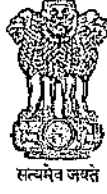


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 195/1266/2012-RA,
195/920/2013-RA
195/133/2017-RA,
195/135/2017-RA

Date of Issue:- 28/06/2018

ORDER NO. 171-174 /2018-CX(WZ) /ASRA/MUMBAI DATED 18.05.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF
THE CENTRAL EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1.	195/1266/2012-RA	M/s Anil Trading Corporation, Mumbai.	Commissioner, Central Excise, Raigad.
2.	195/920/2013-RA	M/s Anil Trading Corporation, Mumbai.	Commissioner, Central Excise, Raigad.
3.	195/133/2017-RA	M/s Anil Trading Corporation, Mumbai.	Commissioner, Central Excise, Raigad.
4.	195/135/2017-RA	M/s Anil Trading Corporation, Mumbai.	Commissioner, Central Excise, Raigad.

Subject :Revision Applications filed, under section 35EE of the Central
Excise Act, 1944 against the Orders in Appeal No.
US/460/RGD/12 dated 02.08.2012, SK/235/RGD/2013-14
dated 28.08.2013 passed by Commissioner, Central Excise
(Appeals), Mumbai-II, CD/427 & 428 /2015 dtd. 01. 07. 2015
passed by Commissioner, Central Excise (Appeals), Mumbai,
respectively.

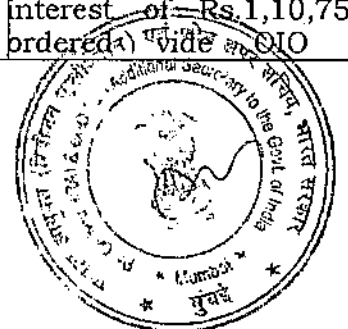


ORDER

These Revision applications are filed by M/s Anil Trading Corporation, Mumbai (hereinafter referred to as 'applicant') against the Orders-in-Appeal as detailed in Table below passed by Commissioner (Appeals) of Central Excise Mumbai Zone-II and The Commissioner (Appeals) of Central Excise Custom & Service Tax, Daman.

TABLE

Sl. No.	R.A.File.No	Order-In-Appeal No.	Order- In- Original No.	Remark
1.	195/1266/2012-RA	US/460/RGD/12 dated 02.08.2012	1381/11-12/DC (Rebate)/Raigad dated 07.12.2011	Deptt. filed appeal against sanction of Rebate claim of Rs. 2,75,904/-on the grounds that the claimant had not given the self sealing Certificate on ARE-1 in violation of procedure prescribed under para 3(a)(xi) of Notification No.19/ 2004 -CE(NT) dated 06.09.2004, Appellate Authority allowed the appeal of the Deptt and set aside OIO sanctioning rebate.
2.	195/920/2013-RA	SK/235/RGD/2013-14 dated 28.08.2013	Raigad/ADC/11/SJ/13-14 dated 18.06.2013	Original Authority confirmed protection of demand of erroneously sanctioned rebate claims of Rs. 2,75,904/-and the said order was upheld by the Appellate Authority.
3.	195/133/2017-RA	CD/427 & 428 /2015 dtd. 07. 05. 2015	3107/13-14/DC (Rebate)/Raigad dated 28.02.2014	The Original Authority appropriated Rs3,26,412/- from the sanctioned rebate towards recovery of confirmed demand of Rs.2,75,904/-along with interest of Rs.1,10,755/-ordered vide OIO No.



				Raigad/ADC/11/SJ/13-14 dated 28.08.2013. The said order was upheld by the Appellate Authority
4.	195/135/2017-RA	CD/427 & 428 /2015 dtd. 07. 05. 2015	3377/13-14/DC (Rebate)/Raigad dated 31.03.2014	The Original Authority appropriated Rs.60,247/- from the sanctioned rebate of Rs.90,426/- towards recovery of confirmed demand of Rs.2,75,904/- along with interest of Rs.1,10,755/- ordered vide OIO No. Raigad/ ADC/11/SJ/13-14 dated 28.08.2013. The said order was upheld by the Appellate Authority

