REGISTERED SPEED POST

सत्यमेव जयते

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. 371/29-30/DBK/14-RA, /2607
195/279/14-RA.

Date of Issue:- 09.04.2021

ORDER NO. 172-174 /2021-CX(WZ)/ASRA/MUMBAI DATED 31.3.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SETION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject :- Revision Applications filed under section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. DMN-EXCUS-000-APP-283 & 284 -13-14 dated 02.01.2014 and DMN-EXCUS-000-APP-141-14-15 dated 01.08.2014 passed by the Commissioner (Appeals),Central Excise Customs and Service Tax, Daman.

Applicant :- M/s Polycab Wires Pvt. Ltd., Daman.

Respondent :- Commissioner, Central Excise, Customs & Service Tax, Daman.

ORDER

These Revision applications are filed by M/s Polycab Wires Pvt. Ltd., Daman (hereinafter referred to as the 'applicant') against the Orders-In-Appeal as detailed in Table below passed by Commissioner (Appeals),Central Excise Customs and Service Tax, Daman.

TABLE

Sl. No.	Revision Application Nos.	Order-In-Appeal No./ Date	Order-In-Original No. & Date	Amount of Rebate sanctioned
1	2	3	4	5
1.	371/29-30/DBK/14	DMN-EXCUS-000-APP-283 & 284 -13-14 dated 02.01.2014	ND/AC/002/13-14/ R dated 01.04.2013. ND/AC/148/13-14/ R dated 03.06.2013.	Rs.43,55,731/- Rs. 6,73,611/-
2.	195/279/14-RA.	DMN-EXCUS-000-APP-141-14-15 dated 01.08.2014	ND/AC/189/13-14/ R dated 29.07.2013	Rs. 41,47,403/-

2. The Brief facts of the case are that the applicant had filed rebate claims (shown at column 5 of Table supra) in respect of Central Excise duty paid on the goods exported on payment of duty in terms of provision of rule 18 of central excise rule 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The rebate claims were sanctioned by the original authority, viz. The Deputy Commissioner of Central Excise, Customs and Service Tax, Division North Daman vide Orders in Original mentioned at column 4 of the table supra.

3. Being aggrieved by the said Orders-in-Original the department filed appeals before Commissioner (Appeals),Central Excise Customs and Service Tax, Daman challenging the sanction rebate claims mainly on the following grounds:-

a. The respondent has used inputs imported under Advance License issued under Notification No.99/2009-Cus dated 11.09.2009 for the manufacture of final products exported under said ARE-1s for which the rebate claims were sanctioned, and

b. That since the said final goods were exported under Advance License Scheme, the same were covered under Sl. No. (ix) of Notification No.99/2009-Cus dated 11.09.2009 according to which the rebate of duty paid on export of such finished goods is not allowable and the Adjudicating Authority has erroneously sanctioned rebate of duty for the finished goods.

4. Commissioner (Appeals) after consideration of all the submissions, and relying on GOI Order in the case of M/s Sonal Garments India Pvt. Ltd. [2012(280) ELT 305 (GOI) found merit in the department's contention that rebate claims in these cases were erroneously sanctioned and held that the respondent was not eligible to claim rebate in these cases. Accordingly, Commissioner (Appeals) vide Orders in Appeal mentioned at Sl. No. 1 & 2 of Column 3 of Table supra, allowed the appeals filed by the department.

5. Being aggrieved and dissatisfied with these Orders in Appeal, the applicant filed these Revision Applications (Column 2 of the Table supra) on the following common grounds:-

5.1 The Ld. Commissioner (Appeals) have erred in relying upon the judgment of Revision Authority in the case of Sonal Garments India Pvt. Ltd. wherein the circular no. 605/65/206-DBK dated 22.01.2007, it is explained that - *"Thus, the position as of now is that in case of export under advance licence scheme, the exporter cannot avail of rebate of duty paid on the input materials, but he can avail of the rebate of terminal excise duty paid on the export goods."* The said circular is on the advance licence scheme and the intent of the Government have been clarified. This circular was not brought to the notice of revisional authority in the case of Sonal Garments India Pvt. Ltd. and therefore the ratio of the said judgment is not applicable for the notification no. 99/2009-Cus dated 11.09.2009. In view of this, the finding of the Commissioner (Appeals) based on the judgment of Sonal Garments India Pvt. Ltd. is not sustainable in law and therefore the said order is prayed to set aside in the interest of justice.

