REGISTERED SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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

F.No. 198/26-29/WZ/17-RA; 198/16/WZ/17-RA, 198/77/WZ/18-RA; 198/78/WZ/18-RA, 198/408/WZ/18-RA; 198/141/WZ/19-RA; 11770

Date of issue: 24.03.2023

ORDER NO. 174-182/2023-CX (WZ)/ASRA/MUMBAI DATED 23.03.2023 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 CGST, Pune-I Commissionerate

Respondent: M/s. GE India Industrial Private Limited

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

ORDER

These nine Revision Applications have been filed by Commissioner of CGST, Pune-I (hereinafter referred to as the Applicant-Department) against following Orders-in-Appeal (OIA) passed by the Commissioner (Appeals-I), Central Tax, Pune.

RA No.	Order-in-Appeal No. (OIA)	Order-in-Original No. (OIO)
198/16/WZ/2017-RA	PUN-EXCUS-001-APP-128-2017-18 dated 22.06.2017	PII/CEX/Dn-IV(CKN.II)/REB/DLC/459/15-16 dated 28.03.2016
198/26-29/WZ/2017-RA	PUN-EXCUS-001-APP-363 to 366 - 2017-18 dated 18.09.2017	PII/CEX/Dn-IV(CKN.II)/REB/DLC/23/16-17 dated 14.06.2016
		PII/CEX/Dn-IV(CKN.II)/REB/PSP/103/16-17 dated 14.07.2016
		PII/CEX/Dn-IV(CKN.II)/REB/PSP/151/16-17 dated 21.09.2016
		PII/CEX/Dn-IV(CKN.II)/REB/PSP/164/16-17 dated 28.09.2016
198/76/WZ/2018-RA	PUN-EXCUS-001-APP-1089-2017-18 dated 19.02.2018	PI/CEX/CT/Dn-IV(CKN)/REB/PSP/124/17-18 dated 13.09.2017
198/77/WZ/2018-RA	PUN-EXCUS-001-APP-1120-2017-18 dated 26.02.2018	PI/CEX/CT/Dn-IV(CKN)/REB/PSP/008/17-18 dated 03.07.2017
198/408/WZ/2018-RA	PUN-EXCUS-001-APP-302-2018-19 dated 07.09.2018	PI/CEX/CT/Dn-IV(CKN)/REB/PSP/397/18-19 dated 28.02.2018
198/141/WZ/2019-RA	PUN-EXCUS-001-APP-490-2018-19 dated 17.12.2018	PI/CEX/CT/Dn-IV(CKN)/REB/PSP/29/18-19 dated 14.05.2018

2. Brief facts of the case are that M/s. GE India Industrial Private Limited, (hereinafter referred to as the Respondent), is engaged in manufacture of cast articles of iron & steel turbine, parts of aviation engine, etc. falling under Ch.73 & 84 of CETA,1985. They had filed rebate claims for duty paid on export goods, under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules,2002. The rebate claims were partially rejected by the rebate sanctioning authority vide impugned OIOs on the following grounds:

i. Each ARE-1 that had a duty amount of less than Rs.500/- is not admissible as per condition 2(f) of Notification No.19/2004 CE (N.T.)

ii. In some cases original and duplicate copies of ARE-1s were not submitted.

iii. In ARE-1 No.15171557, no goods were exported but a service was provided to a SEZ unit.

Aggrieved, the respondent filed appeals, which were allowed by the Commissioner (Appeals) vide impugned Orders-in-Appeal.

3.1 Hence, the Applicant-Department has filed the impugned Revision Applications mainly on the grounds that:

(a) The order of Hon'ble Commissioner (Appeals) is challenging the very basis of grant of rebate and practice/notification/rules being followed by the field formations for the grant of rebate on export of goods.

(b) The Commissioner (Appeals) has passed the order in utter disregard of the provisions of notification 19/2004-C.E.(N.T) dated 06.09.2004. On perusal of this notification it is evident as under:

- The grant of rebate is subject to the:
  - a conditions specified in the said notification;
  - b limitations specified in the said notification and
  - c procedures specified in the said notification.

  Thus, the conditions, limitations and procedures have to be strictly followed for availing benefit of the said notification.
- The condition 2 (f) stipulates that the amount of rebate of duty admissible is not less than five hundred rupees. The said condition 2(f) uses the terminology 'rebate of duty admissible'. Hence, the term 'DUTY' here is of great significance. It has to be interpreted in the context it is used in the said notification. In the notification it is used in the context of payment of government dues on removal of excisable goods for export. In the present notification the removal of goods is done after payment of government dues, on a document called 'FORM A.R.E.1-Application for removal of excisable goods for export by (Air/Sea/Post/Land)'. At a given time for a given "piece/set/lot" of excisable goods one A.R.E.1 is used for removal of excisable

goods for export. This document i.e. A.R.E.1 is simply used as "APPLICATION" at various places in the said notification.