2. The brief facts of the case are that the applicant had filed five rebate claims altogether amounting to Rs. 2,75,904/- (Rupees Two Lakhs Seventy Five Thousand Nine Hundred and Four only) before the Deputy Commissioner (Rebate), Central Excise, Raigad. The rebate sanctioning authority vide Order-in-Original No. 1381/11- 12/DC(Rebate)/Raigad dt. 07.12.2011 sanctioned the said rebate claims. The Department filed appeal against Order-in-Original No. 1381/11- 12/DC(Rebate)/Raigad dt. 07.12.2011 passed by the Deputy Commissioner, Central Excise, Rebate, Raigad on the grounds that the owner, working partner, the Managing Director or the Company Secretary of the manufacturing unit of the goods or the owner of the warehouse has not given the self-sealing certificate as prescribed under the provisions of para 3(a)(xi) of Notification No. 19/2004-CENT) dated 06.09.2004.

3. Commissioner (Appeals) vide Order in Appeal No. US/460/RGD/12 dated 02.08.2012 observed that by not furnishing the self-sealing certificate, the appellants have not followed the procedure as laid down in para 3 a (xi) of the Notification No. 19/2004-CE (NT) dated 16.09.2004 and therefore, the claim was liable for rejection. Accordingly, Commissioner

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(Appeals) set aside Order-in-Original No. 1381/11- 12/DC(Rebate)/Raigad dt. 07.12.2011 and allowed the appeal of the Department.

4. Being aggrieved by the said Order in Appeal, the applicant preferred an appeal before the Joint Secretary (RA), New Delhi vide **RA No. 195/1266/2012-RA (Sr. No. 1 of Table at para 1 above).**

5. Subsequently, the applicant was issued a protective demand for erroneously sanctioned rebate claims of Rs. 2,75,904/-. The Additional Commissioner, Central Excise, Raigad then decided the protective demand cum SCN issued to the applicant and confirmed the demand of Rs. 2,75,904/-(Rupees Two Lakhs Seventy Five Thousand Nine Hundred and Four only) and ordered for recovery of interest vide Order in Original NO. Raigad/ADC/11/(SJ)/13-14 dated 18.06.2013.

6. The applicant also filed appeal against the Order in Original NO. Raigad/ADC/11/(SJ)/13-14 dated 18.06.2013 passed by the Additional Commissioner, Central Excise, Raigad confirming the protective demand of erroneous refund of Rs.2,75,904/- alongwith the interest. However, Commissioner (Appeals) vide Order in Appeal No. SK/235/RGD/2013-14 dated 28.08.2013 rejected the appeal of the applicant.

7. Being aggrieved by the said Order in Appeal, the applicant preferred an appeal before the Joint Secretary (RA), New Delhi vide **RA No. 195/920/2013-RA (Sr. No. 2 of Table at para 1 above).**

8. The applicant had also filed rebate claims for Rs.3,26,412/- (Rupees Three Lakh Twenty Six Thousand Four Hundred and Twelve only) and Rs.90,426/- (Rupees Ninty Thousand Four Hundred Twenty Six only) before the Deputy Commissioner(Rebate) Central Excise, Raigad Commissionerate. The Deputy Commissioner Central Excise, Raigad sanctioned the entire amount as claimed but deducted altogether amount of Rs. 326,412/- (against total confirmed demand of Rs. 2,75,904/- + interest of Rs.1,10,755/-) vide OIO No. 3107/13-14/DC (Rebate)/Raigad dated



28.02.2014 and Rs. 60,247/- vide OIO 3377/13-14/DC (Rebate)/Raigad dated 31.03.2014) towards recovery of the Government dues confirmed vide Order in Original NO. Raigad/ADC/11/(SJ)/13-14 dated 18.06.2013 passed by the Additional Commissioner, Central Excise, Raigad .

9. Being aggrieved by the aforesaid Orders in Original, the applicant filed appeal before Commissioner (Appeals), who vide Order in (Appeal) No. CD/427 & 428 /2015 dtd. 07. 05. 2015 rejected the appeal.