5.2 The Tribunal in the latest decision dated 17.07.2013 in the case of Indorama Synthetics (I) Ltd. reported in 2013 (296) ELT 411 (Tri.-Mumbai) which is in relation to notification no. 94/2004- Cus dated 10.09.2004, wherein the wordings are -

> *"that the export obligation is discharged within the period as specified in the said licence or within such extended period as may be granted by the Licensing Authority* ***by exporting resultant products manufactured in India and in respect of which facility under Rule 18 or sub-rule (2) of Rule 19 of the Central Excise Rules, 2002 has not been availed.*** *At the time of export, the full details of value, quantity, technical characteristics and other particulars of the resultant export product (hereinafter referred to as resultant product) shall be entered in Part E of Part 2 of the Schedule to this notification, of the said certificate by the proper officer."*

Under the present dispute the condition of Notification No. 99/2009-Cus dated 11.09.2009 is also identically same which reads as under :-

> *(ix) that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within*

such extended period as may be granted by the Regional Authority ***by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed :***

Thus the conditions under both the notifications are same and intention is also the same and therefore Board's Circular no. 605/65/206-DBK dated 22.01.2007 is having binding effect on all the authorities including the department and the department cannot go contrary to the said Circular by way of filing appeal before the Commissioner (Appeals). In view of this the order of the Commissioner (Appeals) and action of the revenue for filing appeal to Commissioner (Appeals) were not sustainable in law.

5.3 The Ld. Commissioner (Appeals) ought to have appreciated that the judgment in the case of Indorama Synthetics (I) Ltd. reported in 2013 (296) ELT 411 (Tri.-Mumbai) was well within the knowledge of the Commissioner (Appeals) wherein it is held that..... (The applicant reproduced paras 6.1 to 6.5 of CESTAT, Mumbai's Final Order dated 17-7-2013).

5.4 The Ld. Commissioner (Appeals) on one hand has held that notification number 94/2009-Cus and 99/2009-Cus are pari materia and on the other hand he has not given any finding or given any due consideration on circular no. 605/65/206-DBK dated 22.01.2007 whereby the intention of the Government have been clarified to the effect that - *"Thus, the position as of now is that in case of export under advance licence scheme, the exporter cannot avail of rebate of duty paid on the input materials, but he can avail of the rebate of terminal excise duty paid on the export goods."* In view of this, the finding of the Commissioner (Appeals) is perverse and therefore also the said order is not 'sustainable in law and required to set aside in the interest of justice.

5.5 The said Circular No. 605/65/206- DBK dated 22.01.2007 is having binding effect and the Central Excise Officers cannot take any contrary view then the said circular and cannot file any appeal to the Commissioner (Appeals) applying the ratio of Supreme Court in the case of Paper Products Ltd. reported in 1999 (112) ELT 765 (SC). In view of this the order of the Commissioner (Appeals) giving contrary findings and relying upon revisional authority's order, is not sustainable and required to set aside in the interest of justice.

5.6 The issue involved in the present case had been settled by the Commissioner (Appeals) vide OIA No. AKP/ 195- 219/DMN/NDMN/2009-10 dated 23.12.2009 which have been accepted by the department in the case of the present appellant itself and therefore there was no cause to take any contrary view by the revenue for the subsequent period, much particularly when the intention of the Government was clarified by the Board vide Circular dated 22.01.2007.

5.7 The Ld. Commissioner (Appeals) have tried to clarify that the notification is required to be read as it is by relying upon the judgment cited in para 10, 11, 12, 13 & 14 of his order without appreciating that the Government itself had cleared their intention by issuing circular no. 605/65/206-DBK dated 22.01.2007 on the subject issue of advance licence scheme and therefore there was no question of mis-interpreting of the said notification and therefore the reliance placed by the Commissioner (Appeals) on various judgments has no place in the present case

5.8 The Ld. Commissioner (Appeals) have failed to appreciate that there is no bar for granting rebate on the duty paid for the goods exported and therefore the condition no. ix of Notification No. 99/2009-Cus dated 11.09.2009 is not violated at all and therefore also the finding of the Commissioner (Appeals) are not correct and the said finding are required to brush aside allowing the appeals in the interest of justice.

