F. NO. 195/156/14-RA

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8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 195/156/14-RA /2634 Date of Issue: 09.04.2021

ORDER NO. 175 /2021-CX (WZ) /ASRA/MUMBAI DATED31.3.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINICIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Parixit Industries Ltd.

Respondent : Commissioner(Appeals-I), Central Excise, Ahmedabad

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-002-APP-288-13-14 dated 13.02.3014 passed by the Commissioner(Appeals-I), Central Excise, Ahmedabad.

ORDER

This Revision Application are filed by M/s Parixit Industries Ltd., Survey No. 214/1, 214/2, Viroch Nagar, Virpura Bus Stand, P.O. Iyava, Taluka-Sanand, Dist. Admedabad - 380015 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. AHM-EXCUS-002-APP-288-13-14 dated 13.02.3014 passed by the Commissioner(Appeals-I), Central Excise, Ahmedabad.

2.1 The brief facts of the case are that the Applicant is engaged in the manufacture of Drip Parts, Drip Irrigation Equipments, Drip. Irrigation-Systems etc. falling under Chapter Heading No. 84248100 of the First Schedule to the Central Excise Tariff Act, 1985 and which attracts 'Nil' rate of duty. The Applicant vide their letter dated 24.02.2012. addressed to the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II giving reference to their refund request stating therein that they had filed two refund claims online under Rule 5 of Cenvat Credit Rules, 2004 on 29.04.2011 and 29:05.2011, claiming refund of Rs, 4,93,493/- and Rs. 69,354/- respectively, which were being an amount of excise duty paid on inputs consumed in the manufacture of export goods, which were exported by the Merchant Exporter, M/s Apollo Industries Ltd. during the month of May' 2010 and June' 2010, respectively. It was claimed that for production of the above said goods they had procured duty paid raw materials and used them for manufacture of export goods, which are attracting Nil rate of duty and they have not taken any Cenvat Credit on the said raw material and that under the provisions of Sub-Rule (6)(v) of Rule 6 of Cenvat Credit Rules, 2004, the Cenvat Credit of Central Excise Duty paid on quantity of inputs used in manufacture of finished goods exported and therefore the Cenvat Credit was allowable to them. It was also stated in the said letter dated 24.02.2012 that they are submitting the following documents in support of their refund claims, filed under the provisions of Section 11B of the Central Excise Act, 1944.

(a) Applicant for refund of excise duty in Form –R;

(b) Annexure 'A' showing calculation of total quantity of inputs used in manufacture of finished goods exported and duty involved therein;

(c) Copies of ARE-1s for the month of April-2010, May-2010 and June-2010 along with duly self certified copies of input invoices, Shipping Bills, Export invoices, Central Excise invoices, Bills of Lading and BRCs.

2.2 The Applicant had submitted the said refund claims under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 05/2006-CE(NT) dated 14.03.2006, but not fulfilled conditions prescribed under this notification and not submitted the justification of non-utilization of CENVAT credit. From the ARE-Is, and Shipping Bills, it appeared that exporters. are two different units registered with two different branch codes. To misguide the department, the Applicant had submitted colour photocopies of Duplicate Transporter copy of excise invoices ((except. one invoice) vide letter dated 23.02.2912, which was received by the department on 24.02.2012 only.

2.3 Therefore, the Applicant was issued two Show Cause Notices both dated 19.03.2012 proposing thereby to reject- their refund claims under the provisions of Notification No. 5/2006-CE(NT), dated 14.03.2006, amended issued under Rule 5 of the Cenvat Credit Rules, 2004 read with Section 11B of Central Excise Act, 1944. The said Show Cause Notices were adjudicated by the Assistant Commissioner of Central Excise, Division-IV, Ahmedabad-II vide Orders-in-Original Nos. MP/215/Refund/11-12 & MP/216/Refund/11-12 both dated 31.03.2012, whereby their refund claims amounting to Rs, 4,93,493/- and Rs. 69,354/- were rejected as proposed in the said show cause notices.