- The procedure for presentation of the claim for rebate has been prescribed in para 3(b) if the claim is manual and in para 3(c) if the claim of rebate is by electronic declaration. On perusal of the para 3(b)(i) and 3(b) (ii) it is seen that the terminology used is "copy of the application" which is singular term. Similarly, on perusal of para 3(c) it is seen that the terminology used is "corresponding application" which is again a singular term. The term application here refers to A.R.E-1.
- Hence, from the wordings of the notification it is evident that one 'claim for rebate' means rebate of excisable goods exported vide 'one A.R.E.1'. However, for the sake of convenience the assessee bundle up their different A.R.E.1s and file a claim for rebate for more than one A.R.E.1 at a time. However, the conditions and limitations will have to be examined for each and every A.R.E.1 individually. For example, it will have to be examined:

  i. Whether the excisable goods covered by a particular A.R.E.1 were cleared for export on payment of duty or not.

  ii. Whether the excisable goods covered by a particular A.R.E.1 were exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow.

  iii. Whether the excisable goods covered by a particular A.R.E.1 at the time of exportation were not having a market price less than the amount of rebate of duty claimed. If the market price is less than the amount of rebate of duty claimed then it will lead to rejection of the rebate claim for that particular A.R.E-1.

  iv. Whether the amount of rebate of duty admissible is less than five hundred rupees for the excisable goods covered by a particular A.R.E.1. This will ensure that condition 2(f) of the notification is fulfilled.

(c) The Commissioner(Appeals) has passed the order in utter disregard of the factual position that in many of the ARE-1s the duty per ARE-1 is below Rs. 500/- and the rebate of duty paid on such A.R.E.1s is inadmissible as per the condition no.2(f) of notification no. 19/2004-C.E.(N.T) dated 06.09.2004. The Commissioner (Appeal) has erred in accepting the assessee's (respondent) contention that the condition 2(f) is for entire claim and not for individual ARE.1. The interpretation given by the Commissioner (Appeals) is totally erroneous and legally not tenable.

(d) As regards non-submission of original and duplicate copies of ARE-1s, reliance is placed on the judgment of the Hon'ble High Court of Bombay in the case of U.M. Cables Ltd. vs. UOI and Ors [2013(293) ELT 641 (Bom)]. The Hon'ble High Court remanded the case back to the adjudicating authority for fresh consideration for the above reasons. Implicitly, going by the above decision, submission of documents to establish that the rebate claim relates to goods that have been exported is mandatory. The Appellate authority has also mentioned in the findings at Para 8 that:

> Para 8..... *However, the appellant will not be entitled for any interest, for delay in sanctioning the rebate, because the delay is only due to non-submission of proper documents along with the rebate claim. Also the appellant is required to be more careful in future and to ensure that all the documents, as prescribed in the Notification issued under the provisions of Rule 18 of Central Excise Rules 2002, are preserved carefully for submitting the claim and to avoid such type of litigations repeatedly.*

The Appellate authority through the above findings has re-affirmed the fact that the appellant has not submitted the mandated documents and has specifically directed to ensure that all the documents, as prescribed in the Notification issued under the provisions of Rule 18 of Central Excise Rules 2002, are preserved carefully for submitting the claim and to avoid such type of

litigations repeatedly. Despite this factual position, the Appellate authority has set aside the Order-in-Original dated 14.05.2018.

(e) In the case of Cipla Ltd.,[2016(343) ELT 894 (GOI) the Government vide Order No. 52/2016-CX, dated 29-3-2016 has held that *"Establishment of export of same duty paid goods cleared from factory fundamental requirement for sanctioning rebate under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N. T.) - It cannot be done without original copies of ARE-I duly endorsed by Customs - Benefit under conditional notification cannot be extended in case of non-fulfilment of conditions and non-compliance of procedure - Strict compliance of conditions attached to said notification essential for claiming rebate under Rule 18 ibid"*. The Government has also relied upon the Hon'ble Supreme Court in the case of Indian Oil Corporation Ltd. [2012 (276) E.L.T. 145 (S.C.)], wherein, it was observed that all conditions and procedures laid down in the Notification shall be observed in order to avail the notification. Hence, the applicants are not entitled for rebate on this ground.

(f) As regards matter relating to ARE-1 No.15171557, the Commissioner (Appeals) has erred in relying upon the decision of Hon'ble Tribunal passed in the case of Bhor Industries Ltd. Vs. Commissioner Central Excise, Mumbai-V [2017 (358) E.L.T 761 (Tri.-Mumbai)] as that case deals with the issue of classification of goods. In the present case, the issue involved is of the goods exported under the ARE-1 falls under service and not goods and it does not qualify for export of service. By seeing the invoice of software licence exported to SEZ, it is concluded that the assessee is not in the business of software development. He doesn't have service tax registration for output service of software development. The licence to use software is an intangible asset. Hence it falls under service and not goods.

