; they had become entitled for refund of duty that was borne by them;

f. Though the original offence case was on Ms. Holy Creations Pvt. Ltd., their supplier of the goods, their rebate claims were rejected vide Order-in-Original dated 28.05.2004 on the ground of deficient duty payment by the said supplier, though they, in their capacity as buyer of goods had borne the said duty payment; that this comes within meaning of Section 11B(2)(e) of the Central Excise Act, 1944; the rejection by the Order-in-Original dated 28.05.2004 showing the offence case (set aside vide CESTAT Order dated 08.12.2015) as main ground of rejection of excise rebate under exports was in itself a proof of payment/bearing of the duty by them and since they were not registered with the Excise Department, there remained no occasion or question of passing of such duty to any other party or person; that since the said CESTAT dated 08.12.2015 had totally set aside the said offence case and main ground of rejection of Order-in-Original dated 28.05.2004, the said CESTAT Order dated 08.12.2015 comes within the meaning of explanation para *"B (ec) printed below section 11B(5) of Central Excise Act"*;

g. It was submitted that in view of the submissions above, they had been under the bonafide belief that they were entitled for refund of duty and had filed application dated 11.07.2016 for refund of duty in the

prescribed form and manner within the limitation period of one year from the date of said CESTAT Order dated 08.12.2015 (signed on 08.02.2016); that such refund claim that has been filed within meaning of above discussed provisions of Section 11B of the Central Excise Act, the refusal of the original authority to adjudicate the same by passing a speaking Order-in-Original on the ground of lack of enabling legal provisions was devoid of any truth and merits; that the said refund claim could be disposed of only by passing a speaking Order-in-Original by following due principles of natural justice;

h. They further submitted that it transpired under RTI Act that the said offence case which was the main ground of rejection of their rebate claims by Order-in-Original dated 28.05.2004 was in fact adjudicated by the jurisdictional Commissioner and after adjudication the Commissioner had vide letter dated 03.08.2005 had directed the original authority to process the respondent's said nine rebate claims that were rejected vide Order-in-Original dated 28.05.2004 in the words that- " *Further, rejecting the Rebate Claim of M/s Kanha Internationale, 303, Empire State Building , Surat are also not feasible because goods have been exported and duty paying documents are genuine. Hence you may like to process the rebate claims.*"

i. It was submitted that if they tried to apply the said Cestat Order dated 08.12.2015 to the said Order-in-Original dated 28.05.2004, they found that the moment the ground of offence case is deleted, the ground of procedural lapse evaporates by its own in view of well settled proposition of law that the substantial benefit could not be rejected alone on account of any procedural lapse; thus making all the nine refund/rebate claims refundable; they pleaded that this may be read with the well settled and accepted Legal maxim - "*sublato fundamento, cadit opus*", which means -the foundation being removed , structure falls; that thus by virtue of this the duty became refundable as a consequence of the said CESTAT Order dated 08.12.2015 and thus the same comes within the meaning of Section11B, Explanation (ec), of the

Central Excise Act 1944 which provides a fresh course of action for the claimants in case duty becomes refundable as a consequence of any such Order or judgment;

j. It was submitted that even if it was assumed for the sake of arguments, though otherwise denied, that the said above referred refund claims dated 11.07.2016 were re-submission of application for refund, then too as per para 4.1 of Part I of CBEC Circular No. 1063/2/2018-CX from F. No. 116/2/2018-CX3 dated 16.02.2018, it was held that- "*resubmission should be seen as a continuous attempt and therefore in the matter the department was directed to examine the rebate claims of the petitioner on merits*"; that here it was pertinent to mention that CBEC vide para 3 of the said Circular had categorically mentioned that the main intention of the said Circular was that the cases pending be decided on similar lines so as to reduce unnecessary further litigation;

k. That whenever any rebate claim was rejected by quoting any offence case as one of its grounds, the said rejected duty amount also attains the colours of a pre-deposit, as recovery against an offence case and rejecting an entitled refund due to an offense case, both were technically the same; and the moment the said offence case is set aside, the concerned party can ask for giving effect to the said Order by writing a letter with a copy of said Order; that after receipt of the said letter for giving effect of the Order, the same is considered as a refund claim and refund of the pre-deposit in accordance with law or reject the same in accordance with law by passing a speaking Order-in-Original;

l. It was submitted that the applicant wanted to refuse the adjudication of a refund claim filed on the basis of a CESTAT Order dated 08.12.2015 that had set aside the offence case and duty payment irregularity of their purchase invoices, just because several appeals, revision applications, SCAs and SLPs filed by them were dismissed/ rejected

prior to the CESTAT Order dated 08.12.2015 when the offence case was totally alive; that this proposition sounded similar to an example where the marriage registrar refuses to register and validate the legitimate marriage of one Indian Citizen of 22 years on the ground that he had rejected once a similar request of the same citizen/person when he was a minor of 15 years and all the appeals and writ petitions challenging the said refusal to allow marriage of a minor was rejected/dismissed at the relevant time;

m. It was submitted that they had filed the said refund claims dated 11.07.2016 by post which were received by the original authority on 18.07.2016; that after receipt of the same the original authority had neither sanctioned and nor rejected the said claims; that they kept writing letters requesting for adjudication of the said refund claim dated 11.07.2016, but the original authority had neither sanctioned and nor passed any rejection Order-in-Original and just corresponded by letters from 17.10.2016 to 15.11.2019; that throughout this corresponding period the original authority had never clarified that no Order-in-Original was going to be passed in the matter; that the original authority did not pass any speaking or appealable Order; that the letters issued by the original authority during this correspondence period were just the opinion and fact reports, which could not be termed as an Order; that the respondent was under the bonafide belief that an Order-in-Original would be passed in the said claims dated 11.07.2016 and that was why they repeatedly requested the original authority to either pass a speaking appealable Order or clarify clearly that no Order-in-Original would be passed; that since the original authority had pursuant to the oral clarification on 13.11.2019 followed by letter dated 15.11.2019 informed/clarified to them during their personal visit on 13.11.2019 that no Order-in-Original would be passed in the matter and the same was followed by letter dated 15.11.2019, the limitation period would start from 13.11.2019 and not from 17.10.2016 or any other date; that

they relied on the CESTAT Order dated 05.08.2015 in the case of Sai Sulphonates Pvt. Ltd. Vs CCE&C [2007 8 STR 104] which while relying on a decision of the High Court of Bombay had held that -

"It has been held by the Hon'ble High Court of Bombay that computation of period of limitation under Section 35 when the Order is not passed in a regular fonn would be calculated from the date of such clarification and not from the date of original communication. In the present case, the clarification, that no Order will be passed by the Assistant Commissioner, was communicated on 5th June, 2003. Therefore, the limitation will commence from 5th June, 2003. In the present case, the appeal before the Commissioner (Appeals) has been filed on 30th July, 2003 whereas the clarification by the Assistant Commissioner was issued on 5th June, 2003. Therefore, the appeal filed by the appellants before the Commis3ioner (Appeals) was in time"; they once again referred to para 6 & 7 of the Order-in-Appeal dated 26.12.2019 and submitted that – *"Also, since vide this ground the learned appellant has reiterated the essence of all its earlier discussed grounds of RA, you are most respectfully requested to kindly read all the above submissions of the undersigned mutatis mutandis alongwith this".*

n. It was submitted that in view of the above discussion in general and the fact that the applicant had nowhere impeached/objected to the above discussed finding of the Appellate Authority in the impugned Order-in-Appeal dated 26.12.2019 on any logical ground or otherwise, it was requested that this ground of the applicant be rejected;

(v) They denied the averments made at para 15 of the Grounds of Application / Appeal of the RA and submitted that vide this para the applicant had given their opinion about the requirement of filing an appeal with the Principal Commissioner (RA) for correct determination of the two points mentioned therein; that this para purely consisted of the opinion of the appellant about requirement to file an Appeal/RA and that the same could not be considered as a prayer clause; that the applicant had neither here nor elsewhere throughout the body and text of RA sought any relief or prayer from the Revision Authority; and that the said this RA/ Appeal needs to be dismissed as it is well settled proposition of law that without a prayer clause, the appeal fails.

In view of the above submissions the respondent prayed that :-

(a) The Stay application filed by the applicant be rejected as any Stay Application /Miscellaneous Application could not seek any relief that is greater than that sought vide its source Appeal/RA and in the instant case there was no prayer sought vide the said RA submitted by them;

(b) To first consider and decide on the Preliminary objections to the said RA mentioned in their submission by considering each point without prejudice to one another and dismiss/reject the said RA at this stage itself;

(c) To consider and decide the other objections to the grounds of RA by reading each point therein in light of this entire submission in general and the fact that there was no prayer clause in the said RA in particular and dismiss/reject the said RA by granting consequential relief to them;

(d) To reject the said RA by upholding the impugned Order-in-Appeal dated 26.12.2019 and grant all ancillary and consequential relief to them;

(e) To direct the Original Authority to comply with the Order-in-Appeal dated 26.12.2019 within seven days as the same had not been complied with by the Original Authority;

(f) To grant any other relief to them as deemed fit in the interest of justice;

(g) To grant any other relief that they would seek during the personal hearing or through written submissions in the future;

4.2 The respondent vide their letters dated 16.04.2021 and 11.06.2021 submitted their "Preliminary Objections cum Interim Defense reply" and "Preliminary Objections – cum – Defense reply", respectively, with respect to the Revision Application against the Order-in-Appeal dated 24.11.2020. The submissions made by them vide their reply dated 16.04.2021 are as follows:-