10. Being aggrieved by the said Order in Appeal, the applicant preferred an appeal before the Joint Secretary (RA), New Delhi vide **RA No. 195/133/2017-RA and RA No. 195/135/2017-RA respectively** (Sr. No. 3 & 4 of Table at para 1 above).

11. Being aggrieved by the impugned Orders in Appeal mentioned in the Table at para 1 above, the applicant have filed these Revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following common grounds:

- The action taken by the Hon. Commissioner (Appeals), Central Excise, Mumbai - II, dismissing the Cross Objection of the Applicants and allowing the appeal of Revenue, without going into the merits and facts of the case should be set aside for the following reasons and explanations.

1. There is only one ground for setting aside the genuine Order in original by the Hon. Commissioner (Appeals) is that goods were exported without self sealing, but as required under procedure prescribed under the provisions of Para 3(a)(x) of Notification No.19/2004-CE(NT) dated 06.09.2004 and Para 6.1 of Chapter 8 of CBEC's Central Excise Manual of Supplementary Instructions, the owner, working partner, the Managing Director or the Company Secretary of the manufacturing unit of the goods or the owner of warehouse



or a person duly authorized by such owner, working partner or the Board of Directors of such Company has not given the Self Sealing Certificate on the Application i.e. (ARE1).

2. In this connection Applicants state and submit that Notification No. 19/2004-CE (NT) dated 06.09.2004 has two parts one part is "Conditions and limitations" and second part is "Procedures". Conditions and limits broadly the following conditions. (a) Goods exported after payment of duty and directly exported from the factory of manufacture. (b) The excisable goods should be exported within six months or within extended period. (c) The market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed.(e) The amount of rebate of duty is not less than five hundred rupees & Exported goods are not prohibited under any law for the time being in force. Rebate claim should be filed within one year of export as laid down in Section 11B of Central Excise Act,1944.

These are mandatory conditions and are not condonable. Other than the above conditions the remaining are all procedures and they can be condoned.

Whereas the Procedures are condonable. In this connection Applicants wish to submit as under:

- (a) Applicants submit that the assessee stated export during that time only and they were taking the guidance of the Departmental officers how to export accordingly they were preparing the ARE 1. Same is the case with the Applicants. In the process they were not aware that they have to make endorsement of self sealing on the ARE1. After export within 24 hrs. they have submitted the ARE1 Triplicate and Quadruplicate copies of ARE1 to the Range Supdt. He has



also certified on the back of Triplicate copy and handed over the same in the sealed cover to submit to the Rebate authority. This procedure was going on. The Rebate authority also called for the duty payment certificate from the jurisdictional Range Superintendent, same was also received by him. Rebate was sanctioned and paid to them without raising any objection in the normal course. In view of the same both Department as well as the Applicants were unaware of the procedure and in the interest of justice this needs to be condoned.

(b) In this connection Applicant's rely on the findings of the impugned OIO No.1381/11-12 dated 07.12.2011. It is properly ordered and the rebate has been sanctioned and paid to the Applicants properly. In the process neither the Range Supdt. nor the Rebate authority raised any objection of 'Self Sealing'. The Applicants are lay man and had no intention to suppress anything from the Department. Goods cleared has been physically exported and remittances were also received from abroad. Hence OIO needs to be upheld.

(c) Applicants rely on the Order of Hon. CESTAT in the case of Commissioner vs. Suncity Aloys Pvt. Ltd.,- 2007(218) E.L.T. 174 (Raj.) - Rebate -Exempted goods cleared for export on payment of duty -

(d) The Applicants further submits that all the conditions except the time limit for filing the Rebate claim as per Section 11B of the Central Excise Act, 1944 can be condoned by the Commissioner. This is as per para 11.1 of CBEC Circular No.81/81/94-CX, dated 25.11.1994. As per Government of India Order in the case of G.T.C. Export Ltd. - 1994 (74) E.L.T. 468 (G.O.I.) - Export Rebate -



Central Excise Rules, 1944 - Power vested in Collector to grant a part or whole of the rebate claim by condoning non-observant of some condition(s) of notification issued under the Rule exercisable by Collector (Appeals) as well. In this case of Applicants even there is mistake, same requires to be condoned in the interest of export as per Circular No. 81/81/94-CX dated 25.11.1994 and the GOI order of GTC Export Ltd.

