



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, Cuff Parade,
Mumbai- 400 005

F NO. 195/625/13-RA (15)

Date of Issue: 19/07/2018

ORDER NO. 195/2018 C.EX (WZ) /ASRA/Mumbai DATED 07.06. 2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Shah Nanji Nagasi Exports Pvt. Ltd., Nagpur

Respondent : Commissioner of Central Excise, Mumbai-I.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.BR(28-29) MI/2013 dated 13.02.2013 passed by the Commissioner (Appeals)-I, Central Excise, Mumbai-Zone-I.



ORDER

This revision application has been filed by M/s. Shah Nanji Nagasi Exports Pvt. Ltd., Nagpur (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR (28-29) MI /2013 dated 13.02.2013 passed by the Commissioner (Appeals)-I, Central Excise, Mumbai-Zone-I.

2. Brief facts of the case are that the applicant, M/s Shah Nanji Nagasi Exports Pvt. Ltd filed rebate claim of Rs. 62,85,750/- (Rupees Sixty Two Lakh Eighty Five Thousand Seven Hundred and Fifty only) in September 2006 towards Central Excise Duty paid on export of excisable goods (sugar) manufactured by the following units :-

Sl. No.	Refund Claim No. & Date	Manufacturer	Amount (Rs.)
1.	1295/ 15.09.2006	M/s Shree Tatyasaheb Dore Warana SSK Ltd., Warananagar, Pune -II Commissionerate	21,24,150/-
2.	1296/ 15.09.2006	M/s Shri Hiranyakeshi Sahakari Sakhar Karkhana Niyamit, Sankeshwar, Belgaum Commissionerate	20,80,800/-
3.	1297/ 15.09.2006	M/s KumbhiKasari Sahakari Sakhar Karkhana Ltd., Kuditre, Pune- II Commissionerate	20,80,800/-
		TOTAL AMOUNT	62,85,750/-

3. The Assistant Commissioner (Rebate) Central Excise, Mumbai-I rejected the claims vide Order in Original No. 19/R/07 dated 08.02.2007 holding that the exporter had not fulfilled the conditions laid in notification no. 19/2004 CE (NT) dated 06.09.2004 as they failed to export goods directly from the manufacturers' premises.

4. Aggrieved by the said Order-in-Original dated 08.02.2007, the applicant preferred appeal before the Commissioner of Central Excise (Appeals), Mumbai. The Commissioner (Appeals) vide Order-in-Appeal No. YG (6)/M112008 dated 21.10.2008 allowed the appeal filed by the Applicant



and set aside the Order-in-Original dated 08.02.2007 rejecting the rebate claims. The Commissioner (Appeals) observed that the applicant had exported sugar as it was permissible under law and effected export clearance under supervision of Customs authorities. He held that the bank Realization statement was submitted showing the receipt of foreign exchange earned and description of goods also tallied in all export and excise clearance documents.

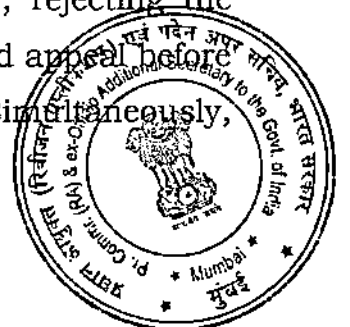
5. Aggrieved by the Order-in-Appeal dated 21.10.2008, the department filed a revision application before the Central Government. The revision application was decided by Joint Secretary (Revision Application), New Delhi vide Order No. 521/11-CX dated 24.05.2011 upholding the Order-in-Appeal partially. Vide said order, the rebate of Central Excise duty paid on the exported goods was held admissible and the rebate of sugar cess paid on the exported sugar was held to be not admissible in terms of Rule 18 of the Central Excise Rules, 2002 read with notification no. 19/2004 - CE (NT) dated 06.09.2004. The original authority was directed to sanction the rebate claim accordingly.

6. Aggrieved by the Order dated 24.05.2011, the department filed Writ Petition No. 10605 of 2011 before Hon'ble Bombay High Court. The Hon'ble High Court dismissed the said Writ Petition vide Order dated 06.02.2012.