(a) This instant Revision Application (RA) filed by the applicant is non est in the eyes of law and thus inconsequential; that the instant RA has been attempted to be filed by the applicant by grossly overlooking and not

complying with the statutory/mandatory and binding provisions laid down under applicable Central Excise (Appeal) Rules, 2001 in general & Rule 9 of the said rules in particular; that this instant RA had been attempted to be filed without due diligence apparently with defects that are fundamental to the institution of the said proceeding of Revision Application; that the instant RA had been attempted to be filed in an unprofessional manner by intentionally concealing the part/whole of the documents that are otherwise statutorily/mandatorily required to be accompanied with the RA; the filing of the instant RA contained such critical deficiencies that the same could not be considered as a Revision Application and the same can be just considered as a bunch of papers filed;

(b) That there was substantial mis-declaration in the Review Order dated 29.01.2021 by the Commissioner, GST & Central Excise, Surat inasmuch as the preamble Para of the Review Order mentioned

" *In exercise of powers vested under section 35EE of Central Excise Act , 1944 , the undersigned has examined the records of the proceedings in which the commissioner (Appeals), CGST & Central Excise Surat has passed Order-in-Appeal No. CCESA-SURAT (APPEALS) PS-121 2020-21 dated 24.11.2020 in the case of M/s Kanha Internationale ..... for the purpose of satisfying as to the correctness, legality or propriety of the aforesaid Order-in-appeal....*" ; that however, when they had filed an RTI application dated 01.02.2021 asking *"were the records of the proceedings in which the hon. Commissioner (Appeals), CGST & Central Excise Surat has passed the said above referred OIA No. CCESA-SURAT (APPEALS) /PS121/2020-21 dated 24/11/2020 were ever called for by the hon. Commissioner of CGST & Central Excise Surat .... ? ...* " ;

That the CPIO had vide reply dated 01.03.2021 stated that no records of proceedings in which the Commissioner (Appeal) passed the impugned Order-in-Appeal dated 24.11.2020 were ever called for by the Commissioner of CGST & Central Excise, Surat and also stated that no such records of the said proceedings were available in their office as the same were never called for by the review section; It was thus submitted that the Commissioner of GST & Central Excise, Surat could not have examined the records of the proceedings when the said records of proceedings were never called for or received and thus not available in his office; they also pointed out that there similar mis-

declaration by the Commissioner in the Authorisation dated 29.01.2021 as confirmed by the data called for by them vide an application under RTI;

(c) They submitted that the main basis of the Review Order dated 29.01.2021 is the mis-quoting of Revision Order no.1143/2006 dated 29.12.2006 and that any legal structure based upon such an erroneous /untrue basis falls by itself upon the very sight of light of truth and facts on records; that the only ground written in bold letters in both, the Review Order and the revision application was the ground mentioned at para 13 wherein the applicant had relied upon and quoted one observation of the Revision Authority at para 6.2 of a Revision Order no.1143/2006 dated 29.12.2006 interalia mis-claimed to be reading as :-

"*6.2 It is admitted fact that the applicants have filed the rebate claims for the duty paid input used in manufacturing of goods exported by the applicant. The Commissioner (Appeals), has given categorical findings that quality and description of the goods mentioned in the excise invoice of the supplier of goods have been found not tally with those mentioned in export documents , such as export invoice , shipping bill , bill of lading, etc.;*

It was submitted that the fact was that the Revision Authority had not disputed the quality of goods anywhere in the Revision Order dated 29.12.2006; that owing to certain mistakes apparent on face of the said Revision Order, the then revision authority noted the said observation about quantity of goods and not about the quality of goods; that since, the quantity of goods mentioned in excise invoice of supplier of the goods was in the 'metres' unit and the same in export documents, such as export invoice, shipping bill, bill of lading, etc was in the unit 'yards', that this mis-match was illusionary, and that if the said yards were converted and metres or the vice versa, the quantity totally matched; that the original authority vide Order-in-Original dated 28.05.2004 had not given any ground of such mis match in the Order-in-Original but due to bonafide error the then appellate authority mentioned it and the then revision authority replicated the said mistake apparent in the said Order dated 29.12.2006; that the Commissioner (Appeals) had recorded these facts in the Order-in-Appeal dated 24.11.2020 and had also have tested the same the said Order-in-Appeal; that the

applicant had intentionally concealed the same from the records and sight of the Revisionary Authority; that the original authority had also misquoted the Revision Order in the Order-in-Original dated 06.10.2020 and after receipt of copy of the Order-in-Original, the respondent had filed an application dated 11.01.2021 under RTI Act and had asked for clarification; however the Original Authority had sabotaged the said mis-quoting fraud by issuing an evasive reply dated 05.02.2021; that this proved that despite the error being pointed out the said mis-quoting has continued in the review Order dated 29.01.2011 as well as the subject Revision Application; that this was nothing but malicious litigation; it was further submitted that the above discussed facts proved that the Commissioner of GST & Central Excise, Surat had acted as a rubber stamp while signing the said Review Order dated 29.01.2021 put to him by his sub-ordinates in a very casual and mechanical manner without any sincere perusal or verification of facts and records;

(d) The entire issue and subject matter of the Revision Application was already decided in favour of the respondent by the Commissioner (Appeals) vide Order-in-Appeal dated 26.12.2019 and being aggrieved by the said Order-in-Appeal the applicant had already filed a Revision Application along with Stay application against the same at the relevant time; and when no stay was granted by the Revisionary Authority and during pendency of the said RA, the original authority decided to sit in appeal to the said earlier Order-in-Appeal dated 26.12.2019 and accordingly passed an Order-in-Original dated 06.10.2020 by totally overruling the law already held and settled by the appellate authority vide Order-in-Appeal dated 26.12.2019; that upon being challenged again in appeal, this act of judicial indiscipline and disobedience of the original authority was set aside by the Appellate authority by passing Order-in-Appeal dated 24.11.2020; that this example of practicing judicial disobedience and judicial indiscipline by the original authority is being promoted/sheltered by the jurisdictional Commissioner by challenging the said Order-in-Appeal which had arisen out of the unlawful Order-in-Original dated 06.10.2020; that hence in the real sense there was no cause of action

for this RA and thus the same deserved to be dismissed at this stage itself for lack of any cause of action;

(e) They submitted that the impugned Order-in-Appeal dated 24.11.2021 was a speaking legal and proper Order and since it had just allowed the appeal by way of remand by setting aside the impugned Order-in-Original dated 6.10.2020 without determining any duty or fine or penalty or refund, the Revision Authority may refuse to admit the RA;

(f) It was submitted that Commissioner (Appeals) had not only considered but had tested in depth the passing of the Order-in-Original dated 28.05.2004 and Order-in-Appeal dated 19.05.2005 but also of subsequent dismissals of their appeals, SCAs and SLPs leading to the finality to the Order-in-Original dated 28.05.2004 at the relevant time; in this connection they drew attention to the discussions at para 5 of the impugned Order-in-Appeal dated 24.11.2021 and that the applicant had concealed the same from the Revision Authority; that since the applicant had not challenged this reasoning of the Order-in-Appeal, the submission that the Commissioner (Appeals) had not considered the facts, is misplaced and incorrect and they requested that the subject application be rejected on this ground; that the applicant had maliciously misquoted the RA Order dated 29.12.2006 and had taken advantage of the errors/mistakes apparent on the face of the ex-parte Order-in-Appeal dated 19.05.2005 and the RA Order as discussed above;

(g) It was submitted that the applicant had tried to baselessly compare the present claim dated 11.07.2016 that were filed on the basis of the CESTAT Order dated 08.12.2015 with the claims filed on earlier occasions prior to the passing of the said CEST AT Order and had advocated that the present refund claims should meet the same fate as of when there was no such CESTAT Order dated 8/12/2015; that in view of the fact that the applicant had disputed these facts it was requested to reject this ground of the applicant;

(h) That the applicant had tried to dilute the pending refund claims dated 11.07.2016 by calling the same as a mere letter; and since the applicant had not disputed/objected the categorical finding of the Commissioner (Appeals) on this count, it was requested that the subject Revision Application be rejected;

(i) They submitted that though the applicant had already filed a revision application against the Order-in-Appeal dated 26.12.2019, there was no stay on the same; that on the contrary the applicant had failed to note that while its subordinates at division office had in one way itself sat in appeal to the Order-in-Appeal dated 26.12.2019 while passing an Order-in-Original dated 06.10.2020 without obtaining any stay on the said Order-in-Appeal dated 26.12.2019 and that the Order-in-Appeal dated 24.11.2020 was not complied with on the grounds that an RA/Appeal against the same was pending; that this was in gross violation of CBEC Circulars and prevalent laws on the same;

(j) It was submitted that any appellate authority had an inbuilt power to remand a case back to the original authority; that this issue was no more res integra and it had been judicially held that an appellate authority could remand a case back to the original authority even without going into merits of the case;

In view of the above it was requested that : -

i. The earlier Revision Application filed by the applicant against the Order-in-Appeal dated 26.12.2019 in the same matter which was pending be decided first;
ii. To read these submissions along with submissions already made in the earlier Revision Application filed by them in earlier Order-in-Appeal dated 26.12.2019;
iii. Their preliminary objections may be considered without prejudice to one another and that the revision application be dismissed at this stage itself;

to dismiss the Revision Application along with all other Miscellaneous and other application filed with/after the same;

iv. To consider and decide the other objections to the grounds of RA by reading each point therein in light of this entire submission in general and the fact that there was no prayer clause in the said RA in particular and dismiss/reject the said RA by granting consequential relief to them;

v. To reject the said RA by upholding the impugned Order-in-Appeal dated 24.11.2020 and grant all ancillary and consequential relief to them;

vi. To direct the Original Authority to comply with the Order-in-Appeal dated 24.11.2020 within seven days as the same had not been complied with by the Original Authority;

vii. To grant any other relief to them as deemed fit in the interest of justice;

viii. To grant any other relief that they would seek during the personal hearing or through written submissions in the future.