(e) The Applicants rely on the Order of the Hon. CESTAT in the case of Sterlite Industries (I) Ltd. VS Commissioner of C. Ex. Tirunelveli- 2009 (236) E.L.T.143(Tri. Chennai) In an identical issue Hon. Tribunal passed the Order in favour of the Assessee. - Rebate - Exporters entitled to rebate of entire duty of excise paid by it on clearance of goods for export - Rule 18 of Central Excise Rules, 2002.

(f) The Applicants rely on following Government of India orders passed for condoning non-mandatory Procedural provisions relying on Hon. Tribunal Order in respect of:

(i) Birla VXL 1998(99)ELT 387, T.I. Cycles 1993(66)ELT497.
(ii) M/s. Banner International Order No. 255/07 dated 27.04.2007. (iii) M/s. Vipul Dye Chem Ltd. Order No.873/2006 dated 29.9.2006. (iv) M/s. Britannia Industries Ltd, Mumbai. Order No. 380-382/07 dated 29.06.2007.

(g) The ARE1 Number date and Commissionerate of Central Excise is shown on the Shipping Bill along with Mate Receipt Number and date, duly countersigned by the Superintendent of Customs. For co-relation, on the back of the ARE 1, Shipping Bill No. and date, ship on which goods are sailed, Mate Receipt Number and date is shown. This is also countersigned by the same Customs Officer who has signed



the Shipping Bill. There is no dispute against this. This itself shows that whatever goods has been cleared for export in fact has been exported. Further to submit that all the goods has been examined by Customs authorities as these can been seen from the endorsement of the Custom's Officer on the Export Invoice after examination. It is the mandatory requirement that whenever any goods cleared without physical examination of Central Excise officer same should be compulsorily required to be examined by the Customs Authorities. Therefore the allegation in this connection is not proper and correct.

- The Additional Commissioner, Central Excise, Raigad issued a SCN for demanding the amount of rebate claimed alongwith interest. This SCN was confirmed by him and the appeal filed against the same by the Applicants was dismissed by the Commissioner (Appeals) vide OIA No. SK/235/RGD/2013-14 dated 28.08.2013 and the Applicants filed Revision Application against the same. The appropriation of the dues is not proper and correct without waiting for the Outcome of the Revision Application or stay application. The Adjudicating authority without giving any SCN or PH appropriated the amounts towards duty and interest. However, this Order is upheld by the Commissioner (Appeals) This is not a proper and correct order and in view of the same , the Order and Appeal and Order in Original may be set aside to the extent of appropriation of amount of duty and interest.

12. The issue involved in all these four Revision Applications being common and interconnected, they are taken up together and are disposed of vide this common order.

13. A Personal hearing was held in this case on 01.02.2018 and Shri R. V. Shetty, Advocate duly authorized by the applicant appeared for hearing. None appeared on behalf of the respondent department. The

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reiterated the submission filed through Revision Applications and written submissions filed on the date of the hearing. In view of the genuine exports & BRC received, the Advocate pleaded that the technical infractions should not be allowed to be used for dismissing rebate. Hence, it was also pleaded that in view of the same Orders in Appeal be set aside and Revisions Applications be allowed.

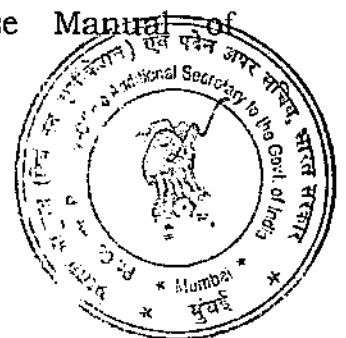
14. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

15. Government first takes up Revision Applications at **Sl. No. 1 of Table at para 1**, viz. bearing No. **195/1266/12-RA** (arising out of Order in Appeal No. US/460/RGD(R)/2012 dated 02.08.2012).

16. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E. (NT) dated 06.09.2004 was sanctioned by Deputy Commissioner, Central Excise(Rebate), Raigad vide order-in-original No. 1381/11-12/DC(Rebate)/Raigad dt. 07.12.2011 however, the department filed appeal against the said Order in Original on the ground that the rebate claims to the tune of Rs.2,75,904/- had been wrongly sanctioned as the applicant had not followed the procedure of self sealing as required vide para 3(a)(xi) of Notification No.19/2004-CE(NT) dated 06.9/004.

17. Government observes that the Appellate authority i.e. Commissioner (Appeals) while setting aside the order-in-original No. 1381/11-12/D C (Rebate)/Raigad dt. 07.12.2011 passed by Deputy Commissioner, Central Excise (Rebate), Raigad and allowing the appeal filed by the department observed as under :-

Para 6.1 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions reads as follows —



6.1 The facility of self-sealing and self-certification is extended to all categories of manufacturer-exporters subject to compliance with the existing procedure. For this purpose the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit exporter or a person (who should be permanent employee of the said manufacturer-exporter holding reasonably high position) duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application (ARE-1) that the description and value of the goods covered by this invoice/ARE-1/ARE-2 have been checked by me and the goods have been packed and sealed with lead seal/one time lock seal having number _____ under my supervision.

From the above it is clear that the above mentioned provision is mandatory provision and the respondents has not followed the Procedure, as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.9.2004. Therefore, the claim was liable for rejection.

18. Government observes that Para (3)(a)(xi) Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides, where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods.

19. From the above Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure has been prescribed in relation to identify and correlation of export goods at the place of dispatch. Since in respect of rebate claims under reference in the present



case the procedure prescribed under Notification No. 19/2004-C.E. (N.T.) has not been followed scrupulously by the applicant and therefore correlation between the excisable goods claimed to have been cleared for export from factory of manufacturer and the export documents as relevant to such export clearances cannot be established.

20. Government observes that the Department in its appeal before Commissioner (Appeals), had pointed out that

"This is not an isolated case of non compliance with procedure. As could be seen from the list of ARE-1s, the exporter is regularly violating the procedure. Further, the goods in respect of all the ARE-1s to the corresponding rebate claims were not opened by the Customs for examination and since the self sealing certificate was not given, the identity of the exported goods was not established. Therefore, in the absence of self sealing certificate, there is no certainty that the same goods which are mentioned in the ARE-1s and on which duty was paid, were cleared from the factory and exported".

21. The applicant has failed to produce any evidences before the Government to show that the goods cleared from the factory were ever opened/checked and verified at Customs end. The applicant has mainly relied on plea that procedural infraction of Notifications, circulars etc are to be condoned if exports have really taken place and the law is settled now that the substantive benefit cannot be denied for procedural lapses.

22. Government observes that it is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India v. Indian Tobacco Association - 2005 (187) E.L.T. 162 (S.C.); Union of India v. Dharmendra Textile Processors - 2008 (231) E.L.T. 3 (S.C.). Also, it is settled that a



notification has to be treated as a part of the statute and it should be read along with the Act as held in the case of Collector of Central Excise v. Parle Exports (P) Ltd. - 1988 (38) E.L.T. 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. v. Union of India - 1978 (2) E.L.T. J311 (S.C.) (Constitution Bench).

23. Government in the instant case notes that the impugned goods were cleared from the factory without ARE-1s bearing certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed and therefore the correlation between the goods cleared from the factory and those exported cannot be said to have been established. Government further holds that absence of Self sealing, Self Certification on the ARE-1s / not following the basic procedure of export as discussed above, cannot be treated as just a minor or technical procedural lapse for the purpose of availing the benefit of rebate of duty. As such there is no force in the plea of the applicant that this lapse should be considered as a procedural lapse of technical nature which is condonable in terms of case laws cited by applicant.

24. Government further notes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 19/2004-N.T., dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No. 19/2004-N.T., dated 6-9-2004 the applicant should have ensured strict compliance of the conditions attached to the said Notification. Government place reliance on the judgment in the case of Mihir Textiles Ltd. v. Collector of Customs, Bombay, 1997 (92) E.L.T. 9 (S.C.), wherein it is held that :

“concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without





compliance of such conditions. No matter even if the conditions are only directory."