7. Meanwhile, during the pendency of Revision application filed by the department against the order of Commissioner (Appeals) dated 21.10.2008, the Assistant Commissioner (Rebate), Central Excise, Mumbai - I sanctioned rebate of Rs.52,48,940/- (Rupees Fifty Two Lakh Forty Eight Thousand Nine Hundred and Forty only) vide Order-in-Original No.53/R12009 dated 21.10.2009. However, he rejected the rebate claim of Rs.10,15,000/- (Rupees Ten Lakh Fifteen Thousand only) which was amount cess paid on exported sugar.

8. Aggrieved by the Order-in-Original dated 21.10.2009, rejecting the rebate of the sugar cess of Rs. 10,15,000/-, the applicant filed appeal before the Commissioner of Central Excise (Appeals), Mumbai-I. Simultaneously,

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the department also filed appeal against sanction of rebate of Rs. 52,48,940/-.

9. The Commissioner (Appeals), Mumbai-I vide common Order-in-Appeal No. BR (28-29) M1/2013 dated 15.02.2013 decided both the appeals arising from the same order-in-original. Vide impugned order, the Commissioner (Appeals) allowed the departmental appeal and also held that the amount of Rs.52,48,940/- is recoverable from the applicant alongwith applicable interest. He has also upheld the denial of rebate of Rs.10,15,000/- being amount of sugar cess.

10. Aggrieved by the impugned order dated 15.02.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai, the applicant has filed present revision application mainly on the following grounds:

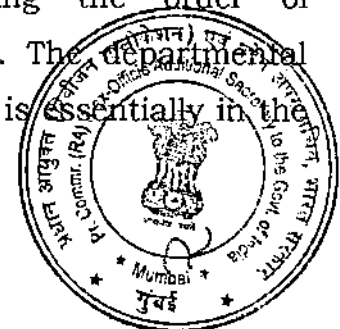
10.1 Admissibility of Rebate Claim Already Settled by the Earlier order of Commissioner (Appeals) dated 21.10.2008:

As upheld by the Revisionary Authority's order no. 521/11-CX dated 24.05.2011 and Bombay High Court's Order dated 06.01.2012 in Writ Petition No. 10605 of 2011

The Commissioner (Appeals) has not appreciated that he has no jurisdiction to overrule the order of Commissioner (Appeals) dated 21.10.2008 which has been upheld by the Revisionary Authority's order no. 521/11-CX dated 24.05.2011. He has also not appreciated that the Hon'ble High Court has dismissed the Writ Petition no. 10605 of 2011 filed by the department against the order of the Revisionary Authority.

10.2 Consequential Rebate Claim; Cannot Re-open the Order of predecessor:

The rebate claim of Rs. 52,48,940/- was sanctioned by the Assistant Commissioner, merely following the order of Commissioner (Appeals) dated 21.10.2008. The departmental appeal against the sanction of rebate claim is essentially in the



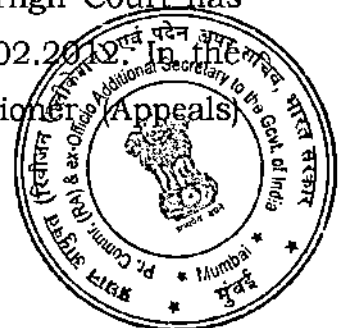
nature of protective appeal pending the departmental appeal with revisionary authority. Therefore, the Commissioner (Appeals) should not have re-opened the issue of admissibility of rebate claim. He should have restricted himself only to the extent of checking if the Assistant Commissioner while sanctioning the rebate claim has followed the order of the Commissioner (Appeals) or otherwise.

10.3 **Judicial Discipline Not Followed:**

The Commissioner (Appeals) has relied upon the order of Revisionary Authority to uphold the rejection of the rebate claim of Rs. 10,15,000/- towards the sugar cess paid on the exported goods. He has relied on the order of the Revisionary Authority no. 521/11-CX dated 24.05.2011 for rejecting the rebate claim related to the sugar cess noting that the said order passed by the Joint Secretary (R.A.) GOI had become final.