4.3 The respondent vide their letter dated 11.06.2021 submitted their "Preliminary Objections – cum – Defense reply". At the onset they reiterated the submissions made by them with respect to Order-in-Appeal dated 26.12.2019 as applicable to the present case. Thereafter, in addition to the submissions already made by their reply dated 16.04.2021, they also submitted that :-

(a) That the subject Revision Application was not filed in accordance with the Rules that govern the same inasmuch as all the pages of the impugned Order-in-Appeal was not submitted along with the application with an intention to conceal and deceive the Revision Authority and in these pages the Commissioner (Appeals) had dealt with non-issue of Show Cause Notice by the original authority before rejection of their claims vide Order-in-Original dated 06.10.2020 and also involved clarifications submitted by them regarding the mis-match of the quantity mis-match as well as the mis-match between the excise invoice of the goods supplier vis-à-vis their export invoice, etc., with the

intention to procure a favorable Order from the Revision Authority; and relied upon the judgment dated 18.03.2020 of the High Court of Delhi in the case of UOI vs Panacea Biotech Limited;

(b) That the RA had been filed without due diligence and in an unprofessional manner and that in the circumstances the Revision Application can be considered just as a bunch of papers;

(c) That on seeing the willful mis-quoting of the revision Order dated 29.12.2006 they had filed another RTI Application dated 12.02.2001 in reply to which the CPIO vide letter dated 05.03.2021 had informed that

–"....In this connection with reference to the para 6.2 of Order No, 1143/2006 dated 29.12.2006 issued by the Joint Secretary (RA) ,Govt. Of India, it is to inform you that while quoting the said para in the Review Order dated 29.01.2021 in para 13 (Grounds of Appeal) has mistakenly typed as "Quality". This is a typographical human error... .Corrigendum to Appeal issued Commissioner, CGST & C. Ex. Surat has already been issued and forwarded to JAC to file a corrigendum for appeal before Pr. Commissioner (RA) & Ex-Officio Additional Secretary to Govt. Of India, Mumbai ...".

It was submitted that the said misquoted findings of the Revision Order dated 29.12.2006 was the main basis and pillar on which the entire Review Order dated 29.01.2021 of the applicant was erected and thus by virtue of this mistake and issuing of corrigendum by the abovenamed applicant of the RA, the entire structure of said Review Order dated 29.01.2021 fell by itself; that as per fiction of law admission of an error/mistake & issuance of a corrigendum to Revision Application aiming to rectify any such error or mistake which goes to the basis of the decision making in Review Order leading to a Revision Application amounts to deemed withdrawal of the Revision Application already filed; that the subsequent RTI Applications and RTI Replies from the office of the applicant and its Division office showed that the said Corrigendum was filed with the office of the Revision Authority by the Original Authority without procuring any authorization to file the same from the applicant of this present RA; that no fresh RA in consonance with the corrections in Review Order dated 29.01.2021 had been filed by the

applicant till date and that the limitation period for filing the same even with delay condonation was already over; hence, as per law , even on this count itself the present RA remains no RA in real sense and this is liable to be dismissed at its very sight; it was also submitted that the issuance of Corrigendum leads the entire Review Order as incomplete and also rendered the RA filed on its strength as incomplete unless the copy of the corrigendum was filed in a legal manner with proper authorization within the limitation period; that the Review Order and the RA arising out of the said Review Order could not be read in isolation to its Corrigendum and the Corrigendum if not filed with legitimate Authorisation to file the same within limitation periods leads the entire RA as infructuous and liable for dismissal; that copy of Corrigendum to Review Order dated 29.01.2021 issued by the applicant/reviewing Authority i.e. the Commissioner of CGST & Central Excise , Surat was for the first time sent to the office of the Original Authority after the expiry of three months from the date of receipt of the Order in Appeal against which the said Review Order dated 29.01.2021 was passed;

(d) It was further submitted that no Show Cause Notice was issued by the original authority before passing the Order-in-Original dated 6.10.2020 whereby their refund claims dated 11.07.2016 were rejected; that this lapse of non-issuance of a Show Cause Notice before rejecting refund claims could not be viewed as just a technical breach , especially when they had vide their letter dated 01.09.2020 had categorically reminded and invoked its legal right to receive legitimate notices, PH hearing intimations, etc. as per principles of natural justice in general and as per prevalent procedural laws as applicable to their refund claims dated 11.07.2016 if they were found to be rejectable on any legitimate ground; that this was not just a gross violation of principles of natural justice but was also judicial disobedience of the Order-in-Appeal dated 26.12.2019 as well as wilful non- adherence of the mandatory

procedural laws on refund claim adjudication as prescribed by the CBEC as well as judicial forums; they sought to place reliance on the Orders of the Hon'ble CESTAT in Appeal No. ST/27103/2013 in the case of *M/s* D. E. Shaw India Software Pvt. Ltd. Vs CC, CE & ST, Hyderabad – II, CE Appeal No.3640 of 2003 in the case of CCE vs Aurangabad vs Sidheshwar SSK Limited and CE Appeal No.ST/2013-SM 25108 in the case of CCE, Tirupati vs Gimpex Limited;

(e) It was further submitted that the Commissioner (Appeals) had vide Order-in-Appeal dated 26.12.2019 had categorically Ordered/directed the respondent original authority to follow the principles of natural justice in this case and the issuance of show cause notice is a mandatory requirement according to the principles of natural justice which is commonly known as audi alteram partem which means that no one should be condemned unheard; that the CBEC Circular no. 1053/02/2017-CX dated 10.03.2017 had clearly mentioned the connection between issuance of a show cause notice & principles of natural justice; it was submitted that thus by passing this mandatory requirement of issuance of show cause notice , the original authority had made entire adjudication proceedings as void ab initio;

(f) It was submitted that the personal hearings shown to be given in the Order-in-Original dated 06.10.2020 was just an illusion as no personal hearing in the real sense was given to them and they stated as follows:-

- The said earlier Order-in-Appeal dated 26.12.2019 was received by the original authority on 08.01.2020, however, the original authority kept the compliance of the said Order-in-Appeal pending till 13.08.2020 on the ground that the said Order-in-Appeal was not accepted by the Department and that an RA/appeal against the same was already filed;
- The original authority issued a letter dated 13.08.2020 for PH scheduled on 21.08.2020; that the said PH letter was not sent to

the undersigned for many days after its issue and was finally dispatched by Speed Post on 17.08.2020; that the original authority was in possession of their e-mail address as indicated by a reply to their RTI application; that they had requested the original authority to send all communication additionally by email mode; that even the letter dated 21.08.2020 for the PH on 27.08.2020 was dispatched by Speed Post at about 5 PM on 21.08.2020; thus they were not given a window of even seven days between the date of issue of the PH letter and the date of the proposed hearing date; that this PH letter was not sent by email mode; that as regards the granting of personal hearing virtually online on 04.09.2020 at 2.30 hours as recorded by the original authority impugned Order-in-Original dated 06.10.2020, it was submitted that before the said claimed invitation for on line hearing, the undersigned had on 01.09.2020 received an intimation through webex messenger for online hearing from Div-I , CGST for a PH on 04.09.2020 at 12.00 PM; that after this they had on 01.09.2020 itself received an another intimation through webex messenger informing the cancellation of the said online hearing; that the original authority in reply to their RTI application had informed that this PH was cancelled due to technical reasons; that on the same day they had received a webex meeting invitation from CGST Div 1 Surat through webex messenger fixing a personal hearing on 04.09.2020 at 2.30 PM; that the said webex meeting invitation was unfair as it did not contain name and designation of the officer presiding over the said PH; neither did it have the name and designation of the officer sending the said intimation nor did it have the details of any officer in charge given for providing assistance for virtual hearing; that was in contravention of CBIC Instructions dated 21.08.2020 containing revised guidelines for conduct of personal hearings in virtual mode; that they had tried to attend the online

hearing on 04.09.2020 but had a connection error and thus needed assistance and since no details of any officer in charge for giving assistance was mentioned in the said online webex invitation, the undersigned tried calling to the landline telephone number of the original authority as available on the official website of the Commisssionerate, but even the landline number of the original authority so displayed was incorrect; that in reply to their RTI query it was informed that there was no landline in the said office; that the date and time of the said online PH was communicated through webex messenger and not through official email address of the original authority which was in violation of the CBEC Instruction dated 21.08.2020; that in reply to their query it was confirmed that the intimation for online PH on 04.09.2020 at 2.30 PM was served to them on 01.09.2020 through messenger@webex.com;

- It was further submitted that the first confusion about the cancellation of the PH was created by the original authority on 01.09.2020 and thereafter the PH intimation for the PH on 04.09.2020 was sent through webex messenger and not through email address on 01.09.2020 with the above-mentioned deficiencies;
- That, in view of the above, it appeared that the original authority had shown undue and alarming haste in finishing the PH formality; that after sitting on the said Order-in-Appeal dated 26.12.2019 for almost more than seven months, the original authority has not kept a time window of even seven days between issue of the PH intimations and actual PH dates; that if the time window of days between the PH intimations service dates and the corresponding PH scheduled dates is counted, even a fair adversary would smell prejudice;
- That the preamble of the said PH letter dated 13.08.2020 showed that the said PH was not for final adjudication of the said refund

claims dated 11.07.2016, but it was a mere query letter reiterating the contents of the earlier letter dated 15.11.2019 of the original authority; that the operative part of the PH letter dated 13.08.2020 showed that it was just meant to give an opportunity to the claimant to present their case on the queries mentioned by the original authority in the preamble; that even the PH letter dated 21.08.2020 said that it was issued in reference to the earlier PH letter dated 13.08.2020 and thus again the same was also for the same reason and not for final adjudication of the said refund claims dated 11.07.2016; that in fact till then the adjudication process had even not begun and the original authority had stated that the adjudication proceedings were initiated after the reply letters of the claimant to the PH letters were submitted by them; that PH should had been granted after the initiation of the adjudication proceedings as the same included granting of PH, issue of SCN and passing of Order-in-Original; thus, no PH was granted to them by the original authority after the initiation of the adjudication proceedings in Order-in-Original dated 06.10.2020 which was in violation of the principles of natural justice;