(g) Licensed Software is a 'Right to Use' which is a service as per the judgment in case of Infotech Software Dealer v/s Union of India, Madras High Court (W.P. No. 3811 and 188886 of 2009) dated 24.08.2010. Also, Global Care Worldwide Application is provided to the customer is a service not goods. The Global Care Worldwide Application of GE Corporation has the database, the access to which is given by the GE India to the Reliance Inds. Ltd., SEZ, Jamnagar, Gujarat.

(h) As per Rule 9(b) of place of provision of Service 2012, the online database access service need to be seen in light of place of service provision of service for taxation purpose. The Global Care application access and Licence to intangible provided by the GE India includes following things as per the agreement i) Software modernization ii) Technical support iii) Self Service support, tools, resources iv) Software maintenance v) Life cycle management vi) Global Care exclusives. All these are based on electronic mode in real time which it classifiable as bundled sett ice having main characteristic of database access falling under Rule 9(b) of place of provision service Rule 2012 which violates condition (d) of Rule 6A of Service Tax Rules. 1994. The condition (d) says to qualify for export of service, the place of provision of Service should be outside India which not in this case as per Rule 9(b) of Place of Provision of Service, 2012.

(i) The condition (e) of above Rule says that payment for such service has been received by the provider of Service in convertible foreign exchange. The BRC or bank details are not presented by the assessee which shows that it should not be treated as export. Also when SEZ unit import any Service he takes permission from unit approval committee of SEZ for such service. The assessee failed to prove inclusion of database access service through electronic mode in form A2. Authorization for procurement of services by a SEZ for authorized operation under Notfn. 12/2013-ST, SEZ can ask for refund of such service tax paid in form A4. Hence the assessee

M/s.GE India can't ask the rebate of duty paid on such service. Moreover, as discussed above it can't be treated as export of service for non fulfilling the clause (d) and (e) of Rule 6A of Service Tax Rule, 1994. Hence, rebate of duty paid service is rejected.

(j) Commissioner (Appeals) erred in holding that the respondent while deciding the case, travelled beyond the scope of deficiency memo. As, it is learnt that the deficiency memo is in the nature of an information to the party stating the deficiency in the claim and calling upon it to remove such deficiency and thereafter, submit the claim. Judgment dated 10.02.2017 of Hon'ble Gujarat High Court in the case of New Pensla Industries Vs Union of India (Special Civil Application no. 1836 of 2016).

On the above grounds the Applicant-Department prayed to set aside the impugned Order-in-Appeal and grant consequential relief.

3.2 In their written submission, the respondent interalia contended that:

a) The ground raised by the department in the RA is that the conditions and limitations as specified under Notification no. 19/2004 — C.E. (N.T.) dated 06.09.2004 must be applied with respect to the individual ARE-I and not the entire single rebate claim filed by the respondent. The department has further raised a ground that the terminology used in para 3(b)(i) and para 3(b)(ii) of the said notification is "copy of the application" and "corresponding application" which is a singular term.

b) In this connection kind attention of the authorities is invited to the Order-in-Original passed by the department (against which the OIA was passed in favour of the respondent) wherein the department has not challenged the other facts as to whether the goods were duly exported out of India or not or the respondent have correctly discharged the rebate liability or not. The only point that the department has raised is that the AREI that had duty amount less

than Rs. 500 is not admissible as per condition 2(f) Of Notification no. 19/2004 CE (N.T.).

c) The facility of exports of goods on payment of duty under Rule 18 of the Central Excise Rules, 2002 has been introduced to enable the exporter to realise in cash, the accumulated input tax credit in respect of the duty paid on the inputs used in the exported product. In absence of such a facility to the exporter, the rising input tax credit balance in the books of the exporter would have increased the transaction/finance cost of the exporter and had made the exporter uncompetitive in the international market which is definitely not the intention of the legislature as the Government always encourages foreign trade and has also at times rolled out various exports schemes. This view has also been affirmed by the Honourable CESTAT Mumbai in the case of Jobelle versus Commissioner of Central Excise Mumbai-I.

d) It is to submit that the respondent if instead of clearing the goods for exports under Rule 18 would have cleared the goods under Rule 19 of the Central Excise Rules, 2002 as mentioned supra, the respondent won't have required to discharge any duty liability while clearing the goods for exports. Hence, any denial of rebate in respect ofARE1 that had duty amounting less than Rs. 500 shall put both these Rules i.e. Rule 18 and Rule 19 under the same footing which is definitely not the purpose of the said rules nor is the objective behind framing of these rules.

e) It is to also submit that the authority somewhere appears to be discriminating in interpreting and applying the provisions for sanction of the rebate claim as provided under the CBEC Manual — Central Excise. Sl.no.8.5 of Chapter 8 of the said manual provides for pre-audit of the rebate claim where the claim amount exceeds Rs. 5 lakhs. In case of the impugned rebate claims filed by the respondent, baring few ARE1s, none of the AREI in the impugned rebate claims filed by the respondent exceeds rebate amounting Rs. 5 lakhs but still the entire claim was sent for pre-audit by the sanctioning authority.