25. In view of the foregoing, Government observes that the impugned goods which were cleared from the factory without ARE-1s bearing certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed and therefore the correlation between the goods cleared from the factory and those exported cannot be said to have been established. Government, therefore, holds that non observations of the conditions and procedure of self-sealing as provided in the Notification No.19/2004-CE(NT) dated 06.09.2004 cannot be treated as minor procedural lapse for the purpose of availing benefit of rebate of duty on impugned export goods. Therefore, the various judgments relied on by the applicant regarding procedural relaxation on technical grounds as well as applicant's plea about treating this lapse as procedural one cannot be accepted.

26. In view of above all Government finds no merits in the revision application No. 195/1266/2012-RA and the impugned Order-in-Appeal No. US/480/RGD/2012 dated 02.08.2012 is upheld for being legal and proper.

27. The revision application **No. 195/1266/2012-RA** is therefore rejected being devoid of merits.

28. Now, Government takes up Revision Application at **Sl.No. 2 of Table** at para 1 viz. **No. 195/920/2013** (arising out of Order in Appeal No.SK/235/RGD/13-14 dated 28.08.2013) for decision.

29. Government observes that a protective demand cum Show Cause Notice F.No. V/15-28/Reb/Anil Trading/Appeal/Rgd/2012-13/ 4956 dated 04.05.2012 was issued to the applicants demanding an amount of Rs. 2,75,904/- (Rupees Two Lakhs Seventy Five Thousand Nine Hundred and



Four only) of erroneously sanctioned rebate claims, along with applicable interest. The Additional Commissioner, Central Excise, Raigad then decided the protective demand cum SCN dated 04.05.2012 issued to the applicant wherein he confirmed the demand of Rs. 2,75,904/- (Rupees Two Lakhs Seventy Five Thousand Nine Hundred and Four only) and ordered for recovery of interest at the appropriate rate under Section 11 AA of the Central Excise Act, 1944, vide Order in Original NO. Raigad/ADC/11/SJ/13-14 dated 18.06.2013. The applicant challenged the same before the Commissioner (Appeals) of Central Excise, Mumbai Zone II. The Commissioner (Appeals) rejected applicant's appeal vide Order-In-Appeal No. No.SK/235/RGD/13-14 dated 28.08.2013 Commissioner (Appeals) upheld Order in Original NO. Raigad/ADC/11/SJ/13-14 dated 18.06.2013, on the basis of Commissioner Central Excise (Appeals), Mumbai-III's, Order in Appeal No. US/480/RGD/2012 dated 02.08.2012 which had set aside Order in Original No. 1381/11-12/DC (Rebate)/Raigad dated 07.12.2011.

30. However, Government has already upheld the Order in Appeal No. US/480/RGD/2012 dated 02.08.2012 (para 28 supra) which had set aside Order in Original No. 1381/11-12/DC (Rebate)/Raigad dated 07.12.2011 sanctioning the rebate claims of the applicant for Rs.2,75,904/- and as a consequence the impugned Order in Original No. Raigad/ADC/11/SJ/13-14 dated 18.06.2013 confirming protective demand of erroneously sanctioned rebate claims of Rs. 2,75,904/- along with interest is legal and proper. Accordingly, Government upholds Order in appeal No.SK/235/RGD/13-14 dated 28.08.2013 which has upheld Order in Original NO. Raigad/ADC/11/SJ/13-14 dated 18.06.2013 confirming the demand of Rs. 2,75,904/- passed by the Additional Commissioner, Central Excise, Raigad.

31. In view of above all Government finds no merits in the revision application No. 195/920/2013-RA and the impugned Order-in-Appeal No.





No.SK/235/RGD/13-14 dated 28.08.2013 is upheld for being legal and proper.