(g) In addition to their earlier submission with regard to para 11 of the grounds of appeal they submitted that the issue of whether or not the Commissioner (Appeals) had the power to remand a matter back to adjudicating authority was no more res integra in refund matters and relied upon the judgement dated 18.03.2020 of the Hon'ble CESTAT, Ahmedabad in Service Tax Appeal No. 10128 of 2015 in Commissioner of Central Excise & ST, Ahmedabad Vs. Adani Powers Ltd. wherein the Tribunal while relying upon Hon'ble Gujarat High Court Order referring to Hon'ble Supreme Court judgement had inter-alia categorically held that :-" *6. As regards the issue that whether Commissioner (Appeals) has power to remand the matter to Adjudicating Authority, we find that this*

being a case of refund of service tax, clearly covered by the ratio of Hon 'hie Gujarat High Court judgment in the case of Associated Hotels Limited (supra). In the said judgment, the Hon'ble High Court has also referred to the judgments of Hon'ble Supreme Court in the case of Mil India Limited vs. CCE, Noida - 2007 (210) ELT 188 (SC). Therefore, we are of the view that the learned Commissioner (Appeals) has power to remand the matter to the Adjudicating Authority, therefore, on this count also, Revenue's appeal does not sustain...." ; that since the said Order-in-Appeal dated 24.11.2021 had just allowed the appeal by way of remand by setting aside the impugned Order-in-Original dated 06.10.2020 without determining any duty or fine or penalty or refund, the Revisionary Authority may refuse to admit the same;

(h) They then reiterated the submissions already made by them in their earlier submission dated 16.04.2021.

4.4 In view of the above it was requested: -

i. To simultaneously decide the earlier Revision Application filed by the same applicant against Order-in-Appeal dated 26.12.2019 in the same matter;

ii. To read these submissions along with submissions already made in the earlier Revision Application filed by them in earlier Order-in-Appeal dated 26.12.2019;

iii. That their preliminary objections may be considered without prejudice to one another and that the revision application be dismissed at that stage itself; to dismiss all the Revision applications along with all other Miscellaneous and other applications filed with/after the same;

iv. To consider and decide the other objections to the grounds of RA by reading each point therein in light of this entire submission in general and the fact that there was no prayer clause in the said RA in particular and dismiss/reject the said RA by granting consequential relief to them;

v. To reject the said RA by upholding the impugned Order-in-Appeal dated 24.11.2020 and grant all ancillary and consequential relief to them;

vi. To direct the Original Authority to comply with the Order-in-Appeal dated 24.11.2020 within seven days as the same had not been complied with by the Original Authority;

vii. To grant any other relief to them as deemed fit in the interest of justice;

viii. To grant any other relief that they would seek during the personal hearing or through written submissions in the future.

5. Government finds that the applicant/Department has filed an application dated 28.08.2020, received by this office on 02.09.2020, requesting an early hearing in the matter of the Revision Application against the Order-in-Appeal dated 26.12.2019. Government finds that the respondent too has filed applications dated 16.06.2022 and 05.09.2022, received on 20.06.2022 and 09.09.2022, respectively, for early hearing in the Revision Application against the Order-in-Appeal dated 24.11.2020.

6.1 Personal hearing in respect of the both the subject Revision Applications was granted to the applicant and the respondent on 04.10.2022 and 18.10.2022, however no one appeared on behalf of the applicant. Shri Purushottam Somani, Proprietor of the respondent firm appeared online on 04.10.2022 for the personal hearing and submitted as under:-

(i) He reiterated their written submissions already made by way of Preliminary Objections-Cum Defense Reply dated 18.09.2020 and 11.06.2021.

(ii) Since both the above referred Revision Applications were about the same matter, he requested to read all the said submissions and relied upon documents of the respondent mutatis mutandis and in totality for both the Revision Applications;

(iii) He submitted that the applicant had presented distorted facts of the case of the said both RAs and requested to test all the submissions of the applicant in light of his written submissions ;

(iv) The applicant has concealed some pages of the OIA No. CCESA-SRT(APPEAL) PS-121/2020-21 dated 24/11/2020;

(v) During the hearing, it came out that these applications were decided earlier and had reached finality. It was submitted that these applications have been re-opened again;

(vi) On specific query whether the said rebate claims again filed on 11.07.2016 by the respondent firm were not barred by limitation, he submitted that the said refund claims dated 11.07.2016 were filed on the basis of favorable Order dated 08.12.2015 of the Hon'ble CESTAT, Ahmedabad and thus are well within the period of limitation of one year from the date of the favorable Order;

(vii) He stated that he would be making an additional written submission within a week.

6.2 A copy of the Memo recording the proceedings of the Personal Hearing held on 04.10.2022, was mailed to the respondent for his information and also to obtain his signature on the same. In response to the same, the respondent vide letter dated 07.10.2022 forwarded a submission titled "*Modified Record of Personal Hearing*", which in addition to the observations made by the Revision Authority during the personal hearing, made several other submissions. The submissions so made are being treated as additional submissions and are being taken on record; the same are being considered along with the other submissions made by the respondent to conform to the principles of natural justice. The respondent also submitted a self-attested copy of Page number 10 of the Order-in-Appeal dated 24.11.2020 along with the above submission, which has been taken on record. The respondent vide

the above mentioned 'Modified Record of Personal Hearing' submitted as follows:-

(a) He reiterated their written submissions already made by way of Preliminary Objections-Cum Defense Reply dated 18.09.2020 and dated 11.06.2021 in respect of the both the subject Revision Applications;

(b) He requested to refer to the entire bunch of appeal along with its annexures that were filed before the Commissioner (Appeals) resulting in the Order-in-Appeal dated 26.12.2019 and further submitted that as both the above referred RAs were about the same matter, he requested that all the said submissions and relied upon documents of the respondent be read mutatis mutandis and in totality for both the RAs;

(c) He submitted that the applicant had distorted the facts of the case in both RAs and requested to test all the submissions of the applicant in light of his written submissions;

(d) The main ground taken by the applicant in both the Revision Applications that these refund applications were decided earlier and had reached finality was totally baseless and incorrect; that these refund applications were refund applications dated 11.07.2016, which were filed on the basis of favorable Order dated 08.12.2015 of the Hon'ble CESTAT, Ahmedabad which was duly accepted and not appealed by the Department; that the said refund claims dated 11.07.2016 were admittedly received by the Original Authority on 18.07.2016; that the records procured under RTI Act, which were annexed to their reply, showed that after filing of these refund claims dated 11.07.2016, the same were considered as fresh refund claims and were vide letter dated 02.08.2016 sent to the concerned Range Superintendent by the office of the Original Authority for verification; that even the range Superintendent had considered the same as fresh refund claims by sending its refund verification report dated 08.08.2016; that the office of the original authority had again vide letter dated 26.08.2016 sent the refund claims to the Review Section of the applicant informing that the said refund claims dated 11.07.2016 were filed by the respondent on the basis of

CESTAT Order dated 08.12.2015 had asked if the said Order was accepted or not by the Department; thus, though the adjudication process of the said refund claims dated 11.07.2016 had already commenced, the Original Authority had till 15.11.2019 neither passed any order nor expressed in clear words about its intention to not to pass any order despite innumerable letters and reminders of the respondent; that there was no law under which an adjudication process which had already begun could be halted; that without giving any personal hearing or any Show Cause Notice, the Original Authority had vide letter dated 15.11.2019 informed that no action was pending in the matter;

(e) It was further submitted that after receipt of this letter, upon personal visit the said Original authority had again reiterated orally that no action was pending in the matter and he did not intend to pass any Order-in-Original in respect of the said claims; that this letter dated 15.11.2019 was appealed against before the Commissioner (Appeals) who had set aside the said letter dated 15.11.2019 of the Original Authority vide Order-in-Appeal dated 26.12.2019 wherein the Commissioner (Appeals) had remanded the case back to the Original Authority with a direction to take appropriate decision on the said rebate claims dated 11.07.2016 on merit after examining all aspects of the case and pass a speaking Order by following principles of natural justice; that the Commissioner (Appeals) had vide paras 6 & 7 of the said Order-in-Appeal observed that :-

"... 6. *It is true that OIO dated 28.05.2004 had attained finality as all the appeals, RAs, S'CAs and SLPs filed by the appellant had been rejected but when the issue that more duty was shown to be paid by M/s. Holy Creations of which rebate was claimed by the appellant and for which the case booked against the said M/s Holy Creations was one of the grounds raised for rejection of claims in the show cause notice and previous Orders, the appellant's re- claim of rebate cannot be faulted upon in light of the favourable decision by the Honourable CESTAT in favour of M/s Holy Creations; that from the several various letters issued by the adjudicating authority to the appellant, it appears that he never intended to take any action on the rebate claims as it was his view that the issue had attained finality and the claims were made again i.e. resubmission of the original claims. However from the documents /records*

obtained by the appellant through RTI Application and submitted along with this appeal, it can clearly be seen that the claims were filed afresh after receipt of the Hon'ble CESTAT Order dated 08.12.2015. The JAC adjudicating authority had sent the same for verification to the JRO like other fresh rebate claims, who recommended rejection of claims on the ground that the case of M/s Holy Creations was not directly related to the appellant and as such the claims could not be revived for consideration. This view was not correct as the case against M/s Holy Creations was one of the major grounds for rejection of the claims earlier and till the rejection Order attained finality, the CESTAT Order was not issued. The facts and circumstances are such that the claims made on 11.07.2016 cannot be treated as re-submission / repetition of the original claims but to be treated as fresh claims in view of favorable decision on the issue of payment of more duty than that was payable by the supplier of goods of the appellant viz. M/s. Holy Creations. Even if it is re-submission of claims then also the adjudicating authority should have examined the case on merit and should have passed a speaking Order. In the case of Apar Industries Vs Union of India [2016 (333) ELT 246 (Guj.)J, the honourable High Court of Gujarat has held that the resubmission of rebate claim should be seen as continuous attempt. The department was directed to examine the rebate claims on merits in that case. In the instant case even the commissioner, who passed the OIO in the case of Mis. Holy Creations was of the view that rejecting the rebate claims of the appellant are not feasible because goods had been exported and duty paying documents were genuine. Even he had confirmed demand against M/s. Holy Creation (Letter F. No. V(Ch 54) 3-22/Dem/2005 dated 03.08.2005 of the commissioner to the deputy commissioner div-IV, Surat as submitted by the appellant refers..."