On the other hand, the department is applying the condition prescribed in clause of the Rebate Notification to the individual ARE1s and accordingly rejecting the ones with duty amount less than Rs. 500. This pick & choose practice adopted by the department is not fair and just and is never intended under the law.

f) The respondent is of the belief that the condition 2 (f) of Notification no. 19/2004 CE (N.T) which reads as "that the amount of rebate of duty admissible is not less than five hundred rupees" is with respect to the admissibility of the rebate claim by the sanctioning authority i.e. irrespective of the amount of rebate claim filed, admissible amount as determined by the sanctioning authority on examination of the claim should not be less than five hundred rupees. Hence, the said condition cannot be applied to individual AREI in a rebate claim of a group of AREI. Such interpretation will lead to absurdity and shall jeopardize the interest of the Medium and Small-Scale exporters. Had the respondent would have filed separate application for each such AREI, the interpretation of the department would have held water. However, the same is not the case here.

g) With respect to the department's contention that the terminology used in para 3(b)(i) and para 3(b)(ii) of the said notification is "copy of the application" and "corresponding application" is in a singular term, the respondent would invite attention of the authorities to the ruling of the Hon'ble CESTAT Chennai in the case of Sri Venkateshwara Precision Components v/s CCE (2010 (258) E.L.T. 553) wherein the Hon'ble CESTAT held as follows:

> *"As per the General Clause Act, when the context requires the word used in singular can mean in plural and, therefore, the term CVD can mean the two CVDs. In view of the above, I hold that there is merit in the contentions of the Ld. Advocate for the appellants"*

h) The ground raised towards another objection by the department is that the Commissioner (Appeals) has erred in holding that the department while deciding the case, travelled beyond the scope of

deficiency memo. The department has also raised a ground that the impugned goods falls under services and hence, rebate of duty paid is rejected as the procedure prescribed for exports of services to the SEZ unit has not been followed by the respondent.

i) The attention of the authorities is invited to highlight the contradiction involved in the ground raised by the department while relying on the Hon'ble Gujarat High Court in the case of New Pensla Industries v/s UOI (Special civil application no. 1836 of 2016). Although, the department is in agreement of the fact that "deficiency memo is in the nature of an information stating the deficiency in the claim and calling upon the respondent to remove such deficiency', the department in the impugned case has never pointed out the impugned issue (i.e. the classification as adopted by the respondent falls under services) under its deficiency memo dated 12.05.2017 nor the department ever raised the same during the personal hearing dated 05.06.2017. Moreover, the deficiency memo issued by the department has accepted the respondent's classification as goods and has therefore asked the respondent to submit Original and Duplicate copies of AREI along with proof of exports of goods to SEZ which are being sought in case of goods and not services.

j) The respondent would invite the attention of the authorities to the Hon'ble CESTAT Mumbai ruling in the case of FDC Ltd, v/s CGST Mumbai West (Order No. A/87764/2018 dated 26.10.2018 wherein the Hon'ble CESTAT held as follows: -

> *"The presence of the appellant before the Adjudicating Authority, without issuance of show cause notice, cannot lead to the conclusion that the appellant had a fair opportunity to defend the case. Otherwise also principle of natural justice requires issuance of show cause notice before the adjudication proceedings. It is not open to the revenue to bypass such legal requirement. There is no doubt that the principle of natural justice has been violated in the present matter and therefore without going into other grounds raised by appellant, the*

impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any."

Hence, the issue of SCN is the statutory liability of the department failing which the department would be deemed to have encroached upon the right of the respondent to have a fair and just opportunity of placing his defense.

k) Without prejudicial to the above, the attention of the authorities is invited to the fact that, even if for the time being the contention of the department is accepted that the impugned goods fall under services, the only objection of the department is that the procedure for refund under SEZ rules has not been followed in the impugned case. The department has not objected other facts like the recipient of such goods (alleged as services) is a SEZ unit, the duty if any on the impugned goods (alleged as services) has been duly paid by the respondent and is refundable as the supply is made to SEZ etc. The matter that substantive benefit cannot be denied on procedural irregularity is no more res integra and hence, the respondent places its reliance on the ruling of the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise vs. Dashion Ltd (Tax Appeal No. 415 of 2013 & 662 of 2014) wherein the Hon'ble High Court dismissed the department's appeal holding that non-registration of ISD is only a procedural irregularity for which substantial benefit of CENVAT credit cannot be denied. CBEC vide Circular No. 1063/2/2018-CX dated 16.08.2018 has confirmed its acceptance to the said ruling and has decided not to prefer any further appeal against the said ruling. Copy of the circular is attached herewith vide Exhibit — V. Further, the department erred in holding that the SEZ unit has to obtain approval from unit approval committee before procuring any service and hence such service cannot be deemed to be used for authorized operations of the SEZ. In this regard, the respondent would like to invite the attention of the authorities to the Uniform list of services dated 19.11.2013 as published by the Ministry of Commerce & Industry wherein the supply of 'Information

technology software services' is held to be a default authorized service for the purpose of SEZ exemption