10.4 **Clear findings of the Revisionary Authority Ignored:**

However, the Commissioner (Appeals) has conveniently ignored the part of the same order upholding the sanction of the rebate claim by the Commissioner (Appeals) observing that the substantial benefit of rebate cannot be denied for procedural lapses as long as core aspect or fundamental requirement of manufacture and subsequent export for sanctioning rebate was met. (Refer Para 12 of the order). The revisionary authority in Para 8 of its order has confirmed the finding of fact by the Commissioner (Appeals) in his order dated 21.10.2008 that the consignment of sugar was transported directly from the factory to the port premises and exported; the exported sugar was duty paid as confirmed by the range superintendent and sugar was freely exportable at the relevant time. Hon'ble High Court has endorsed these findings in the order dated 06.02.2010. In the circumstances, impugned order the Commissioner (Appeals)

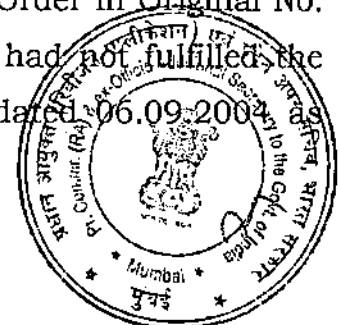


which selectively relies on the order of the Revisionary Authority is violative of the principles of judicial discipline and therefore not sustainable.

In view of the foregoing, the applicant prayed for quashing and setting aside the Order in Appeal No. BR/28-29/M-I/2013 dated 13.02.2013 passed by the Commissioner (Appeals), Mumbai Zone-I and to hold that rebate of RS. 52,48,940/- towards the Central Excise duty paid on the exported goods is admissible to them as held by the Assistant Commissioner (Rebate), Central Excise, Mumbai-I vide Order in Original No. 53/R/2009 dated 21.10.2009 read with Order No. 521/11-CX dated 24.05.2011 of the Government of India.

11. A Personal hearing was held in this case on 29.01.2018 and Shri Prashant Patankar, Consultant appeared on behalf of the applicant for hearing and reiterated the submissions made in the Revision Application and pleaded that the Order in Appeal be set aside and Revision application be allowed as it amounts to infringement of judicial discipline.

12. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. On perusal of records, Government observes that the applicant, M/s Shah Nanji Nagasi Exports Pvt. Ltd., a Merchant exported had filed rebate claim of Rs. 62,85,750/- (Rupees Sixty Two Lakh Eighty Five Thousand Seven Hundred and Fifty only) in September 2006 towards Central Excise Duty paid on export of excisable goods (sugar) manufactured by M/s Shree Tatyasaheb Dore Warana SSK Ltd., Warananagar, Pune-II Commissionerate, M/s Shri Hiranyakeshi Sahakari SakharKarkhana Niyamit, Sankeshwar, Belgaum Commissionerate and M/s KumbhiKasari Sahakari Sakhar Karkhana Ltd., Kuditre, Pune- II Commissionerate which was rejected by the Assistant Commissioner (Rebate) Central Excise, Mumbai-I vide Order in Original No. 19/R/07 dated 08.02.2007 holding that the exporter had not fulfilled the conditions laid in notification no. 19/2004 CE (NT) dated 06.09.2004.

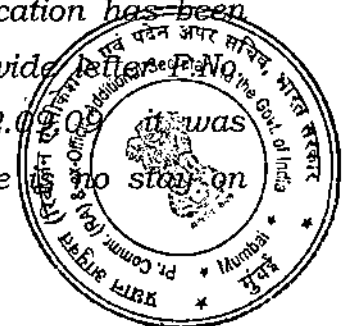


they failed to export goods directly from the manufacturers' premises. On appeal being filed by the applicant, the Commissioner (Appeals) vide Order-in-Appeal No. YG (6)/M1/2008 dated 21.10.2008 allowed the appeal filed by the applicant by setting aside the Order-in-Original dated 08.02.2007 holding that the applicant had exported sugar as was permissible under law and effected export clearance under supervision of Customs authorities and that the bank Realization statement was submitted showing the receipt of foreign exchange earned and description of goods also tallied in all export and excise clearance documents.