2.4 Being aggrieved, the Applicant filed appeals before the Commissioner(Appeals-I), Central Excise, Ahmedabad. The Commissioner(Appeals) vide Order-in-Appeal No. 239 to 240/2012 (Ahd-II) CE/AK/Commr(A)/Ahd dated 27.09.2012, held that the refund claim was filed within the time prescribed under Section 11B of the Central Excise Act, 1944 and remanded back the case to the Original adjudicating authority for re-

quantification and verification of documents with reference to refund claims filed online by the Applicant.

2.5 In the remanded case, the Deputy Commissioner of Central Excise, Division-IV, Ahmedabad-II vide Orders-in-Original Nos. 62 to 63/Refund/2013 dated 01.07.2013 rejected the refund claims amounting to Rs, 4,93,493/- and Rs. 69,354/- under Notification No. 21/2004-CE(NT) dated 02.09.2004 as amended issued under Rule 18 of the Central Excise Rules , 2002 read with Section 11B of the Central Excise Act, 1944.

2.6 Aggrieved, the Applicant filed appeals before the Commissioner(Appeals-I), Central Excise, Ahmedabad. The Commissioner(Appeals) vide Order-in-Appeal No AHM-EXCUS-002-APP-288-13-14 dated 13.02.3014 dismissed their appeals and upheld the Orders-in-Original dated 01.07.2013

3. Aggrieved, the Applicant has filed the current Revision Application on the following grounds:

(i) The Applicant submitted that the following facts are not in dispute:

(a) They had manufactured said export goods in their factory under Central Excise Registration No. AAACP8985DXM002;

(b) Said export goods, being classifiable under heading No. 8428 8100 and chargeable to Nil rate of duty, and by observing the provisions of Rule 6 of Cenvat Credit Rules, 2004 had not availed Cenvat credit of the duty paid on materials consumed in the manufacture of said export goods;

(c) They had procured such materials either from a manufacturer or registered dealer under excise invoices issued under Rule 11 of Central Excise Rules;

(d) With due accountability of manufacture of said export goods in books of account, they had removed them from their factory under excise invoices issued under Rule 11 ibid, covered by ARE-1;

(e) Said export goods had been removed from factory, in factory stuffed containers, supervised and sealed by Central Excise Officer of jurisdictional Range. In token of this, the Central Excise Officer had signed documents related to factory stuffing;

(f) After removal of goods from their factory, said export goods had been directly exported, within stipulated time period of six months, by said merchant exporters as declared in ARE-1;

(g) As is obligated, the merchant exporter had also submitted proof of export with the excise authority with which he had executed export Bond;

(h) Refund claim had been submitted with designated authority viz. Assistant / Deputy Commissioner of Central Excise having jurisdiction over the Applicant's factory and the same had been filed within time period of one year specified in Section 11B of the Central Excise Act, 1944.

(i) Refund pertains to the incidence of excise duty suffered on the quantity of materials consumed in the quantity of said export goods and the refund claims, amounting to Rs. 4,93,493/- + Rs. 69,354/- = Rs. 5,62,847/-, had been filed under the provisions of Section 11B of the Central Excise Act,1944, within stipulated time limit of one year.

(j) Refund claim application had been submitted in Form-R, along-with specified documents viz. Original & Duplicate copies of ARE-1 duly endorsed by Customs certifying export of goods, Triplicate copy of ARE-1 collected from the range office, Duplicate transporter copies of excise invoice, self certified copies of Shipping Biils, Bills of Lading, disclaimer certificate of exporter, self-made statement Annexure-A showing detailed particulars of materials

consumed in the manufacture of said export good and dutv paid on such quantity of materials

(k) Though Bank Realization Certificate (BRC) was not a specified document for claiming refund of duty from the department, they had also submitted copies of BRC to prove that payment was received from their overseas buyer and thereby precious foreign exchange had been earned for the nation.