(f) That the Department had filed a R.A. against the said Order-in-Appeal dated 26.12.2019; that when the respondent kept requesting the applicant's office and original authority for the compliance of the said Order-in-Appeal dated 26.12.2019, they first kept the compliance pending for almost eight months and when the claimant started filing grievance letters, RTI Applications and reminders, the learned original authority had without issuing any Show Cause Notice rejected the said claims vide Order-in-Original dated 6.10.2020 by grossly tossing aside all the principles of natural justice and directions and observations contained in said Order-in-Appeal dated 26.12.2019; that this was an act of judicial indiscipline by the applicant's office whereby the Original Authority has itself sat in appeal to the Order dated 26.12.2019 of the Commissioner(Appeals) when the RA against the same was already pending in office of this Hon. Revision Authority; that they had filed their defense reply vide their submission dated 18.09.2020 and that

they additionally re-iterated and relied upon the submissions & documents filed therein;

(g) That after the Original Authority had issued the said Order-in-Original dated 06.10.2020 without issuing any Show Cause Notice and without obeying the findings, observations and directions of the Commissioner (Appeals), they had again filed an appeal against the same before the Commissioner (Appeals) and that Hon'ble Commissioner (Appeals) vide Order-in-Appeal dated 24.11.2020 had set aside the said Order-in-Original dated 06.10.2020 and had allowed the said appeal by remanding it back to the original authority with directions to re-examine the issue and take appropriate decision after examining all aspects of the case and pass a speaking order following the principles of natural justice; that this Order-in-Appeal dated 24.11.2020 was not complied with by the Department till date though an RA against the same has been filed by them by concealing /not filing various significant pages of the said Order-in-Appeal dated 24.11.2020 along-with the RA; that in addition to the concealment of page nos. 4, 6, 8 & 10 of the Order-in-Appeal dated 24.11.2020, the applicant had also concealed /not filed certain pages of the Order-in-Original dated 06.10.2020; that the said pages of the said Order-in-Appeal dated 24.11.2020 had been knowingly concealed by the applicant from the Revisionary Authority as the Commissioner (Appeals) had vide para 5 of the said Order-in-Appeal had observed as –

"5. In the instant case, the Original Refund Claims was rejected vide OIO No. Surat-I/Div.II/AD09/2004/R dated 28.5.2004 on the following grounds .. in the findings portion of the said OIO, nothing regarding mismatch of quantity and description of goods between excise invoice and export documents finds mention event though such allegation was made in the show cause notice..... As far as the passing of excess credit by the supplier by showing duty on the subject goods lying in stock@ 10% instead of 6%, a case was booked by the department against the supplier i.e. Ms. Holy Creations Pvt Ltd. and a demand of Rs.1,00,14,302/- was issued and the said demand was confirmed vide OIO No. 12/MP/2005 dated 30.07.2005. However, Hon'ble CESTAT vide Order No. A/11795-11796/2015 dated 08.12.2015 set aside the said OIO and allowed the appeal filed by M/s. Holy Creations Pvt Ltd.. Feeling that this case was the

main reason for rejection of their refund claims, the appellant again filed their claims in prescribed format along with separate request for giving effect to the said Tribunal's Order, vide their letter dated 11/07/2016. The competent authority vide letter dated 17.10.2016 informed the appellant that as the issue had attained finality, he could not process the application. The appellant requested the authority vide its various letters not to consider the applications re-submission of claims and to give effect to the CESTAT Order and pass a speaking Order. However, the authorities did not consider their requests. Lastly the appellant submitted the letter dated 13/11/2019 to the adjudicating authority which was replied vide letter dated 15.11.2019 that no action was pending and warranted in the matter at the stage. Being aggrieved the applicant filed an appeal ... The appeal against the said decision/letter was decided vide OIA No. CCESA-SRT(APPEAL)/PS- 543/2019-20 dated 26.12.2019 wherein the adjudicating authority was directed to pass a speaking Order rather than issuing a simple letter conveying that no action is warranted. In the said Order, while remanding the matter back to the adjudicating authority for passing a speaking Order, it was categorically mentioned at para 7 of the Order that Order dated 08.12.2015 of the Hon'ble CESTAT has bearing in the instant refund claim, as one of the major reasons of rejection of the original refund claims was on the ground of the offence case booked against the supplier viz. M/s. Holy Creations Pvt Ltd ..... However, in the impugned Order, the adjudicating authority once again rejected the submission dated 11/7/2016 citing previous Orders of the revisionary authority. The adjudicating authority has also pointed out the SCAs filed by the appellant were dismissed by the Hon'ble High Court vide its Order dated 24.02.2010 & 26.7.2013. That even SLP (Civil) No. 2630 of 2014 before the Hon'ble Supreme Court was dismissed vide Order dated 17.02.2014; But it is felt that the Order of the Hon'ble CESTAT has direct bearing in the instant case and the same cannot be brushed aside citing the judgement in the case of Mafatlal Industries Vs. UOI, since the appellant is directly effected in the instant case being the recipient of the goods supplied by Mis. Holy Creations Pvt Ltd. Under the circumstances, I am of the opinion that the refund claim dated 11.07.2016 submitted subsequent to Hon'ble CESTAT Order dated 08.12.2015 has to be treated as fresh applications and the matter is required to be decided accordingly after following the principles of natural justice....".

It was submitted that since the said findings of the Hon'ble Commissioner (Appeals) was on the internal page nos. 9 & 10 of the impugned Order-in-Appeal dated 24.11.2020 and since page no. 10 was among the several other pages of the said Order-in-Appeal which was concealed/not filed by applicant with the RA, a self-attested copy of internal page no. 10 of the said impugned Order-in-Appeal dated 24.11.2020 was attached along with this submission;

(h) That there were certain significant mis-declarations in the RA; that after filing of RA against the said Order-in-Appeal dated 24.11.2020, the applicant had issued a Corrigendum to its Review Order: that they had already filed their reply vide Preliminary Objections-Cum-defense dated 11.06.2021 in this case and that they additionally reiterated and relied upon the submissions and documents filed therein;

(i) That on specific query whether the said rebate claims again filed on 11.07.2016 by the respondent firm were not barred by limitation, he submitted that the said refund claims dated 11.07.2016 were filed on the basis of the favorable Order dated 08.12.2015 of the Hon'ble CESTAT, Ahmedabad and thus were well within the period of limitation of one year from the date of the favorable Order; that on the other hand, in addition to all their submissions, it was submitted that the RA dated 20.03.2020 was barred by limitation as the same was received by office of RA on 01.06.2020; as such the postal services were very much working till then and during lockdown also and the relaxation in filing of appeals and RA on account of pandemic was applicable for only appeals that were pending; and not for the appeal/RA that was already ready and dispatched on records on 20.03.2020 itself.

7. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the said Orders-in-Original, the impugned Orders-in-Appeal and all the earlier Orders by various authorities and the Hon'ble Courts in this matter.

8. Government notes that the applicant has filed an application for condonation of delay in filing of the Revision Application against the Order-in-Appeal dated 26.12.2019. Government finds that the said Order-in-Appeal was received by the applicant on 08.01.2020 and the subject Revision Application against the same filed on 26.06.2020. Government finds that during the said period, the Government of India, in view of the spread of

pandemic COVID-19 had relaxed certain provisions, including extending of time limits in taxation and other laws vide the Taxation and other Laws (Relaxation of certain provisions) Ordinance, 2020 dated 31.03.2020. Chapter V of the said Ordinance, inter alia, provided that the time limit for completion or compliance for the purpose of filing appeals/applications under the Central Excise Act, 1944, during the period 20.03.2020 to 29.06.2020, stood extended to 30.06.2020. Government notes that in the normal course the last day for filing the said Revision Application would have been 07.04.2020, however, in light of the above mentioned Ordinance dated 31.03.2020, the last date for filing the same stood extended to 30.06.2020 and given the fact the said Revision Application was filed on 26.06.2020, Government finds that the same has been filed within the time limit prescribed and there is no delay in filing the same.

9. Government notes that the respondent has raised several objections to the Applications filed by the applicant Department, which include –

- the applicant has not made any prayer in the memorandum of the Revision Applications;
- the Review Order authorizing filing of the subject Revision Applications were approved and signed by the applicant Commissioner on the same day on which the file with the relevant documents were put up to him and hence the same was done in a casual and mechanical manner and that the Commissioner had acted as a rubber stamp as he had no occasion to apply his mind;
- The applicant Commissioner had not examined the records of the proceedings in which the Commissioner (Appeals) had passed the impugned Orders-in-Appeal and had hence made a false declaration in the preamble to the Review Orders and the related Authorizations;
- The covering letter of the Additional Commissioner forwarding the Authorization for filing of the Revision Application against Order-in-Appeal dated 26.12.2019 required it to be filed by 07.04.2020, however,

the same was filed on 26.06.2020 and hence the said Revision Application was filed without any legitimate authorization;

- the covering letter forwarding the said Revision Application did not bear a DIN number and that the copy of the Revision Application sent to them was at a later date than what was mentioned in the Revision Application;
- the Revision Application was not in the proper format and had not been signed or verified as required by the Central Excise (Appeals) Rules, 2001;
- there was a delay in filing of the said Revision Application and that there was no application for condonation of such delay.