l) The attention of the authorities is invited to highlight that the facts of the judgment of Hon'ble Madras High court in the case of Infotech Software Dealer v/s no. 3811 and 188886 of 2009) as relied by the department are distinct than the facts of the impugned case. The basic question before the Hon'ble Madras High Court was whether the provisions of Section 65(105)(zzzze) of Chapter V of the Finance Act, 1994 (as amended by Finance No.2 Act of 2009) is within the legislative competency of the Parliament? Further, the petitioner under the above case before the Hon'ble High Court were resellers of the already developed computer software. However, in the impugned case, the respondent is directly clearing the product to the SEZ unit after writing the software on the CD. The said activity of writing software in CD undertaken by the respondent tantamount to manufacture and is subject to 12.50% Excise duty under CETH 85238020 of the Central Excise Tariff Act, 1985 as "Information Technology Software".

m) The attention of the authorities is also invited to the fact that the department has erred in treating the product supplied by the appellant as service just by referring the invoice copy raised by the respondent. The department did not even intend to take any pain in understanding the look and feel of the product by not taking due cognisance of the documents already on record such as copies of Export cum Excise Invoice, Packing slip, ARE 1, Bill of Export duly endorsed by the SEZ Unit and endorsement made by the Customs Appraiser and Preventive Officer of the SEZ unit. Copy of these documents are attached herewith vide Exhibit—VII. These documents are stipulated under the Central Excise, Customs and SEZ laws and are to be raised/filed only in case the item supplied to the SEZ unit is 'goods'. Hence, in case the product supplied by the respondent would not have been excisable goods, the SEZ and Customs authorities won't have followed the process of filing of Bill of Exports, examining

the goods at the SEZ gate, etc. before allowing the said goods inside the SEZ area. Moreover, the Bill of Exports attached supra duly contains the Gross Weight and the Net Weight of the product which is 0.44 Kgs and 0.35 Kgs respectively. This inter alia further substantiates that the product supplied is in a physical form.

n) The respondent further submits that be it the clearance of excisable goods or providing of services to the SEZ unit, the excise duty or the service tax is either exempted or is refundable to the supplier or recipient of the said goods/services. The excise duty or service tax never accrues to the exchequer and hence, the impugned case leads to a revenue neutral situation.

4.1 Personal hearing in the case was fixed for 24.01.2023. S/Shri Premanshu Jaiswal, Abhijit Saha, Vipin Bang and Ms. Arati Mantri attended the hearing on behalf of the respondent and submitted that Commissioner (Appeals) has passed a legal and proper order. They further submitted that most issues relate to non-submission of ARE-1s and ARE-2s and other procedural deficiencies. There is no doubt regarding export duty paid goods. They requested 2 week's time for making additional submissions.

4.2 No one appeared on behalf of the Applicant-Department nor have they sent any written communication.

5. The respondent submitted additional written submissions wherein they inter alia contended that:

i. The limit of INR 500 should be applied to the whole of the rebate claim covering multiple ARE1's and should not be applied to the individual ARE1;

ii. The department has not challenged the fact as to whether the goods were duly exported out of India or not or that the company has correctly discharged the rebate liability or not;

iii. The facility of export of goods on payment of duty as provided under Rule 18 of the Central Excise Rules, 2002 has been introduced to enable the exporters to realise in cash, the accumulated input tax

credit in respect of the duty paid on the inputs used in the export product. In absence of such facility to the exporter, the rising input tax credit balance in the books of exporter would have increased the transaction/finance cost of the exporter and had made the exporter uncompetitive in the international market;

iv. In terms of Rule 19 of the Central Excise Rules, 2002, an exporter is allowed to export the excisable goods without payment of duty. The company if instead of clearing the goods under Rule 18 would have cleared the goods under Rule 19 of the Central Excise Rules, 2002, the company would not have discharged any duty liability while clearing the goods for exports. Hence, denial of rebate that had duty amounting to less than INR 500 will put both of these rules under the same footing which is definitely not the purpose of the said rules nor is the objective behind framing these rules;

v. In terms of Sr. No 8.5 of the Chapter 8 of the CBEC manual- Central Excise, pre-audit of the rebate claim is a mandate where the claim amount exceeds INR 5 lakhs. With reference to the rebate claim filed by the company, barring few ARE's, none of the ARE's had the rebate claim exceeding INR 5 lakhs but still the entire rebate claim was sent for pre-audit by the refund adjudicating authority. However, when it comes to applying the provisions of clause 2(f) of the Rebate Notification, the same is being applied to the individual ARE and accordingly those with the amount of less than 500 are being rejected. This differentiating approach adopted by the authorities is not fair and just and is never intended under the law;

vi. With reference to non-submission of the original and duplicate copy of ARE1, the respondent contended that the alternative set of documents establishing that the impugned goods were exported outside India were duly submitted before the Commissioner (Appeals -I). Pursuant to the OIA passed by the Commissioner (Appeals -I), the documents were verified by the department. Accordingly, the company has complied with the order passed by the Commissioner (Appeals -I). The same is evident from para 17 of the initial submission made before the

authorities pursuant to the receipt of SCN. OIA in respect of non-submission of the original and duplicate copy of ARE1, has made its observation in para 8.

vii. Further, reliance has been placed on the decision pronounced by the Hon'ble Gujarat High Court in case of Raj Petro Specialities Vs Union of India 2017 (345) E.L.T. 496 (Guj)J wherein it has been held that the production of original and duplicate copies of ARE is a procedural aspect and cannot be a mandatory requirement for granting rebate.