5.9 The Ld. Commissioner (Appeals) have failed to appreciate that order passed by the adjudicating authority allowing rebate claims were sanctioned and paid only after examining the rebate claims from all four corners of law and conditions of notification no. 99/2009-Cus dated 11.09.2009. In view of this, the finding of the Commissioner (Appeals) allowing the appeals of the revenue is not correct in law and therefore the said orders are prayed to set aside in the interest of justice.

6. Personal hearing in these cases was held on 20.01.2021 which was attended online on behalf of the applicant by Shri K.I. Vyas, Advocate. He reiterated the submissions made earlier. He submitted copy of judgment of Indorama Synthetics (I) Ltd. [2013(296) E.L.T. 411 (Tri.-Mumbai)] and Bhilwara Spinners Ltd. [2011(269) E.L.T. 384 (Tri.-Del.)]. He also submitted a judgment of M/s Kotsons Pvt. Ltd.[(2020(373)E.L.T. 562 (G.O.I.)]. Shri K.I. Vyas, Advocate was shown Hon'ble M.P. High Court decision in Suraj Impex (India) Pvt. Ltd. [2017 (347) E.L.T. 252 (M.P.)]. He requested for two weeks' time to make submissions in this regard.

7. During the personal hearing held earlier before the Revisionary Authority Shri K.I. Vyas, Advocate had filed additional written submissions contending therein as under:-

7.1 Show cause notice F.No. V(Ch.85)3-41/DEM/ADJ-NDMN/2014-15 dated 22.07.2014 is solely issued by Joint Commissioner, Central Excise, Customs and Service Tax, Daman Commissionerate on the ground as indicated in para 3 of the show cause notice that –

> *"The goods exported under advance license scheme notification no. 99/2009-Cus dated 11.09.2009, the rebate of duty paid on export of the finished goods is not allowable in terms of Sr. No. (ix) of Notification No. 99/2009-Cus dated 11.09.2009 which reads as under-*

that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said uthorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed :

The Central Excise authority has no power to issue any notice for violation of Customs Notification No. 99 /2009-Cus dated 11.09.2009. Since the allegation is pertaining to violation of advance license issued by concerned authority in relation to the export-import policy, the proper jurisdiction is Customs authority of the port and therefore the present notice for violation of the Customs Notification No. 99 /2009-Cus dated 11.09.2009 is not maintainable in law and therefore the order passed by the Commissioner (Appeals) is not valid in law. In support of this, the reliance is placed in the case of Polycab Cables Pvt. Ltd. in Order-in-Appeal No. AKC/195-219/DMN/NDMN/2009-10 dated 23.12.2009 on the similar issue and the said order have been accepted by the revenue. In the said order, in para 11, it is concluded that –

" 11. A similar matter had arisen much earlier in the case of DEEC (VABAL) Scheme operated through exemption notfn no. 203/ 1992 dated 19.05.1992 where it was found that a number of exporters had taken Cenvat Credit on their inputs while operating under the Scheme, though this was specifically barred as per the notfn. Action was initiated all over India by the Customs formations (and not by the Central Excise formations) to deny the benefit of the exemption notification and action was not taken by Central Excise formations to recover the Cenvat Credit wrongly taken in contravention of the conditions of the notfn. [Board's Circular No. 322/38/97-CX, dated 9-7-1997 also refers} Similar action should have been taken by the Department in this case also if they felt that the conditions of notfn. No. 94/2004-Cus had been violated."

In above case also after availing advance authorization benefit the rebate claims were filed and sanctioned and paid and the department had issued notice for recovery of the rebate claims and adjudication order was passed confirming the show cause notice against which the department filed 25 appeals which were rejected vide above order.

7.2 They also rely upon the judgment in the case of Commissioner of Central Excise, Jaipur-II Vs. Bhilwara Spinners Ltd. reported in 2011 (269) ELT 384 (Tri-Del) which is also in relation to advance license scheme which also clearly speaks that for the violation of Customs notification, the proceedings have to be issued by the Customs Authorities and the rebate claims cannot be denied. (The applicant reproduced para (No. 6) and head-note of the Final Order dated 25.02.2011). Applying the ratio of the above judgment also, the Central Excise authority have no jurisdiction to issue show cause notice for violation of Customs notification and therefore order passed by both the lower authorities are not sustainable in law on the point of jurisdiction.