Government has examined the above submissions made by the respondent. Government finds that the applicant in both the subject Revision Applications, has made requests/prayers at the appropriate places in the Revision Applications detailing the relief sought by them and the same has been mentioned above; thus Government does not find any merit in the submission of the respondent on this count. As regards the submission of the respondent that the applicant Commissioner had acted as a rubber stamp and not applied his mind for the reason that he had approved the Review Order on the same day it was put up to him, Government finds that the respondent has cast aspersions and sat in judgment on the efficacy of the applicant Commissioner without any basis; Government finds that such unwarranted allegations and indulgence in frivolity will not help the respondent. Government finds these submissions to be totally baseless and rejects the same. The submission of the respondent that the Commissioner had not examined the records of the proceedings of the Commissioner (Appeals) and hence had made a false declaration in the preamble to the respective Revision Applications and the Review Orders, borders on being preposterous, as it is neither a prescribed procedure nor an acceptable norm for an aggrieved party to call for the records of proceedings of a quasi-judicial authority who decided their case. The declaration made in the preamble and related documents by the applicant is to the effect that the applicant has

examined all the documents related to the case and its proceedings which are available in his office; Government finds no fault with such declaration and hence rejects the submissions of the respondent on this count as the same is devoid of any merit. Government has examined the subject Revision Applications and finds that the same have been filed in the format prescribed and have been signed and verified by the appropriate authorities as required by the law and hence finds the submissions of the respondent on this count to be incorrect and rejects the same. As regards the submissions of the respondent that the subject Application is time barred, the same had been addressed in the preceding para and Government finds that these submissions too are incorrect and hence rejected. Lastly, Government finds the submission that the Revision Applications suffered from not having a valid DIN number to be baseless, as the law governing the filing of Revision application does not prescribe such requirement and hence this submission of the respondent stands rejected. As regards the application having been sent to them at a later date than that indicated, Government finds that copies of the subject Revision Applications have been sent to the respondent, the same has been received by the respondent and they have filed their cross-objections/submissions to the subject Revision Applications.

10. Government finds that the applicant has filed an application/ Corrigendum dated 10.03.2021 seeking to correct certain errors in the Revision Application filed by them against Order-in-Appeal dated 24.11.2020. Government notes that the applicant has submitted that the word "quality" appearing "in the para 6.2 of the quoted portion" at para 13 and para 19 of the Revision Application be read as "quantity". Government has taken note of the same and the application will be read and examined in light of the same. Government finds that the respondent, in this connection, has alleged that the applicant had tried to deliberately mislead the Revisionary Authority, however, given the above mentioned application of the applicant seeking to correct the error, the apprehension of the respondent on this count stands addressed.

11. Government now proceeds to examine the issue on merits. As stated at para 2 of this Order, this case has indeed had a long history. The case stems from the claims filed by the respondent for rebate of the duty paid on the inputs used in the final products which were exported by them. The said claims were rejected on several counts by the original authority vide Order-in-Original dated 28.05.2004, a decision which was upheld by the Commissioner (Appeals) vide Order-in-Appeal dated 19.05.2005. The said Order-in-Appeal was challenged before the Revisionary Authority leading to Order No.1143/2006 dated 29.12.2006 which upheld the said Order-in-Appeal. Challenges to these decisions by the Respondent in the High Court did not meet with any success and subsequent appeals against the same were dismissed by the Hon'ble Supreme Court.

12. Government notes that the respondent sought to re-open the entire issue after the Hon'ble Tribunal ruled in favor of their supplier, viz., M/s Holy Creations and held that they were eligible to 10% transitional Cenvat credit vide its Order dated 08.12.2015. The respondent vide letter dated 11.07.2016, once again requested the JAC to decide their rebate claims in light of the said Order of the Tribunal, in response they were informed on 17.10.2016 that the issue had attained finality and hence their claims could not be re-processed. Government observes that the respondent chose to file appeal against letter dated 15.11.2019, which conveyed and reiterated the decision of the Department communicated by the earlier letter dated 11.07.2016, before the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 26.12.2019.

13. Government finds that the bone of contention here is whether the case had attained finality with the Order of the Revisionary Authority dated 29.12.2006 being upheld by the Hon'ble High Court and later by the Hon'ble Supreme Court or whether the rebate claims with respect to the same export consignments can/should be re-examined in light of the Hon'ble CESTAT

Order dated 08.12.2015 in the case of the supplier of the respondent, viz. M/s Holy Creations.

14. At this juncture, Government notes that Commissioner (Appeals) in both the impugned Orders-in-Appeal dated 26.12.2019 and 24.11.2020 has remanded the case back to the original authority with directions to examine all aspects of the case and thereafter pass a speaking Order. In this connection, Government notes that a Commissioner (Appeals) was divested of the powers to remand a case back to the original authority vide the amendment dated 11.05.2011 to Section 35(A) of the Central Excise Act, 1944. Given the above, it is clear that the Commissioner (Appeals) in both the cases has passed Orders which are not proper and bad in law. Government notes that the respondent has cited the decision dated 18.03.2020 of the Hon'ble Tribunal, Ahmedabad in the case of Commissioner of Service Tax vs Adani Power Limited, in support of their contention that the Commissioner (Appeals) continues to have the power to remand cases back to the original authority. Government has examined the said case and the relevant portion of the same is reproduced below:-

> *" 20. Revenue also filed appeals against the impugned Orders on the ground that the Commissioner (Appeals) has no power to remand the matter. The Hon'ble High Court of Gujarat in the case of Commissioner of Service Tax v. Associated Hotels Ltd. - 2015 (37) S.T.R. 723 (Guj.), on the identical issue dismissed the appeal filed by the Revenue. In that case, the question raised before the Hon'ble High Court as to whether the CESTAT is correct in holding that in Service Tax matters, the Commissioner (Appeals) has power to remand the matter back to the adjudicating authority for de novo adjudication. The Hon'ble High Court held as under :*
>
> *SERVICE TAX Appeal Nos. 10128,10129 & 10131-10133 of 2015 "15. We, however, cannot accept the argument of Ms. Mandavia that by virtue of sub-section (5) of Section 85, the same limitation on the Commissioner (Appeals) to remand a proceeding contained in Section 35A(3) of the Central Excise Act, 1944 must apply in the appeals under Section 85 of the Finance Act, 1994 also. This is so because, sub-section (5) of Section 85 though requires the Commissioner (Appeals) to follow the same procedure and exercise same powers in making Orders under Section 85, as he does in the Central Excise Act, 1944 in appeals, this sub-section itself starts with the expression "subject to the provisions of this Chapter". Sub-section (4) of Section 85 itself contains the width of the power of the Commissioner (Appeals) in hearing the proceedings of appeal under Section 85. The scope of such powers*

flowing from sub-section 85(4) therefore, cannot be curtailed by any reference to sub-section (5) of Section 85 of the Finance Act, 1994."

Thus, the Commissioner (Appeals) has power to remand the matter to the adjudicating authority for de novo decision. So, the appeals filed by the Revenue on both the grounds are liable to be rejected."

A reading of the above clearly indicates that the said observation made by the Hon'ble Tribunal is with respect to the provisions relating to Service tax under the Finance Act, 1994 and hence will not apply to the present case which is under the Central Excise Act, 1944. Government finds support in the decision of the Hon'ble Supreme Court in the case of MIL India Limited vs CCE, Noida [2007 (210) ELT 188 (SC)] wherein it was held that the power of remand by the Commissioner (Appeals) had been taken away with effect from 11.05.2001 by virtue of the amendment to Section 35(A) of the Central Excise Act, 1944, by the Finance Bill, 2001. In light of the above, Government finds that both the impugned Orders-in-Appeal dated 26.12.2019 and 24.11.2020 deserve to be set aside on this count alone.

15. Government also notes that the respondent has addressed the Order-in-Appeal dated 19.05.2005 and the Order dated 29.12.2006 of the Revisionary Authority as 'ex-parte' Orders. Government finds that it needs to be mentioned here that the respondent in their appeal before the Commissioner (Appeals) had waived their right to be personally heard in the appeal memorandum itself and had requested the case to be decided on the basis of the written submissions, despite which the Commissioner (Appeals) had accorded them the opportunity for personal hearing on 17.08.2004 and 14.09.2004. Further, the Revisionary Authority too had accorded the respondent opportunities for personal hearing on seven occasions, however, the respondent appeared for none of them. Thus, given the conduct of the respondent during these proceedings, the impression which the respondent now seeks to create that they were denied natural justice, by time and again referring to the above said Orders as 'ex-parte Orders', will find no purchase, as it is clear that they themselves had opted to not appear for the personal

hearings granted by both the above mentioned authorities. Further, the respondent has submitted that the said Order-in-Appeal dated 19.05.2005 and Order dated 29.12.2006 of the Revisionary Authority suffers from "*errors/mistakes apparent on face*" inasmuch as both the said Orders had erroneously mentioned that the Order-in-Original dated 28.05.2004 had rejected their claims on three grounds, without noting that the third ground of non-tallying of the quantity and description mentioned by the respondent in their invoices vis-à-vis the export documents, viz. Shipping Bill, Bill of Lading, etc., was not mentioned by the original authority as a reason for rejecting their rebate claims. In this context, Government finds that the respondent has not made any plea before either of the said authorities or to the appellate authorities/High Court for correction of such "*errors/mistakes apparent on face*" in the said Order-in-Appeal or the Order of the Revision Authority and hence, holds that the respondent cannot at this juncture claim that the said Orders suffer from any such deficiency.