(l) All above facts themselves conclude that normal export procedure specified in Notification No 19/2004-C.E.(NT) dated 06..09.2004 (earlier it was Notification No. 42/2001-C.E.(NT) dated 26.06.2001) stands complied. In other words, it can be said that had export of said goods been covered under Notification No 19/2004-C.E.(NT) dated 06.09.2004, then the Applicant would have got the refund of duty paid thereon, under the provisions of Rule 18 ibid, read with Section 11B of the Act;

(m) Above facts undisputedly conclude that the core aspect and fundamental principle of manufacture and subsequent export of goods for admissibility of rebate stands complied.

(ii) Notification No. 21/2004-CE(NT) dated 06.09.2004 contain six paragraphs i.e. Para (1) is for *"filing of declaration"*, Para (2) is for *"verification of Input-out ration"*, Para (3) is for *"procurement of material"*, Para (4) is for *"removal of materials or partially processed material for processing"* (which was not applicable in the present case), Para (5) is for *"procedure for export"* and Para (6) is for *"presentation of claim of rebate"*.

(iii) The Applicant had complied with procedure specified in Para (3), (4), in Para (5) except minor variation that instead of ARE-2, said export had been removed under ARE-2 and Para (6) of the Notification and there cannot be any dispute on this fact. The deviation occurred was only with reference to Para (1), (2) and some part of Para (5).

(iv) Had the Applicant filed declaration, got input ration verified and removed said export goods under ARE-2, the question of rejection of refund claim would not have arisen. However through oversight, the Applicant had skipped the procedure contained in above mentioned Para (1) & Para (2) and removed said export goods under ARE-1 instead of ARE-2. These deviation was unintentional and do not resulted into evasion of duty or had not created any adverse impact to the exchequer. Except these deviations, there is no dispute on all other compliance made by the Applicant for export of goods. So it will be unfair to draw an inference that they had not made substantial compliance of the said notification, which was the basis for dismissal of an appeal by the Commissioner (Appeals). The Applicant had made substantial compliance, except minor deviations explained above. Deviation in procedure cannot be equated with non-compliance and hence in terms of various Judicial decisions cited by the Applicant, deviation in procedure needs to be condoned since the main object & Core aspect of export stands complied in the present case.

(v) The policy for grant of rebate of duty on excise on excisable exported goods or on excisable materials used in the manufacture of goods which are exported out of India, is governed by Section 11B of the Act, more preciously under clause (a) of sub-section (2) of Section11B of the Act. The present refund claim also pertains to duty paid on excisable goods used in the manufacture of said export goods which were exported and hence the Applicant is eligible for refund of such duty, under provisions of Section 11B(2)(a) of the Act. Further, it is well settled legal position that rules and notification cannot override the provisions of the Act itself. Therefore, Rule 18 of Central Excise Rules, 2002 and said notification being subordinate legislation, cannot override or run contrary of the provisions of Section 11B of the Act..

(vi) While submitting rebate claim in Form-R, along with specified documents, the Applicant had also submitted a statement marked as Annexure-A, showing particulars of quantity of inputs used in

manufacture of finished goods export and duty paid thereon. The very purpose of submitting such details were to comply the requirement of Table-2 (details of duty paid on excisable materials and packing materials used in manufacture of export goods for which rebate under notification was being claimed) of ARE-2. It can be seen from the content of Annexure-A that the requirement of table-2 of ARE-2 stands complied through details contained therein. This would mean the Applicant had complied with the procedural deviation in removal of such export goods through ARE-1 instead of ARE-2. Further, the quantities of inputs used in the manufacture of such export goods had been worked out on the basis of Input-Out Norms approve by Jt. DGFT. In this they relied in the case of Banaras Bead Ltd [2011 (272) ELT 433 (GOI)].