7.3 Without prejudice to the above legal submissions on the point of jurisdiction, the order passed by the Commissioner (Appeals) is not legal and proper, on merits it is submitted that even under notification no. 99/2009-Cus dated 11.09.2009, there is no bar for export on payment of duty under the advance license scheme and claiming rebate of duty paid on the export goods. In support of this, reliance is placed in the case of Bombay Dyeing and Manufacturing Company Ltd. reported in 2015 (315) ELT 312 (Tri.-Mumbai). (The applicant reproduced the headnotes and paras 11,12,13,14 & 16 of the Tribunal Mumbai's Order dated 26-8-2014). Applying the ratio of the above Final Order of the Tribunal, the present Revision Application is prayed to be allowed in the interest of justice.

7.4 The Commissioner (Appeals) have relied upon the order of Revisional authority dated 03.10.2011 in the case of Sonal Garments India Pvt. Ltd. interpreting Customs Notification No. 94/2004-Cus. Subsequent to this, Division Bench of Tribunal, Mumbai have interpreted the provisions of notification no.94/2004-Cus dated 10.09.2004 and held that the rebate can be allowed. [the applicant reproduced para 6.5 of CESTAT Mumbai's Order in Indorama Synthetics (I) Ltd.2013 (296) E.L.T. 411 (Tri. - Mumbai)].

7.5 Further, in the case of Bhilwara Spinners Ltd. the Division Bench of Tribunal have dismissed the appeals filed by Commissioner, Central Excise on the issue of Notification No. 43/2002 & 93/2004 wherein it is clearly held that if the condition on the advance license is breached, exemption under advance license deniable and not benefit under Rule 18 or Rule 19. The above order of the Tribunal whereby the appeals filed by the revenue is dismissed, is not reversed by higher forum as per the record available with the applicant and therefore the said order of the Division Bench is binding being the latest order of the Court. Further, the above judgment of the Division Bench were not available before the Revisional Authority and therefore the findings of the Revisional authority in the case of Sonal Garments India Pvt. Ltd. distinguishing some judgments is total misinterpretation of notification no. 94/2004-Cus and therefore the said view is erroneous view considering latest judgment of the Court on the subject notification.

7.6 In nutshell the Revision authority is of Sonal Garments India Pvt. Ltd. have distinguished the law landing judgment passed by the Revisional authority itself on the subject issue and have given different verdict contrary to further judgments of the Tribunal on the subject issue. Thus, the latest will prevail and therefore it is prayed to apply the latest judgment and its concept in the present case for allowing revision application on following two points

(A) Only Commissioner of Customs having jurisdiction of import under advance license is empowered to issue show cause notice to deny the benefit of Notification No. 99/2009-Cus dated 11.09.2009.

(B) On merits the ratio of the following judgments are squarely applicable considering that the wording of notification no. 94/2004-Cus and 99/2009-Cus are common which reads as under –

94/2004-Cus dated 11.09.2004	99/2009-Cus dated 11.09.2009
that the export obligation is discharged within the period as specified in the said licence or within such extended period as may be granted by the Licensing Authority **by exporting resultant products manufactured in India and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed.** At the time of export, the full details of value, quantity, technical characteristics and other particulars of the resultant export product (hereinafter referred to as resultant product) shall be entered in Part E of Part 2 of the Schedule to this notification, of the said certificate by the proper officer :	that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority **by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed ;**
Provided that an Annual Advance Intermediate Licence holder shall discharge export obligation by supplying the resultant product to the ultimate exporter in terms of Para 4.1.3 of the Foreign Trade Policy;	Provided that an Advance Intermediate authorization holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.1.3 (ii) of the Foreign Trade Policy;

(1) Commissioner (Appeals) Order-in-Appeal No. AKP/195-219/DMN/ NDMN/ 2009-10 dated 23.12.2009

(2) Indorama Synthetics Pvt. Ltd. - 2013 (296) ELT 411 (Tri.-Mumbai)

(3) Commissioner of C.Ex., Jaipur-II Versus Bhilwara Spinners Ltd. – 2011 (269) ELT 384 (Tri.-Del.)

(4) Bombay Dyeing & Mfg. Co. Ltd. Vs. CCE., Raigad- 2015 (315) ELT 312 (Tri.-Mumbai)

In view of its aforesaid submissions the applicant has prayed to allow the revision applications.