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

7. Government observes that the first issue in the instant matter is whether condition 2(f) of the Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004 is applicable to each ARE-1 or a rebate claim? (This is a common issue raised in all the impugned revision applications.)

7.1 Government observes that the relevant condition mentioned at para 2(f) of the Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004 reads as under:

(2) Conditions and limitations: -

(f) that the amount of rebate of duty admissible is not less than five hundred rupees;

In the instant case it is undisputed fact that some ARE-1s in the rebate claims filed by the respondent had duty amount of less that Rs.500/-. As per Applicant-Department such ARE-1s violate the above condition. However, the respondent contends that the condition (supra) is for the amount involved in each rebate claim consisting of multiple ARE-1s. Government observes that the Notification (supra) is issued under Rule 18 of the Central Excise Act, 1944 which reads as under:

Rule 18. Rebate of duty. -

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty

paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Thus, Government observes that each export is entitled for rebate of duty paid of export goods. As per Notification (supra), an export is to be carried out under Form A.R.E. 1 - Application for removal of excisable goods for export by (Air/Sea/Post/Land), specified in the Annexure to said notification. The A.R.E.1 is required to be prepared in quadruplicate. A Claim of the rebate of duty is to be lodged along with original copy of the A.R.E.1 with the jurisdictional Division in-charge or the Maritime Commissioner. Government observes that certain sections of ARE-1 are meant for the concerned Central Excise/Customs officials including rebate sanctioning authority. The section meant for rebate sanctioning authority is reproduced hereunder:

PART D
REBATE SANCTION ORDER
(On Original, Duplicate and Triplicate)

Refund Order No..... dated ..... Rebate of Rs..... (Rupees .....) sanctioned vide Cheque No. .....dated .....

Place .....
Date .....

Assistant/Deputy Commissioner/ Maritime Commissioner of Central Excise

In the light of above findings, Government concurs with the Applicant-Department that condition 2(f) of Notification (supra) is to be complied for each A.R.E.1 and allows this ground of impugned revision applications.

8. Government observes that the second issue in the instant matter is whether rebate claim can be rejected on the ground that the original and duplicate copies of ARE-1s were not submitted? (This issue is raised in two revision applications, viz. 198/408/WZ/2018-RA and 198/141/WZ/2019-RA.)

8.1 From the perusal of records, Government observes that the rebate sanctioning authority rejected the rebate claims as the respondent could not

produce the original & duplicate copies of the ARE-1 as required under Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004. However, as evident the concerned OIOs, all other documents pertaining to the relevant export had been submitted by the respondent which has also been observed by the Appellate authority. The relevant paras of the OIO/OIA are reproduced hereunder:

OIO No. PI/CEX/CT/DN-IV(CKN)/REB/PSP/397/2018 dated 28.02.2018

7.2 I find that the claim is filed within a period of one year from the date of actual exportation. The goods were exported in time i.e. within 6 months from the date of its removal from factory on payment of total duty amounting to Rs.1,32,19,347/- through CENVAT Account as detailed in Annexure I attached to this order.

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7.4 In respect of non submission of Original and Duplicate copies of the ARE1 duty involving Rs. 11,81,044/- it is observed that the assessee is not submitted the original copies of ARE1 but at the time of personal hearing they submitted other relevant document in respect of some ARE-1.

OIA No. PUN-EXCUS-001-APP-490-2018-19 dated 17.12.2018

8. Now coming to the issue of rejection of rebate claim to the extent or Rs. 27,54,413/-, as discussed in para 6 above is concerned, on going through the findings of the impugned order, I found that the Respondent has specifically recorded the findings that "the claim is filed within a period of one year from the date of actual exportation. The goods were exported in time i.e. within 6 months from the date of its removal from factory, on payment of total duty amounting to Rs.3,06,01,890/- through CENVAT account as detailed in Annexure I attached to this order". Thus from the said findings itself, it is clear that the goods have been exported on payment of duty and there is no dispute about the same. It is very much clear that export of goods and payment of duty on the said exported goods, are the basic ingredients for claiming the refund of duty in case of export of goods, under the provisions of Rule 18 of Central Excise Rules, 2002 and in no other cases the exporters can be deprived of his legitimate right for the refund of the duty paid on the exported goods in case of fulfilling these basic requirements. The substantive benefit cannot be denied in case the exporter is able to satisfy the sanctioning authority about the genuineness or the export on payment of duty because procedural infractions of Notification/ Circular etc. are to be condoned if exports have been really taken place. In number cases it has been held that non-production of ARE-Is would not result in invalidation of the rebate claim and in such cases it is open to