(vii) There is plethora of judicial decisions, establishing well settled legal position that substantive benefit of such policy decisions cannot be denied on procedural infractions of notification / circular as long as exports have taken place actually. In this they relied on few case laws:
(a) Deesan Agro Tech Ltd [2011)273) ELT 457 (GOI)];
(b) Murli Agro Ltd Vs CCE, Nagpur [2005 (183) ELT 277 (Tri. Del.)];
(c) ACE Hygiene Products Pvt Ltd [2012 (276) ELT 131 (GOI)];
(d) Sanket Industries Ltd [2011 (268) ELT 125 (GOI)];

(viii) It is a well recognized principle that taxes and duties are not to be exported. To enable exporter to complete in the global market, the Government has a policy of providing relief to the exporters for expenses incurred towards various taxes and duties suffered by the goods which are exported and for this purpose the Government has server scheme like drawback/DEPB/DFRC/DEEC, rebate of excise duty paid on goods export. It is also a policy of the Government to encourage exporters and to ensure that domestic taxes are not exported along with the goods.

(ix) By not following order of higher forums, the Appellate Authority had flouted well settled principles of judicial discipline. The priniciples of

judicial disciple require tha the orders of the higher appellate authority should be followed unreservedly by the subordinate authorities. The mere fact that the order of the Appellate Authority was not acceptable to the department, in itself an objectionable phrase. If this healthy rule is not followed, the result will only be undue harassment to the assessee and chaos in administration of tax laws. For such judicial non-discipline, Hon'ble Courts and Tribunals have passed stricture against adjudicating authority. This legal position stands substantiated in following decisions:

(a) Allover and Lace P. Ltd Vs CCE, Pune [2011 (264) ELT 292 (Tri. Mumbai)];

(b) Videocon International Ltd Vs CC, Mumbai [2010 (261) ELT 220 (Tri. Mumbai)]

(c) Galaxy Indo Fab Ltd Vs UOI [2010 (252) ELT 3(All.);

(d) Milcent Appliances Pvt Ltd. Vs UOI [2006 (205) ELT 130 (Guj.)];

(x) The Applicant by providing collateral evidences on specified minor deviation, has also established the fact that the procedure specified in Notification No. 21/2004-CE(NT) stands complied in the present case. So they are eligible for the refund of duty of the amount involved in the present application.

(xi) The Applicant prayed that the Order-in-Appeal be quashed and set-aside.

4. Personal hearing in the case was fixed on 11.04.2018, 16.01.2019 and 15.01.2020. But no one appeared on behalf of the Applicant. The Respondent Department vide letter dated 08.01.2020 submitted written submission. Since there was a change in the Revisionary Authority, personal hearing was fixed on 07.01.2021, 14.01.2021, 21.01.2021 and 26.02.2021. However no one appeared for the hearing. Hence the case is being decided on merit.

5. The Deputy Commissioner, CGST & Central Excise, Division-III, Ahmedabad North vide letter dated 08.01.2020 submitted the following written submissions:

(i) Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 specifies for the condition and the procedures for regulating the claims for rebate of duty paid on excisable goods.

(a) Filing of declaration;
(b) Verification of Input-Output ratio;
(c) Procurement of material;
(d) Removal of materials or partially processed material for processing;
(e) Procedure for export.

(ii) From the records of the case, the adjudicating authority found no such declaration filed by the Applicant before the Jurisdictional Division office. There was nothing on records to confirm that the Deputy Commissioner of Central Excise had verified/approved the correctness of the ratio of input and output before commencement of export of such good or that any permission was granted to the Applicant for manufacture or processing and export of finished goods under Notification No. 21/2004.CE(NT) dated 06.09.2004. The goods were not exported on an application in Form ARE-2 specified in the Annexure to the Notification chargeable to "NIL" rate of duty or are wholly exempted from payment of duty, other than goods cleared by a hundred percent export oriented undertaking are allowed under Notification No. 42/2001 CE(NT) dated 26.06.2001. The Respondent was also required to declare and certify in Form ARE-2 that they have been granted permission by Assistant / Deputy Commissioner of Central Excise Vide C. No. .... dated..... for working under Notification No.21 /2004-Central Excise (N.T.), dated the 6th September, 2004.