8. Government has carefully gone through the relevant case records and perused the Orders-in-original, Orders-in-appeal and written submissions filed by the applicant.

9. The issue involved in all these 3 Revision Applications is whether the applicant is eligible for rebate under rule 18 of the Central Excise Rules, 2002 in respect of exported finished goods manufactured out of inputs imported under Annual Advance Authorisation (AAA) issued in terms of Notification No. 99/2009-

Cus dated 11.09.2009 or not. The issue involved in all these Revision Application being same, they are disposed off vide this common Order.

10. The applicant in its additional written submissions has contended that Show cause notice F.No. V(Ch.85)3-41/DEM/ADJ-NDMN/2014-15 dated 22.07.2014 is solely issued by Joint Commissioner, Central Excise, Customs and Service Tax, Daman Commissionerate and the Central Excise authority have no power to issue any notice for violation of Customs Notification No. 99 /2009-Cus dated 11.09.2009. Since the allegation is pertaining to violation of advance license issued by concerned authority in relation to the export-import policy, the proper jurisdiction is Customs authority of the port and therefore the present notice for violation of the Customs Notification No. 99/2009-Cus dated 11.09.2009 is not maintainable in law and therefore the order passed by the Commissioner (Appeals) is not valid in law.

10.1 In this regard, Government observes that being aggrieved by the Orders-in-Original mentioned at column 4 of Table at para 1 supra, sanctioning the rebate claims, the department filed appeals before Commissioner (Appeals), Central Excise Customs and Service Tax, Daman under Section 35 of the Central Excise Act, 1944 and the impugned Orders in Appeal have been passed by the said Commissioner (Appeals) strictly within the parameters determined by law. Government also observes that filing of appeal by the department before Commissioner (Appeals) and issuance show cause notices for recovery of erroneous rebate by Joint Commissioner, Central Excise, Customs and Service Tax, Daman Commissionerate are two independent actions taken well within the ambit of Central Excise Act, 1944. The issue in the present matter is not of disallowing Notification No.99/2009-Cus dated 11.09.2009, but admissibility of rebate when goods have been exported utilizing Notification No.99/2009-Cus. Thus, it is falling in the competence. Even assuming without admitting for a moment, that the show cause notice issued by the Joint Commissioner, Central Excise, Customs and Service Tax, Daman Commissionerate was without any authority, it will have no bearing on the validity of impugned Orders in Appeal in as much as the said Orders have been passed within the framework of law. Moreover, Government observes that this issue of jurisdiction for issue of Show Cause Notice is not a cause of action before this authority to decide and is not impugned in these Revision Applications. Further, the powers vested in the Central Government in terms of Section 35EE of the Central Excise Act, 1944 are restricted to granting relief to persons aggrieved by

Orders passed by Commissioner (Appeals) under Section 35 A of the Central Excise Act, 1944 and therefore it will be open to the applicant to avail such remedy as may be available to it in law to address its grievance about jurisdiction of the show cause notice. Hence applicant's aforesaid contention about jurisdiction in their additional written submissions does not merit any consideration.

11. In the instant cases the applicant was operating under Advance License issued under Notification No. 99/2009-Cus dated 11.09.2009 for the manufacture of final products exported and claimed rebate for the goods exported under Rule 18 of Central Excise Rules, 2002 which were sanctioned by the original authority. However, on appeal filed against these Orders in Original sanctioning rebate claims, the Commissioner (appeals) vide impugned Orders allowed the appeal of the department holding that the applicant was not eligible to claim rebate in these cases.

12. Government observes that the Condition number (ix) of the Notification number 99/2009-Cus dated September 11, 2009, relating to Annual Advance Authorisation (AAA), says that "*the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the regional authority by exporting resultant products, manufactured in India which are specified in the said authorisation and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed*". Rule 18 of Central Excise Rule, 2002, deals with rebate of excise duty paid on the export product as well as rebate of the duty paid on the inputs used in the manufacture of the export product.