16. Further, as regards the submission of the respondent that the original authority had initially treated their claims filed on 11.07.2016 as fresh rebate/refund claims since the same was sent to the Range Superintendent and returned as refund claims and hence deserves to be disposed by passing a speaking order, Government finds the same to be incorrect and without any legal basis as it is clear that only after such verification was carried did the applicant/ Department realize that the respondent had earlier too filed rebate claims with respect to the same export consignments which were disposed of much earlier vide a proper Order-in-Original and the respondent was accordingly apprised of the same vide letter dated 17.10.2016 and subsequent letters. The respondent again wrote to the new jurisdictional authority on 13.11.2019 and was promptly replied by the new jurisdictional Assistant Commissioner vide letter dated 15.11.2019 that the matter had attained finality. Further, Government finds that the references made by the respondent to various clauses of Section 11B of the Central Excise Act, 1944

in support of the freshly submitted claims will not hold good, as these provisions cannot be invoked here, as they are irrelevant to the issue on hand.

17. Government further notes that the respondent has chosen to file an appeal before the Commissioner (Appeals) against the letter dated 15.11.2019 of the jurisdictional Assistant Commissioner (JAC). Government notes that the current round of litigation has been prompted by the letter dated 11.07.2016 of the respondent wherein they have once again sought to renew their claim for rebate on the basis of the Hon'ble CESTAT Order dated 08.12.2015 in the case of their supplier. Government finds that this letter was replied to by the JAC vide letter dated 17.10.2016 wherein, it was clearly informed that the issue had attained finality and the applications made by them cannot be re-processed. Government finds this letter dated 17.10.2016 of the JAC to be a detailed one providing explicit reasons for the decision conveyed by it. Government notes that the respondent did not file any appeal against the said letter 17.10.2016 before the Commissioner (Appeals) or any other authority. Government also notes that the letter dated 15.11.2019 of the JAC which the respondent has now chosen to file an appeal against, mentions that the issue raised by the respondent had been replied to by the JAC vide earlier letters dated 17.10.2016 and 03.12.2018 and it proceeds to reiterate what was already communicated vide the above said letters. Given these facts, Government finds that the respondent, if aggrieved, should have filed an appeal against the letter dated 17.10.2016 wherein it was informed that their request for re-processing the rebate claims could not be acceded to. As the respondent failed do so within the time limit prescribed, it follows that the decision of the applicant/Department communicated vide the letter dated 17.10.2016 has attained finality. Given these facts, Government finds that the Commissioner (Appeals) erred in entertaining the appeal against the letter dated 15.11.2019, as the issue involved was communicated by the Department to the respondent almost three years ago vide letter dated 17.10.2016 against which, as stated above, no appeal was filed by the

respondent, and hence the present appeal before the Commissioner (Appeals) was clearly hit by the limitation of time.

18. Having observed so, Government now proceeds to examine the issue on merits. Government finds that the Revisionary Authority in the Order dated 29.12.2006 had discussed the issue in detail and had in very clear terms provided the reasons as to why the respondent would not be eligible to the rebate claimed by them. The relevant portion of the same is reproduced below:-

> *"6.1 Govt. has carefully gone through the written submissions, Order-in-Original & impugned Order-in-Appeal.*
>
> *6.2 It is admitted fact that the applicants have filed the rebate claims for the duty paid input used in manufacturing of the goods exported by the applicant. The Commissioner (Appeals), has given categorical findings that quantity and description of the goods mentioned in the excise invoice of the supplier of the goods have been found not to tally with those mentioned in export documents, such as export invoice, shipping bill, bill of lading, etc. It is further facts on records that the applicants have not followed the procedure for claiming rebate claims under rule 18 of the Central Excise Rules, 2002 r/w relevant Notification issued thereunder. In these facts and circumstances, there is no clinching evidence to prove that the applicants have manufactured the export goods out of Central Excise duty paid input and for that amount they are claiming rebate. Hence, Govt. upholds the impugned Order-in-Appeal, in this regard.*
>
> *6.3 The second ground for rejection of the rebate claims has been that supplier of the said input was allowed 6% as transitional credit only on the subject goods whereas the supplier of the said input had shown the duty @ 10% Govt., would agree with the findings of the Commissioner (Appeals), that transitional credit was allowable @ 6% to the supplier of goods and consequently the applicants were entitle to rebate @ 6% in case the rebate claims was found in Order. However, in the instant case no rebate is admissible to the applicants in view of the facts mentioned in sub para 6.2 above.*
>
> *7. In view of above facts and circumstances as discussed above Govt., finds no infirmity in the impugned Order-in-Appeal and same is accordingly rejected."*

A reading of the above Order makes it clear that the rebate claims of the respondent were rejected for the following reasons:-

(a) The quantity and description of the goods mentioned in the excise invoice of the supplier of goods did not tally with that mentioned by the respondent in their export documents, viz., Export Invoice, Shipping Bill, Bill of Lading, etc.;

(b) The respondent did not follow the procedure for claiming rebate as laid down under Rule 18 of the Central Excise Rules, 2002 read with the relevant notification issued thereunder;

(c) Their supplier had incorrectly availed Cenvat credit @ 10 % as against @6 % which appeared to be allowable;

Here it is pertinent to point out that the Revisionary Authority had found that since transitional credit at the rate of 6% was allowable to their supplier, the respondent would be entitled to the rebate at the rate of 6%, in case the rebate claims were found in order. Having observed so, the Revisionary Authority proceeded to categorically hold that the respondent would not be eligible to claim rebate of even the Cenvat credit found allowable to their supplier, due to the reasons mentioned at (a) and (b) above. Thus, it is clear that the Revisionary Authority had held that the respondent would not be eligible for the rebate claimed, irrespective of the quantum of credit available to their supplier. Further, Government notes that the respondent has not provided any explanation for the mis-match in the quantity and description of the goods either before the Commissioner (Appeals) or the Revisionary Authority; Government, in fact, finds that the Commissioner (Appeals) in the Order-in-Appeal dated 19.05.2005 has at para 10 recorded his findings on this issue, which is as follows :-

> *"The quantity and description of goods mentioned in the excise invoices of the supplier, M/s Holy Creations, have been found not to tally with those mentioned in other documents such as export invoices, shipping bill, bill of lading etc. This leads to serious doubts about whether the goods exported are really those on which the rebate has been claimed. The appellant has also not given any explanation for these discrepancies recorded in the impugned Order."*

The above findings have been reiterated by the Revisionary Authority in the Order dated 29.12.2006. The above deficiency, pointed out by the lower authorities and upheld by the Revisionary Authority, for which no explanation was provided by the respondent during at the relevant time, cannot be termed as a 'technical lapse' as sought by the respondent during these proceedings, as this deficiency challenges the identity and quantity of the goods exported vis-à-vis the goods on which the rebate has been claimed. Given the above, it is clear that the export and other documents furnished by the respondent with the rebate claim established no linkage of the quantity and nature of goods exported by them with that mentioned in Excise invoice for which no explanation was provided by them before any of the authorities at the relevant time. Government notes that the respondent has sought to explain the mis-match in the quantity of the goods during the course of these proceedings, however, Government does not find it appropriate to discuss the same, as this issue has been debated and ruled upon in the earlier Orders, including the Order of the Revisionary Authority which has been upheld after being subjected to the entire appellate process right up to the Hon'ble Supreme Court. Thus, Government finds that the issue now stands settled and is not open for re-examination by this authority.

19. As regards the second reason that the respondent had not followed the procedure laid down in Rule 18 of the Central Excise Rules, 2002 and the relevant notification, viz. notification no.41/2001-CE(NT) dated 26.06.2001, Government finds that the said notification prescribes the procedure for filing of declaration, verification of input-output ratio, procurement of material, procedure for export and presentation of claim of rebate. As per the said notification, the manufacturer/processor is required to file a declaration with the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture declaring the finished goods proposed to be manufactured or processed along with their rate of duty leviable and the manufacturing/processing formula with particular reference to quantity or proportion in which the raw material is actually used, along with the tariff

classification, rate of duty paid or payable on such material so used in relation to the finished goods to be exported. It is clear that the procedure laid down by the above notification has been designed to ensure that the rebate sanctioning authority can verify and determine the quantum of inputs that would be consumed in a unit of the export product and also determine the quantum of duty involved on such inputs consumed, which finally would be used to determine the rebate allowable to the exporter. The non-following of the above procedure by the respondent had raised serious doubts about the nature and quantum of inputs used by them in the final products exported by them. Government notes that it is in this context the Revisionary Authority had held that the respondent would not be eligible to the rebate claimed by them irrespective of the quantum of Cenvat credit available to their supplier.

20. Given the above, it is clear that the decision of the Hon'ble CESTAT to allow Cenvat credit @ 10% to M/s Holy Creations, the supplier of inputs to the respondent, would not have any impact on the decision given by the Revisionary Authority in the Order dated 29.12.2006, as it was clearly held therein that irrespective of the supplier's eligibility to claim Cenvat credit, the claim of the respondent was liable for rejection for the other two reasons mentioned therein. Government finds that this decision of the Revisionary Authority was challenged by the respondent in the High Court wherein the Hon'ble Court had vide its Order dated 26.07.2013, while referring to its decision dated 24.02.2010 in an earlier petition filed by the respondent in the same case, had observed and held as follows :-

> *"2.3 Being aggrieved by and dissatisfied with the Order passed by the original authority rejecting the claims of the petitioner, the petitioner preferred appeal before the Commissioner (Appeals) and by Order dated 19-5-2005, the Commissioner (Appeals) dismissed the said appeals confirming the Order passed by the Order-in-Original. That being aggrieved by and dissatisfied with the Order passed by the Order-in-Original, the petitioner preferred a revision application before the revisional authority and the revisional authority, by the Order dated 29-12-2006 dismissed the said revision application.*

2.4 It appears that thereafter on the basis of some material collected by the petitioner under the Right to Information Act, the petitioner again approached the appropriate authority to reconsider their earlier decision. The petitioner preferred Special Civil Application No. 11576 of 2008, which the petitioner withdrew with a liberty to approach the Joint Secretary to the Central Government.