(iii) At the time signing of the ARE-2, the Central Excise officer is required to certify in Form ARE-2 to the effect that, *"Certified that the material consumption as indicated in Table 2 overleaf are in accordance with the declaration No..... filed by..... on...."*. Since the Applicant neither got the consumption ratio approved by the Deputy Commissioner of Central Excise nor followed the ARE 2 procedure for clearance of export goods,

the Central Excise Officer at the extant time of clearance had no occasion to verify the details. On the contrary, the Applicant had declared in column 11 of ARE-1s that *"Amount of Rebate Claimed is "NIL""*.

(iv) The adjudicating authority had also found that the exports were made under Advance Authorization No. 3410026404 dated 18.02.2010 issued in terms of paragraph 4.13 of the Foreign Trade Policy. Notification No. 96/2009-Cus. dated 11.09.2009 governing the scheme of imports/exports under Advance Authorization. The provision of condition (viii) of the said notification speaks that export obligation is to be discharged within specified period, by exporting resultant products manufactured and in respect of such exports facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of Rule 19 of the Central Excise Rules, 2002 has not been availed. The facility under Rule 18 includes rebate of duty paid on materials used in the manufacture of such exported products. Therefore, the said Customs Notification debars the Applicant from availing facility of rebate of duty paid on materials used in the manufacture of such exported products under Rule 18. Also while filing the claims for rebate under Rule 18 of the Central Excise Rules, 2002, the Applicant had not submitted any proof to establish as to how these mandatory conditions in the Notification No. 96/2009-Cus. dated 11.09.2009 can be said to have been satisfied by the Advance Authorization holder who is required to discharge the export obligation specified in the Authorization by exporting resultant products, manufactured in India which are specified in the said Authorization and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) have not been availed. All the exports in the case were made through Merchant Exporter under CT-1 procedure. It was not forthcoming from the claim documents, whether the POEs have been submitted and whether have been accepted by the Maritime Commissioner (Bond Issuing Authority).

(v) From Rule 18 of Central Excise Rules, 2002, it is clear that grant of rebate is allowed by the Government subject to conditions or limitations and fulfillment of procedure as specified in the notification. From the discussion and findings recorded above it was come out that the the Applicant had failed to follow the procedure prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004 and also not fulfilled the conditions of the Notification supra. Therefore, the rebate claims were correctly rejected vide Orders-in-Original Nos. 62 to 63/Refund/2013 dated 01.07.2013.

(vi) The Commissioner (Appeals-I), Central Excise, Ahmedabad vide Order-in-Appeal No. AHM-EXCUS-002-APP-288-13-14 dated 13.02.3014 had also dismissed the appeal filed by the Applicant and upheld the Orders-in-Original Nos. 62 to 63/Refund/2013 dated 01.07.2013.

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

7. On perusal of the records, Government observes that Commissioner(Appeals-I), Central Excise, Ahmedabad. vide Order-in-Appeal No. 239 to 240/2012 (Ahd-II) CE/AK/Commr(A)/Ahd dated 27.09.2012 had held that the refund claim was filed within the time prescribed under Section 11B of the Central Excise Act, 1944 and remanded back the case to the Original adjudicating authority for re-quantification and verification of documents with reference to refund claims filed online by the Applicant. The Applicant had vide their letter dated 24.02.2012. addressed to the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II giving reference to their refund request stating therein that they had filed two refund claims online under Rule 5 of Cenvat Credit Rules, 2004 on 29.04.2011 and 29:05.2011, claiming refund of Rs, 4,93,493/- and Rs. 69,354/- respectively, *"Though, we are not availing the Credit of Excise Duty paid on the above raw materials but now as we exported our final products which attract nil rate of Tariff Excise Duty under sub-heading no. 84248100 we intend to claim the rebate of duty on raw materials (excisable*

goods) used in goods exported. .....We hereby, undertake that we have not availed the Cenvat credit of Excise Duty Paid on the Qty. of Inputs Consumed in Export Qty of Final Product. ". The Applicant had submitted the following documents:

(a) Applicant for refund of excise duty in Form –R;

(b) Annexure 'A' showing calculation of total quantity of inputs used in manufacture of finished goods exported and duty involved therein;

(c) Copies of ARE-ls for the month of April-2010, May-2010 and June-2010 along with duly self certified copies of input invoices, Shipping Bills, Export invoices, Central Excise invoices, Bills of Lading and BRCs.