13. The applicant has contended that in Circular no. 605/65/206-DBK dated 22.01.2007, it is explained that - "*Thus, the position as of now is that in case of export under advance licence scheme, the exporter cannot avail of rebate of duty paid on the input materials, but he can avail of the rebate of terminal excise duty paid on the export goods.*", and that the said circular is on the advance licence scheme and the intent of the Government has been clarified. As this circular was not brought to the notice of revisional authority in the case of Sonal Garments India Pvt. Ltd. and therefore the ratio of the said judgment is not applicable for the Notification No. 99/2009-Cus dated 11.09.2009. The applicant has relied upon the judgment in the

case of Bombay Dyeing & Mfg. Co. Ltd. Vs CCE., Raigad [2015 (315) E.L.T. 312 (Tri. - Mumbai)] and contended that even under Notification No. 99/2009-Cus dated 11.09.2009, there is no bar for export on payment of duty under the advance license scheme and claiming duty paid on the export goods. Government observes that CESTAT Mumbai in its aforesaid judgment has also relied upon CESTAT Delhi Order in Commissioner of Central Excise, Jaipur-II Vs. Bhilwara Spinners Ltd. 2011 (269) E.L.T. 384 (Tri. - Del.). In the case of Bhilwara Spinners Ltd. (supra), Tribunal at para 6 of its Order observed as under :-

..... *"Moreover, when the exemption notifications Nos. 43/2002-Cus. or 93/2004-Cus. in respect of the duty free imports made against Advance Licence issued against the exports made under Advance Licence Scheme, mention that for the benefit of the exemption under these notifications, the export obligations in respect of the Advance Licence should be discharged by export of finished products without availing the facility under Rule 18 or Rule 19(2) of the Central Excise Rules, 2002 and if these conditions are breached, as according to Department, facility of input duty rebate under Rule 18 of Central Excise Rules, 2002 is equivalent to cash refund of accumulated Cenvat credit under Rule 5 of Cenvat Credit Rules, 2004, then it is the benefit of the duty exemption under these notifications in respect of the goods imported against the advance licence, which has to be denied, and not the benefit of cash refund under Rule 5 of the Cenvat Credit Rules, 2004 in respect of the exports".*

13.1 Government, however observes that Hon'ble Delhi High Court while dealing with the specific issue *"whether the petitioner is entitled to rebate of duty under Rule 18 of the Central Excise Rules, 2002 having availed of the benefit of Notification No. 93/2004-Cus dated 10.09.2004"* in the Case of International Tractors Ltd. (2017(354) E.L.T. 311(Del.) vide its Judgment dated 13.07.2017 observed as under:-

> ***14.*** *It is the admitted position that the petitioner has availed the benefits under the Advance Authorizations by importing input material and exporting the manufactured goods. The petitioner has, thus, availed of the benefit of non-payment of customs duty on the whole of the imports which it made during the relevant period. The discharge of the Advance Authorizations given in favour of the petitioner was as per Notification No. 93 of 2004.*
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> ***15.*** *The submission of the petitioner, that availing of the benefit under Rule 18 of CER is not dependent or contingent upon any other notification or obligation, is incorrect. Rule 18 is a rebate, which is subject to such conditions or limitations, as may be stipulated.*
>
> ***16.*** *In the present case, there is a categorical reference to Rule 18 in Notification No. 93. It is a conscious and deliberate inclusion, inasmuch as, the policies envisaged in Rule 18 of the CER and Notification No. 93 is grant of rebate on payment of excise and exemption from payment of customs duty respectively. A party cannot be allowed to avail of both the exemptions when clearly, the intention seems to be to permit only one exemption.*

17. *The reference to Rules 18 and 19(2) in Notification No. 93 clearly reveals that non-payment/rebate of either excise duty or customs duty is being granted to encourage exports. Once an export transaction has been used for seeking discharge of Advance Authorizations issued under the CA, the same export transaction cannot be used for seeking rebate of duty under CER, as the rebate, in this case, is subject to the conditions and limitations, as specified in Notification No. 93, which clearly requires that 'the facility under Rule 18 or sub-rule (2) of 19 of CER, 2002' ought not to have been availed. The petitioner's right to seek rebate is clearly limited by this condition and hence it is not entitled to rebate under Rule 18 CER.*

The Hon'ble Supreme Court Bench dismissed the Petition for Special Leave to Appeal (C) filed by International Tractors Limited against the aforesaid Judgment dated 13-7-2017 of Delhi High Court [2019(368)E.L.T. A292(S.C.)]. Though the aforesaid judgment is rendered in respect of Advance license claiming exemption under Notification No. 93/2004-Cus., dated 10-9-2004, the conditions the condition No.(v) Notification No. 93/2004-Cus., dated 10-9-2004 and condition no (ix) of Notification No. 99/2009-Cus., dated 11-9-2009 are similar as shown below:-