13. Government further observes that, being aggrieved by the Order-in-Appeal No. YG (6)/M112008 dated 21.10.2008, the department filed Revision Application before the Joint Secretary, Government of India who vide Order No. 521/11-CX dated 24.05.2011 upheld the Order-in-Appeal partially, allowing the rebate of Central Excise duty paid on exported goods and disallowing the rebate of sugar cess paid on exported sugar being not admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Aggrieved by the Order dated 24.05.2011, the department filed Writ Petition No. 10605 of 2011 before Hon'ble Bombay High Court. The High Court dismissed the said Writ Petition vide Order dated 06.02.2012.

14. Government also observes that during the pendency of Revision application filed by the department against the order of Commissioner (Appeals) dated 21.10.2008, the Assistant Commissioner (Rebate), Central Excise, Mumbai - I processed the rebate claims of the applicant observing that :-

5. *As per Board's Circular FNo.572/9/01-CX dated 22.02.01 no refund/rebate claim should be withheld on the grounds that an appeal has been filed against the order giving the relief, unless stay order has been obtained. In the instant case, as no stay application has been obtained as communicated by D.C. (Trb.), Mumbai-I vide letter No. V(Tr) App-15/08/288 dated 29.04.09 and dated 22.09.09 directed by Commissioner to pay the rebate as there*



payment of rebate. I have no option but to process the claim in preview of directions given by the Commissioner (A) in O.I.A. No. YG (6)/M1/2008 dated 21.10.2008 The sugar cess is not eligible as per Notification No. 19/2004-CE(NT) dated 06.09.2004. So Rs. 10,15,000/- less sanction against the sugar cess.

6. *Therefore, though department is of firm view that the claim is not admissible and filed an appeal against the said OIA, the department has left no other alternative but to process the rebate claim as no stay has been obtained against O-IA. Hence rebate of Rs.62,85,750/- is being processed.*

Accordingly, the Assistant Commissioner (rebate), Central Excise, Mumbai-I vide Order-in-Original No.53/R/2009 dated 21.10.2009 sanctioned rebate claims of Rs.52,48,940/-(Rupees Fifty Two Lakh Forty Eight Thousand Nine Hundred and Forty only) However, he rejected the rebate claim of Rs.10,15,000/-(Rupees Ten Lakh Fifteen Thousand only) which was amount cess paid on exported sugar being not eligible as per Notification No. 19/2004-CE(NT) dated 06.09.2004.

15. Aggrieved by the aforementioned Order-in-Original dated 21.10.2009 to the extent it rejected the rebate of the sugar cess of Rs. 10,15,000/-, the applicant filed appeal before the Commissioner of Central Excise (Appeals), Mumbai-I. Simultaneously, the department also filed appeal against the same Order-in-Original dated 21.10.2009 to the extent it sanctioned the of rebate of Rs. 52,48,940/-, also before the Commissioner of Central Excise (Appeals), Mumbai-I.

16. Commissioner (Appeals) vide his impugned Order dated 13.02.2013 set aside the Order-in-Original dated 21.10.2009 and allowed the appeal of the department and also held that the amount of Rs.52,48,940/- involved in the appeal, that is already refunded to the exporter applicant in Appeal No.(ii) is recoverable along with interest at the applicable rate from the respondent. However, Commissioner (Appeals) rejected the appeal filed by

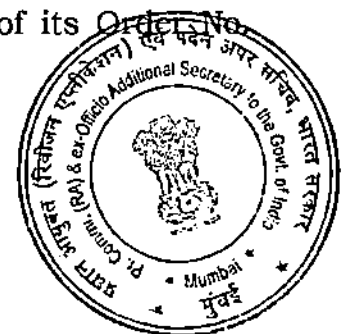


the applicant against Order-in-Original dated 21.10.2009 rejecting the rebate of the sugar cess of Rs. 10,15,000/-.

17. Now, the applicant is before the Government vide present Revision Application against the impugned Order mainly on the grounds mentioned at para 10 supra.