8. On scrutiny of the ARE-1 Nos. 43/10-11 and 44/10-11 both dated 07.06.2010 specifically indicate that the goods were cleared

(a) without availing Cenvat Credit Rules, 2002 without availing facility under Notification No. 21/2004-CE(NT) dated 06.09.2004 under Rule 18 of Central Excise Rules 2002;

(b) without availing facility under Notification No. 43/2011-CE(NT) dated 26.06.2011 issued under Rule 19 of Central Excise (No.2) Rules, 2001;

(c) Export was in discharge of the export obligation under duty Drawback under Customs & Central Excise Duties Drawback Rules, 1995 – EPCG No 0830002076 dated 24.05.2007 /Advance Lic. No, 3410026404 dated24.05.2007;

(d) Goods were cleared for export under Bond under CT-1 to M/s Apollo International Ltd., Vill-Limda, Taluka-Waaaghodia, Dist.Baroda which is registered under IEC No. 0594050014 Branch Code-2.

9. Government notes that since the exported goods had been cleared under CT-1 Bond, the Applicant should have cleared the goods under ARE-2 instead

they had cleared under ARE-1. Here the Applicant submitted that had they filed the declaration, got input ratio verified and removed said export goods under ARE-2, the question of rejection of refund claim would not have arisen. However through oversight, they had skipped the procedure contained in Para (1) & Para (2) of the Notification No. 21/2004-CE(NT) dated 06.09.2004 and removed the export goods under ARE-1 instead of ARE-2. This deviation was unintentional and does not result into evasion of duty or had not created any adverse impact to the exchequer. Except these deviations, there is no dispute on all other compliance made by the Applicant for export of goods.

10. Government notes that that the Notification No. 21/2004-CE(NT) dated 06.09.2004 states that *".... rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter: "* and Conditions in paragraph

"(1) Filing of declaration. - .....

(2) Verification of Input-output ratio. - .....

(3) Procurement of material. - .....

(4) Removal of materials or partially processed material for processing. - ....."

procedure to be complied with in paragraph

(5) Procedure for export. - .....

(6) Presentation of claim of rebate. - .....

11. Government notes that condition para (2) of the Notification No. 21/2004-CE(NT) dated 06.09.2004 clearly states -

'(2) Verification of Input-output ratio. - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed ***before commencement of export of such goods,*** *if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise*

or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods"

Government finds that the Applicant had not filed the declaration and the Input-Out ratio before the jurisdictional Assistant/Deputy Commissioner for verification before commencement of the export. The fact that the Notification No. 21/2004-CE(NT) dated 06.09.2004 has placed the requirement of paras (1) to (4) under the heading "*conditions*" itself shows that these are not procedural requirements which can be condoned. Hence Government finds that the Applicant has failed to fulfil the conditions of filing the declaration and the Input-Out ratio before the jurisdictional Assistant/Deputy Commissioner for verification before commencement of the export and the same cannot be condoned.

13.1 Government places reliance on its earlier orders viz. Order No. 85/2015-CX dated 21.09.2015 in Re : M/s Kriti Nutrients Ltd. Dewas and Order No. 11/2016-CX dated 20.01.2016 in Re : M/s Themis Medicare Limited, Haridwar, have also rejected the Revision Applications by upholding rejection of rebate claims of the applicants therein, for not following the other provisions of Notification No.21/2004-CE(NT). The GOI in its aforementioned orders observed as under:-

"Government, therefore, holds that non fulfilling the statutory conditions laid down under the impugned Notification and 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 on the impugned goods. 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.

Government notes that nature of above requirement is both a statutory condition and mandatory in substance for removal of goods for exports under claim for rebate of duty either on the final goods exported or on the inputs contained therein.

It is in this spirit and this background that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani - (AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said

requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory.