2.5 That thereafter, the petitioner approached the Joint Secretary to the Central Government with a representation. That by Order dated 19-12-2009, the revisional authority rejected the said representation, against which the petitioner preferred Special Civil Application No. 2053 of 2010 and by detailed and speaking Order, the Division Bench of this Court had dismissed the said Special Civil Application by its Order dated 24-2-2010 [2010 (256) E.L.T. 73 (Guj.)].

Despite the rejection of the aforesaid Special Civil Application, the petitioner again made a representation to reconsider the request of the petitioner, which is not entertained by the impugned communication. Hence, the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

3. Having heard Mr. Shastri, learned advocate appearing on behalf of the petitioner and considering the Order dated 24-2-2010 passed in Special Civil Application No. 2053 of 2010 rejecting the aforesaid Special Civil Application, in which the similar prayer was made, as such it is not open for the petitioner to again move the revisional authority and even this Court. As such the proceedings have come to an end when earlier the revisional authority dismissed the revision application by Order dated 29-12-2006 confirming the Order passed by the original authority rejecting the claims of the petitioner. Even thereafter also the aforesaid Special Civil Application preferred by the petitioner came to be dismissed by Order dated 24-2-2010. While dismissing the aforesaid Special Civil Application, the Division Bench of this Court has observed in Paragraph Nos. 6, 7 and 8 as under :-

> *"6. The only ground raised by the petitioner in this petition is that letter dated 3-8-2005 written by the Commissioner, Central Excise & Customs, Surat to the Deputy Commissioner was received by him in February 2009 wherein it is stated that rejection of the rebate claim of M/s. Kanha Internationale is not feasible because goods have been exported and duty paying documents are genuine. The Deputy Commissioner was, therefore, directed to process the rebate claims. On the basis of this letter, the petition filed earlier before this Court was withdrawn and representation was made.*
>
> *7. The above letter which is heavily relied on by Mr. Modh is stated to have been written on 3-8-2005. By that time, the Deputy Commissioner has already taken the decision on 28-5-2004*

whereby the refund claim of the petitioner was rejected by the Deputy Commissioner. Once the Deputy Commissioner has already passed Order, against which the petitioner has filed an appeal before Commissioner (Appeals), there is no business of the Commissioner to issue such letter to the Deputy Commissioner. Even the Commissioner has also dismissed the appeal of the petitioner on 19-5-2005. Even if such a letter is written by the Commissioner to the Deputy Commissioner, the same was written during the pendency of the appeal before the Commissioner (Appeals). It is, therefore, not open for the Deputy Commissioner to take any cognizance of the said letter. Not only that, after dismissal of the appeal by the Commissioner (Appeals), the petitioner preferred revision application before the Joint Secretary and that revision application was also rejected on 29-12-2006. Even before the Joint Secretary also, there is no reference to such letter. The Order passed by the Joint Secretary was challenged before this Court in Special Civil Application in 2008 and for the first time in 2009, the reference was made to this letter, on the basis of which the petition was sought to be withdrawn and accordingly, the said petition was withdrawn. Since there are three decisions of the authorities below who have given concurrent findings of facts while rejecting the claim of the petitioner, the petitioner has not invited any Order of this Court on the merits so far as the Order dated 29-12-2006 is concerned. All the three Orders are self speaking Orders and detailed reasons are given for rejection of the rebate claim of the petitioner. On the one hand, there are three Orders of the competent authorities rejecting the refund claim of the petitioner and on the other hand, simply on the basis of one letter, the petitioner wants to revive all these proceedings.

8. In the above view of the matter, when the Joint Secretary informed the petitioner that it is not possible to reconsider the Order passed on 29-12-2006 looking to the provisions contained in Section 35EE of the Central Excise Act, we do not find any infirmity neither in the Order dated 29-12-2006 nor in the Order dated 9-12-2009. Even looking to the petitioner's own conduct all throughout, we do not want to exercise our equitable writ jurisdiction in favour of the petitioner and there are several disputed questions of fact which cannot be gone into by this Court while exercising its writ jurisdiction. We, therefore, do not find any substance in the petition and the petition is accordingly dismissed."

Considering the aforesaid facts and circumstances of the case and earlier

Order passed by this Court dated 24-2-2010 passed in Special Civil Application No. 2053 of 2010 [2010 (256) E.L.T. 73 (Guj.)], there is no substance in the present Special Civil Application, which deserves to be dismissed. It is to be noted that there must be an end to the litigation. The petitioner cannot be permitted to re-agitate the question/issue which has been settled/adjudicated earlier, on making representations one after another.

4. In view of the above, there is no substance in the present Special Civil Application, which deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there shall be no Order as to costs."

It needs to be mentioned here that the respondent had filed appeals with the Supreme Court against the above Order dated 26.07.2013 of the High Court as well as the Order dated 24.02.2010 of the High Court cited therein. Both the appeals were dismissed by the Hon'ble Supreme Court vide its Orders dated 17.02.2014 and 08.07.2010, respectively. Thus, it is evident that the respondent has had several rounds of litigation up to the Hon'ble Supreme Court and has failed in each of them. Given the above, it is clear that all the challenges by the respondent to the Order dated 29.12.2006 of the Revisionary Authority have failed and hence the same has attained finality.

21. On examining the impugned Order-in-Appeal dated 26.12.2019, Government notes that the Commissioner (Appeals) has also relied upon the letter dated 03.08.2005 written by the Commissioner, Surat to the Deputy Commissioner, to hold that the claims for rebate once again made on 11.07.2016 should be treated as fresh claims and the matter should be examined once again. Given the above cited Orders of the High Court, it can be seen that the Hon'ble Court itself had held that the Commissioner had no business to issue such letter and that no cognizance should be taken of the same. Given these observations of the Hon'ble High Court, Government finds that the Commissioner (Appeals) has grossly erred in placing reliance on the said letter of the Commissioner to order re-examination of the rebate claims of the respondent.

22. Government finds that the Commissioner (Appeals) in the impugned Order-in-Appeal dated 26.12.2019 has found that the Order-in-Original dated 28.05.2004 had attained finality. However, the Commissioner (Appeals) after having observed so, still ordered for re-examination of the rebate claims of the respondent for the reason that the Hon'ble CESTAT vide Order dated 08.12.2015 had ruled in favor of the respondent's supplier. Government finds this decision of the Commissioner (Appeals) to be incorrect as the rebate claims were rejected, as indicated in the Order dated 29.12.2006 of the Revisionary Authority, for three reasons as detailed at para 17 above. The deficiencies of mis-match in the input and export documents and the total non-following of procedure laid down by the relevant notification, as discussed at para 17 above, cannot be termed as technical or procedural lapses. Government also notes that it is not the case that the said CESTAT Order dated 08.12.2005 would have any bearing on the above mentioned two deficiencies thus necessitating a speaking order. Government finds that the Commissioner (Appeals) failed to appreciate the fact that the Revisionary Authority vide Order dated 29.12.2006, which has held its ground right up to the Apex Court, had clearly held that the respondent would not be eligible to the rebate claimed by them, even if the Cenvat credit availed by their supplier was found to be proper, in light of the other irregularities/deficiencies in the rebate claim detailed in the said Order. Thus, Government finds that the Commissioner (Appeals) in the impugned Order-in-Appeal dated 26.12.2019 has grossly erred in ordering that the rebate claims filed by the respondent on 11.07.2016 should be examined once again on merits and a speaking order be passed by the original authority, as it would tantamount to sitting in judgment over an issue that has been settled by the higher authorities right up to the Hon'ble Supreme Court. In view of the above, Government holds the impugned Order-in-Appeal dated 26.12.2019 to improper and illegal and hence annuls the same.

23. Government notes that the original authority had passed Order-in-Original 06.10.2020 in compliance of the impugned Order-in-Appeal

26.12.2019. The respondent filed an appeal against the said Order-in-Original dated 06.10.2020 resulting in the second impugned Order-in-Appeal dated 24.11.2020. Government finds that since the Order-in-Appeal dated 26.12.2019 has been set aside, the Order-in-Original dated 06.10.2020 and the Order-in-Appeal 24.11.2020 become void, *ab initio*. In light of the above, Government annuls the second impugned Order-in-Appeal dated 24.11.2020 too.

24. The Revision Applications filed by the applicant/Department against Order-in-Appeal dated 26.12.2019 and Order-in-Appeal 24.11.2020 are allowed. The Stay application filed by the applicant/Department and the Applications for Early Hearing filed by both the applicant and the respondent stand disposed along with the subject Revision Applications.

8/12/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.1190-1191/2022-CX (WZ) /ASRA/Mumbai dated .12.2022

To,

Commissioner of CGST & Central Excise, Surat Commissionerate,
Central Excise Building, Chowk Bazar,
Surat – 395001, Gujarat.

Copy to:

1. M/s Kanha Internationale, C/o L.P. Shetty (Advocate) B-2/501, 5th floor, Sarthak Residency, Behind CNG Pump, in front of SMC Community Hall, Pal, Surat – 395 009.
2. Commissioner (Appeals), CGST & Central Excise, 3rd floor, Magnnus Mall, Althan Bhimrad Canal Road, Near Atlantis Shopping Mall, Althan, Surat – 395 017.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.