93/2004-Cus dated 10.09.2004	99/2009-Cus dated 11.09.2009
(v) that the export obligation as specified in the said licence (both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the Licensing Authority **by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002 has not been availed :**	(ix) that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority **by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed :**

13.2 Moreover, the principle underlined by their Lordships in the aforesaid judgment that *"it is a conscious and deliberate inclusion, inasmuch as, the policies envisaged in Rule 18 of the CER and Notification No. 93 is grant of rebate on payment of excise and exemption from payment of customs duty respectively. A party cannot be allowed to avail of both the exemptions when clearly, the intention seems to be to permit only one exemption"* is also equally applicable to the present cases. The judgment of the Hon'ble Delhi High Court supra, has affirmed the departmental action of issuance of show cause notices and subsequent rejection of rebate claims of the petitioner, when they have availed exemption available to the

Advance Licence holder. Therefore, applicant's contention that *'for the violation of customs notification, the proceedings have to be issued by the Customs Authorities and the rebate claims cannot be denied'* is fallacious.

13.3 Government relies on the aforesaid judgment of Hon'ble Delhi High Court, duly maintained by the Hon'ble Supreme Court, to affirm that the reliance placed by the applicant on Commissioner (Appeals) Order-in-Appeal No. AKP/195-219/DMN/ NDMN/ 2009-10 dated 23.12.2009, Bombay Dyeing & Mfg. Co. Ltd. Vs CCE., Raigad [2015 (315) E.L.T. 312 (Tri. - Mumbai)], Commissioner of Central Excise, Jaipur-II Vs. Bhilwara Spinners Ltd. 2011 (269) E.L.T. 384 (Tri. - Del.) as well as on Circular no. 605/65/206-DBK dated 22.01.2007 is misplaced.

14. The applicant has also relied on judgment in the case of M/s. Indorama, Synthetics (I) Ltd. v. CCE [2013 (296) E.L.T. 411 (Tri. - Mum.)] wherein the Tribunal held that the holder of Advance License under Annual Requirement in terms of Notification No. 94/2004-Customs, dated 10-9-2004 can export under claim for rebate under Rule 18 of Central Excise Rules, 2002. The said notification allowed the discharge of export obligation subject to the condition that exports were not under claim for rebate under Rule 18 or sub-rule (2) of Rule 19 of Central Excise Rules, 2002. In its Order CESTAT drew parity with the advance license holders under Notification No. 93/2004-Customs, dated 10-9-2004 wherein there was no such condition and granted relief to the assessees on the premise that advance license holders on annual basis cannot be put to disadvantage in comparison to holders of advance license on consignment basis. However, Civil Appeal No. 3343 of 2014 filed by the department against aforesaid CESTAT judgment in M/s. Indorama Synthetics (I) Ltd. has been admitted by the Hon'ble Suprme Court [2015 (316) E.L.T. A157 (S.C.)]. Hon'ble Apex Court in UOI v. West Coast Paper Mills Ltd. -2004 (164) E.L.T. 375 (S.C.), has held that once the appeal having been filed and entertained by the Supreme Court, the judgment of a High Court or the Tribunal is in jeopardy. Relevant portions of that judgment are reproduced below:

> *38. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit."*

14.1 Hence decision rendered in M/s. Indorama Synthetics (I) Ltd. will not aid the applicant as the same is subjudice before the Hon'ble Supreme Court. Also the judgment of M/s Kotsons Pvt. Ltd.[(2020(373)E.L.T. 562 (G.O.I.)] relied upon by the applicant pertains to Notification No. 96/2009-Cus., dated 11-9-2009 and does not apply to the facts of present case in as much as under the notification number 96/2009-cus dated 11.09.2009, the bar will operate for facility Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) and not in respect of rebate of duty claimed on final duty paid goods exported.

15. In view of foregoing, Government observes that allowing rebate under Rule 18 of the Central Excise Rules, 2002 in respect of exported finished goods manufactured out of inputs imported under Annual Advance Authorisation (AAA) issued in terms of Notification No. 99/2009-Cus dated 11.09.2009, when condition (ix) of the said Notification is quite clear and puts embargo on availing facility under rule 18 of the Central Excise Rules, 2002 by the authorisation holder, would amount to expanding the scope of the notification, which is not the intention of the legislation.