32. The revision application No. **195/920/2013-RA** is therefore rejected being devoid of merits.

33. Now, Government takes up Revision Applications at **Sl.No. 3 & 4 of Table at para 1 viz. Nos. 195/133/2017-RA and 195/135/2017-RA** (arising out of Order in Appeal No. CD/427 & 428/RGD/2015 dated 07.05.2015) for decision.

34. Government observes that the applicant had also filed rebate claims for Rs.3,26,412/- (Rupees Three Lakh Twenty Six Thousand Four Hundred and Twelve only) and Rs.90,426/- (Rupees Ninty Thousand Four Hundred Twenty Six only) respectively, before the Deputy Commissioner (Rebate) Central Excise, Raigad Commissionerate. The Deputy Commissioner Central Excise, Raigad sanctioned the entire amount as claimed but deducted altogether amount of Rs. 326,412/- vide Order in Original No. 3107/13-14/DC (Rebate)/Raigad dated 28.02.2014 and Rs. 60,247/- vide Order in Original 3377/13-14/DC (Rebate)/Raigad dated 31.03.2014) towards recovery of the Government dues confirmed (total confirmed demand of Rs. 2,75,904/- + interest of Rs.1,10,755/-) vide Order in Original NO. Raigad/ADC/11/(SJ)/13-14 dated 18.06.2013 passed by the Additional Commissioner, Central Excise, Raigad. The Original authority while appropriating the amount of government dues observed that though the applicant had filed a Revision Application along with stay application before the Revisionary Authority against the Order in Appeal No. SK/235/RGD/2013-14 dated 28.08.2013 there is no stay against the same and accordingly in terms of Section 11 of the Central Excise Act, 1944, the due amount has been recovered from the applicant by appropriating the due rebate claim.



35. On appeal filed against the aforesaid Orders in Original by the Applicant, the Commissioner (Appeals) vide Order in Appeal No. CD/427 & 428/RGD/2015 dated 07.05.2015 observed that the adjudicating authority had rightly exercised his power under Section 11 of the Central Excise Act, 1944 by sanctioning and appropriating the due rebate claim against the amount payable as a consequence of the Order in Original No. Raigad/ADC/11/SJ/13-14 dated 18.06.2013 and rejected the appeals filed by the applicant.

36. Being aggrieved the applicant filed two Revision Applications before Government bearing Nos. 195/133/2017-RA and 195/135/2017-RA respectively.

37. In this regard Government has already held at para 32 supra, that Order in Original No. Raigad/ADC/11/SJ/13-14 dated 18.06.2013 passed by the Additional Commissioner, Central Excise, Raigad confirming protective demand of erroneously sanctioned rebate claims of Rs. 2,75,904/- along with interest is legal and proper and also upheld the Order in appeal No. SK/235/RGD/13-14 dated 28.08.2013.

38. Government observes that in terms of Section 11 of the Central Excise Act, 1944 where there is any recovery of sum / amounts due to the Government, then those amounts could be appropriated against the outstanding dues by an officer empowered by the Central Excise. The procedure for recovering is also laid down in the Central Excise Act, 1944. Therefore, the adjustments of amounts as against the confirmed orders of the lower authorities, when the said orders are not stayed is justified and correct.

39. In view of above Government finds no merits in the revision application No. 195/133/2017-RA and 195/135/2017-RA the impugned Order-in-Appeal No. CD/427 & 428/RGD/2015 dated 07.05.2015 is upheld for being legal and proper.





40. The revision applications No. **195/133/2017-RA** and **195/135/2017-RA** are therefore dismissed being devoid of merits.

41. Accordingly, all the four Revision Applications viz. RA Nos. 195/1266/2012-RA,195/920/2013-RA,195/133/2017-RA and 195/135/2017-RA are dismissed in terms of above.

42. So, ordered.

(Handwritten Signature)
18.5.18

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

ORDER No. 171-174/2018-CX (WZ) /ASRA/Mumbai Dated 18-05-2018

To,

M/s Anil Trading Corporation,
706 A, 8th Floor, Ecstasy Business Park,
Near City of Joy, J.S.D. Road,
Mulund, Mumbai 400 080.

True Copy Attested

(Handwritten Signature)
5-6-18

एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.