the exporter to demonstrate by production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of C. Ex. Rules, 2002 read together with the Notification have been fulfilled. Also the guidelines issued by CBEC in Part II, para 13.7 (Procedure relating to proof of export) of Chapter 7 of Excise Manual are very clear and self explanatory wherein it has been clarified that in case of loss or document the divisional officer or the bond accepting authority may get the matter verified from the Customs authority and exporter may call for collateral evidences such as remittance certificate, mate receipt etc. to satisfy himself that the goods have actually been exported. However, I found that no such exercise has been carried out by the rebate sanctioning authority before rejecting the claim, which definitely causes hardship to the genuine exporters. In such situation it is very much wrong on the part of the Respondent to deny the rebate claim specifically when there is no dispute about the export of goods and duty payment on such clearances for export. I am therefore of the view that the appellant is eligible for the full claim subject to submission of any alternate documents e.g. remittance certificate, mate receipt or ICE gate screen shot with EGM No. and Shipping Bill, in support or evidence of export which will be entertained by the rebate sanctioning authority. Accordingly the appellant should submit any alternate document to the rebate sanctioning authority, as discussed herein and the Respondent to verify the said documents and allow the rebate forthwith without insisting for specific documents in support of the export. However, the appellant will not be entitle for any interest for delay in sanctioning the rebate, because the delay is only due to non submission of proper documents along with the rebate claim. Also the appellant is required to be more careful in future and to ensure that all the documents as prescribed in the Notification issued under the provisions of Rule 18 of Central Excise Rules 2002, are preserved carefully for submitting the claim and to avoid such type of litigations repeatedly.

8.3 Government observes that Hon'ble Bombay High Court in the case of M/s. Zandu Chemicals Limited [2015 (315) E.L.T. 520 (Bom.)], held that: *the condition of submission of original as well as duplicate copies of ARE1 was only directory/procedural, and not mandatory and that Rebate claim could not be rejected for their non-submission, as there was proof of export of goods in other documents like shipping bill on which ARE1 was mentioned.*

8.4 Government further observes that Hon'ble Gujarat High Court in the case of M/s. Raj Petro Specialities [2017 (345) E.L.T. 496 (Guj.)] held that: *as per requirement of law, submission/production of original and duplicate copies of ARE1 along with rebate claim, is not the only requirement. Since*

exporter producing other documents supporting and establishing export of excisable goods on payment of duty from factory/warehouses and all other conditions and limitations mentioned in Clause 2 of Notification issued under Rule 18 of Central Excise Rules, 2002 satisfied, exporter to be entitled to rebate of duty. Assessee's entitlement to rebate under Rule 18 ibid on fulfillment of conditions and limitations mentioned in Clause 2, is undisputed. Submission of documents along with rebate claim falls under head "procedure" therefore, production of original and duplicate copies of ARE1 along with rebate claim, merely, procedural one. Production of impugned documents as per procedure required to be held directory and not mandatory. Merely on the ground of non-submission of said documents, rebate claim ought not to be rejected.

8.5 Government observes that these judgments overruled the Orders passed by this authority wherein it had been held that non-submission of statutory document of ARE-1 could not be treated as just a minor/technical procedural lapse for the purpose of granting rebate of duty. Similar view had also been taken in the matter of M/s. Cipla Limited, which has been relied upon by the Applicant-Department and therefore Government does not find it applicable in the instant matter.

8.6 Government observes that in the instant case too, there was sufficient collateral evidence to verify the rebate claim filed by the respondent. The details of export goods available in triplicate copy of ARE-1 can be used to verify with the details of same appearing in the Shipping Bill/Invoice/Bill of Lading. Further, as pointed out the Appellate authority, duty paid nature of the goods and their export has not been challenged by the Applicant-Department. Therefore, Government rejects this ground of impugned revision applications.

9. Government observes that the third issue in the instant matter is whether rebate claim in ARE-1 No.15171557 can be rejected on the ground that no goods were exported but a service was provided to a SEZ unit? (This issue is raised in revision application no. 198/77/WZ/2018-RA.)

9.1 Government observes that the rebate sanctioning authority had issued deficiency memo dated 12.05.2017 to the respondent for not submitting original & duplicate copy of ARE-1 No.15171557 dated 25.06.2016 alongwith proof of export. However, the respondent had submitted other relevant documents pertaining to said ARE-1 as evident from para 3.3 and record of personal hearing of the concerned OIO No. PI/CEX/CT/Dn-IV(CKN)/REB/PSP/008/17-18 dated 03.07.2017 which is reproduced hereunder:

3.3 Observation 2 — Missing documents of ARE-1 number 15171557 (rebate claim amount is INR Rs.38,81,241/-)

3.3.1 Assessee submitted that the ARE-1 number contain the details of assessable value and amount of duty, necessary for the purpose of verification of rebate. However, the assessable value and amount of excise duty can alternatively be verified from triplicate copy of ARE-1 duly submitted with your goodself. Also, other necessary documents like export invoice, excise invoice, packing slip have been submitted to substantiate the export of such duty paid goods.