16. It is a settled position in law that a Notification should be construed strictly, being in the nature of exception. It is also equally settled that while interpreting a Notification, no words should be read into a Notification or no words should be excluded from a Notification. The Notification should be interpreted as it is worded.

16.1 The Hon'ble Apex Court in the case of Commissioner of Central Excise, Surat v. Favourite Industries - 2012 (278) E.L.T. 145 (S.C.) held as under:-

14. *Before we deal with the contentions canvassed by the learned counsel for the parties to the lis, we deem it appropriate to notice the observations made by the Constitution Bench of this Court in the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors., (2011) 1 SCC 236 = 2010 (260) E.L.T. 3 (S.C.), insofar as the mechanism and interpretation of an exemption notification issued under a fiscal enactment. This Court has observed in the said decision:*

> *"A provision especially a fiscal statute providing for an exemption, concession or exception has to be construed strictly. An exemption notification has to be interpreted in the light of the words employed by it and not on any other basis. A person who claims exemption or concession must establish clearly that he is covered by the provision(s) concerned and, in case of doubt or ambiguity, the benefit of it must go to the State."*

15. *The observations made by the Constitution Bench of this Court are binding on us.*

16. *Furthermore, this Court in Associated Cement Companies Ltd. v. State of Bihar & Ors., (2004) 7 SCC 642, while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held :*

> *"12. Literally "exemption" is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See Union of India v. Wood Papers Ltd. and Mangalore Chemicals and Fertilisers Ltd. v. Dy. Commr. of Commercial Taxes to which reference has been made earlier.)"*

17. *In G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh, (2009) 2 SCC 90, this Court has held :*

> *"29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries (S.C.C. para 26); TISCO v. State of Jharkhand (SCC paras 42 to 45); State Level Committee v. Morgardshammar India Ltd.; Novopan India Ltd. v. C.C.E. & Customs; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and Reiz Electrocontrols (P) Ltd. v. C.C.E.]"*

25. *The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous. In Commissioner of Customs, Kolkata v. Rupa & Co. Ltd., (2004) 6 SCC 408 = 2004 (170) E.L.T. 129 (S.C.), this Court has observed that the exemption notification has to be given strict interpretation by giving effect to the clear and unambiguous wordings used in the notification. This Court has held thus :*

> *"7. However, if the interpretation given by the Board and the Ministry is clearly erroneous then this Court cannot endorse that view. An exemption notification has to be construed strictly but that does not mean that the object and purpose of the notification is to be lost sight of and the wording used therein ignored. Where the wording of the notification is clear and unambiguous, it has to be given effect to. Exemption cannot be denied by giving a construction not justified by the wording of the notification."*

16.2 The principle of interpretation of an exemption notification has been lucidly expressed by Rolatt, J, in the following words :

> *"In a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." [Cape Brady Syndicate v. IRC (1921 1 KB 64 p.71)].*

17. In view of the foregoing discussion and relying on case laws discussed at paras 13.1, 16.1 & 16.2 supra, Government holds that rebate claims are rightly held inadmissible by the Commissioner (Appeals) in the instant cases. Government therefore does not find any reason to interfere with or modify the Order in Appeal No. DMN-EXCUS-000-APP-283 & 284 -13-14 dated 02.01.2014 and DMN-EXCUS-000-APP-141-14-15 dated 01.08.2014 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Daman and upholds the same.

18. The 3 Revision applications bearing Nos. 371/29-30/DBK/14-RA, and 195/279/14-RA are rejected being devoid of merits.

Shrawan 31/03/21

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

ORDER No. 172/2021-CX (WZ) /ASRA/Mumbai Dated 31.3.2021

To
M/s Polycab Wires Pvt. Ltd.,
Plot No. 74/8-11,38/1-6,41/4-9,42/1-2,
43/1-3,44/1-3,45/1-2 Daman Industrial Estate,
Village Kadaiya, Daman – 396 210.

Copy to :

1. The Commissioner of CGST, Daman, 2nd Floor, Hani's Landmark, Vapi-Daman Road, Chala Vapi.
2. The Commissioner of CGST, (Appeals), 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat-395007.
3. Assistant Commissioner, Division-IV, CGST & CE, 3rd Floor, GST Bhavan, RCP Compound Near Vapi Bridge, Chala, Vapi (Gujarat) 396191
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.