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 Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 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 by in case of Collector of Central Excise Vs Parle Exports (P) Ltd – 1988(38)ELT 741(S.C.) and Orient Weaving Mills Pvt. Ltd. Vs Union of India 1978 (2) ELT J 311(S.C.) (Constitution Bench).

Government 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. 21/2004-NT dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No.21/2004-NT dated 06.09.2004 the applicant should have ensured strict compliance of the conditions attached to the Notification No.21/2004-NT dated 06.09.2004. Government place reliance on the Judgment in the case of MIHIR TEXTILES LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1997 (92) ELT 9 (S.C.) wherein it is held that:

> *"concession/ 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."*

Further, Government finds that there is no provisions under Rule 18 of Central Excise Rules 2002 for condonation of non-compliance with the conditions and procedure laid down in the Notification allowing rebate under said Rule. In view of the above discussions, Government finds that the applicant failed to fulfill the above mandatory condition of the said provisions and the condition being mandatory the same is required to be followed by the applicant particularly when the applicant is the beneficiary in the claim of rebate".

13.2. Government observes that the manufacturer had declared in the relevant ARE-1s that the goods have been manufactured by them by availing facility under Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules,2002. Government finds that procedure to be complied with in paragraph " *(5) Procedure for export. -.....*" shows that the Applicant should have filed ARE-2. However the Applicant had filed in ARE-1s which are procedural lapse and hence same is condoned.

14. Applicant has exported goods under Notification 96/2009-CUS dated under Advance Authorization. This Notification inter alia prescribes the following conditions:

> *"vi. that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);*
>
> *Viii 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(rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed:"*

The plain reading of the provision of said condition (viii) reveals that export obligation is to be discharged within specified period, by exporting resultant products manufactured and in respect of such exports facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of Rule 19 of the Central Excise Rules, 2002 has not been availed. The facility under Rule 18 includes rebate of duty paid on materials used in the manufacture of such exported products. Therefore, the said Customs Notification debars the Applicant from availing facility of rebate of duty paid on materials used in the manufacture of such exported products under Rule 18.

15. In view of the above discussions, Government has come to the conclusion that the Applicant is not entitled for benefit of provisions of Notification No. 21/2004-CE(N.T), dated 06.09.2004, as they had failed to comply with the condition appended to the said notification. There cannot be an estoppel

against the law as held by the Hon'ble Supreme Court in Elson Machines Pvt. Ltd. v. Collector of Central Excise - 1988 (38) E.L.T. 571 (SC) = 1988 (19) ECR 449 SC. Further, Government following the principle laid down by Hon'ble Supreme Court in cases (i) ITC Ltd. v. C.C.E. - 2004 (171) E.L.T. 433 (S.C.) and (ii) Paper Products Ltd. v. C.C. - 1999 (112) E.L.T. 765 (S.C.) that simple and plain wording of applicable statutory provisions as elaborated vide relevant Notification /Circular are to be strictly adhered to, holds that as the Applicant had not followed the statutory provision of Notification No. 21/2004-C.E. (N.T.), dated 06.09.2004 and has exported availing benefit of Notification 96/2009-CUS dated 11.09.2009 therefore input rebate claims are rightly held not admissible to them.

16. Hence, Government finds no infirmity in impugned Order-in-Appeal No. AHM-EXCUS-002-APP-288-13-14 dated 13.02.3014 passed by the Commissioner(Appeals-I), Central Excise, Ahmedabad and hence, upholds the same.

17. Revision Application is thus rejected being devoid of merit.

Shrawan 31/03/21

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

ORDER No.175/2021-CX (WZ) /ASRA/Mumbai Dated 31.3.2021

To,
M/s Parixit Industries Ltd.,
Survey No. 214/1, 214/2,
Viroch Nagar, Virpura Bus Stand,
P.O. Iyava, Taluka-Sanand,
Dist. Admedabad – 380015.

Copy to:

1. The Commissioner of CGST & CX, Ahmedabad North, Customs House, 1st floor, Navrangpura, Ahmedabad – 3800 009.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.