3.3.2 Duplicate and triplicate copy of bill of export duly attested by the customs officer, Reliance SEZ, ('CO RSEZ') Jamnagar and Office of development commissioner SEZ (Reliance) Jamnagar ('DC RSEZ'), specifies that goods covered under invoice number 15171557 have been supplied inside the RSEZ. Further, the packing list and export invoice related to the said ARE-1 number are also verified by the DC, RSEZ.

RECORD OF PERSONAL HEARING:

Following the principle of natural justice, the assessee have been given opportunity for personal hearing. The personal hearing in the matter held on 05.06.2017 Shri Dhiraj Agarwal, C.A., the authorised person appeared for hearing. They submitted written reply and pleaded that full rebate should be sanctioned. The proof of export such as bank detail

statement will be submitted soon. Though copy of ARE-1 couldn't be presented, the shipping bill / bill of export is duly signed by the Customs Authority of SEZ is submitted.

9.2 Government observes that instead of deciding the issue, the Original authority rejected the claim of the respondent on the ground that '*By Seeing the invoice of software licence exported to SEZ, it is concluded that the assessee is not in the business of software development. He don't have service tax registration for output service of software development. The licence to use a software is an intangible asset, hence it falls under service and not goods.*'. In this regard, the Appellate authority has observed as under:

9.2. Second part states that the goods exported under the said ARE-I falls under service and not goods and it does not qualify for export of service. The Appellant have stated that such objection was neither part of the deficiency memo nor it was raised by the Respondent at the time of personal hearing dated 05th June, 2017. Thus, the Appellant were not, given a fair opportunity to defend their case. The Appellant further submitted that in case the product invoiced by them were not excisable goods, the SEZ and customs authorities won't have followed the procedure of allowing the filing of Bill of exports and examining the goods at the SEZ gate. The Appellant also submitted that the Respondent erred by not-referring the T.I. 85238020 of Central Excise Tariff. Act, 1985 under which the Information Technology software is subject to 12.50% excise duty. On going through the impugned 0-in-O, I agree with the Appellant that such argument was never a part of the deficiency memo. Therefore the Respondent while deciding the case, travelled beyond the scope of deficiency memo. Here I rely upon the decision of Hon'ble Tribunal passed in the case of Bhor Industries Ltd. Vs. Commissioner Central Excise, Mumbai-V [2017 (358) 761 (Tri.-Mumbai)] wherein it been held as under.

Government concurs with this finding of the Appellate authority. The original authority should have ideally issued a show cause notice to the respondent and given them an opportunity to put forth their case.

9.3 Government observes from the relevant documents enclosed by the respondent with their written submission that the description of item in the Export-cum-Excise invoice No. 15171557 dated 25.06.2016 is *'Licence, Software & Global Care, (2-DVD consist of Software Qty as per PO qty), HSN code – 85230820'*. The invoice bears the remarks *'Export to SEZ under claim of Rebate under Rule 18 of Central Excise Rules, 2002'*. An amount of Rs.10,000/- has been charged towards Freight. The documents ARE-1 and Bill of Export bear attestation by the concerned Customs officials in testimonial to allowing goods inside Reliance RSEZ, Jamnagar.

9.4 Government observes that Supplementary Note to Section XVI, Chapter 85 of CETA,1985 reads as under:

> *For the purposes of heading 8523, "Information Technology Software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine*

Further, Chapter subheading 85230820 reads as under:

Tariff Item	*Description of goods*	*Unit*	*Rate of duty*
(1)	*(2)*	*(3)*	*(4)*
8523 80 20	*Information technology software*	*u*	*12.5%*

In the light of these findings, Government concludes that the export (supra) of DVDs consisting of Software is of excisable goods and not of a service and rejects this ground of impugned revision application.

10. In view of the findings recorded above, Government modifies the impugned Orders-in-Appeal passed by the Commissioner (Appeals-I), Central Tax, Pune as regards the issue of violation of condition 2(f) of the Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004.

11. The Revision Applications are disposed of on above terms.

23/3/23

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

ORDER No. 179-182 /2023-CX (WZ)/ASRA/Mumbai dated 23.03.23

To,
M/s. GE India Industrial Private Limited,
Plot No. A-78/1, Chakan Industrial Area,
MIDC Phase-II, Village Vasuli,
Taluka-Khed, Pune – 410 501.

Copy to:

1. Pr. Commissioner of CGST, Pune-I
   2nd Floor, 41-A, GST Bhavan,
   Sassoon Road, Opp. Wadia College,
   Pune – 411 001.

2. Shri Vipin Bang/Ms. Arati Mantri,
   M/s. Price Waterhouse & Co. LLP,
   7th Floor, Tower-A, Wing-1, Business Bay,
   Airport Road, Yerwada, Pune – 411 006.

3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.