18. Government observes that the Commissioner (Appeals) vide his impugned Order has observed that "*in the present case the appellant exporter has misled one and all by providing unsigned copy of the ARE-1 (triplicate copy) to make it believe that they had submitted the application but for any reason it did not bear signature of the manufacturer or range Central Excise officer. The fact is totally different and contrary to the claim of the appellant exporter and contrary to the provisions of law. Goods are exported either under the supervision of Central Excise officer or Customs officer. Option was also given to the manufacturers to remove the goods under self-sealing. In both the cases where the goods are exported either under the supervision of Central Excise officer or under self sealing by the manufacturer or the merchant manufacturer or exporter as the case may be has to submit application for removal of excisable goods for export by (Air/ Sea/ Post/land) in Form ARE-1 to the jurisdictional Central Excise officer. There is no alternate to it. The act of the appellant exporter definitely appears to be fraudulent as they prepared the ARE-1 Form without submitting it to the Central Excise officers and falsely makes the customs as well as Central Excise officers believed that the export is under the knowledge of jurisdictional Central Excise officer*". He further observed that "*there is no dispute that the applicant exporter had not followed these procedures. In the absence of the same which is not only a substantial condition but a mandatory condition, the question of processing the refund claim itself does not arise, leave alone sanctioning the same*".

19. However, while deciding the Revision Application No. 198/09/09 filed by the department against earlier Commissioner's Order No. YG (6)6/M-I/2008 dated 21.10.2008 Government of India at para 8 of its Order No. 521/11-CX dated 24.05.2011 observed as under:-



20. Government further notes that Hon'ble Bombay High Court while dismissing the Writ petition No. 10605 of 2011 vide its order dated 6-2-2012, filed by the department against Government Order No. 521/11-CX dated 24.05.2011, observed as under:

3. *The Revisional Authority has essentially confirmed this finding of fact in Paragraph 8 of its impugned order. The Revisional Authority has noted that the railway receipt and transport documents submitted by the assessee in support of its contention show that the consignment of sugar was transported directly from the factory to the port premises. Moreover, the Range Superintendent had confirmed the payment of duty of the goods by the relevant Central Excise invoice. The Revisional Authority has also decided that though the sugar had been cleared for sale in the open market at the relevant time, the clarification issued by DGFT on 16 March 2006 did not contain any restriction on export since sugar was freely exportable.*

4. *In view of the concurrent findings of fact arrived at by both the authorities below, we see no merit in this petition. The finding is based on the material on record and does not suffer from perversity or error.*

5. *The petition, is accordingly, dismissed.*

21. From the above, Government observes that the issue of admissibility of rebate of Central Excise duty paid on the exported goods to the applicant has already been decided by the Commissioner (Appeals) vide order No. YG (6)6/M-I/2008 dated 21.10.2008 and by the Revisionary Authority, GOI vide Order No. 521/11-CX dated 24.05.2011 and upheld by the Hon'ble Bombay High Court vide its order dated 6-2-2012 by dismissing the Writ petition No. 10605 of 2011 filed by the department. Government further observes that the issues raised /grounds of appeal by the department in their Revision application and Writ Petition were identical to the ones raised before the Commissioner (Appeals), Central Excise, Mumbai Zone-I, who passed the impugned order. Government also notes that there is nothing on record or in the impugned Order that the Hon'ble Bombay High Court Order dated 06.02.2012 has been challenged by the department or its operation has ever been stayed by the superior Court. In the absence of any appeal filed against the Order dated 06.02.2012 of the Hon'ble Bombay High Court by



the Revenue, the same has attained finality. Therefore, Government is of the considered view that the department cannot take two parallel proceedings for the same issue i.e. challenging the erroneously refunded duty amount by the department to the applicant. As department was unsuccessful in the earlier litigations before Appellate/ Revisionary Authority and also in Writ Petition, the department should not have proceeded with the appeal before the Commissioner (Appeals) who has passed the impugned order, as no new facts/grounds against the applicant emerged after the issuance of Hon'ble Bombay High Court's order dated 06.02.2012.

22. Government notes that there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer in terms of Board Circular No.294/10/97-Cx dated 30.01.1997 may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse and sufficient corroborative evidence found to correlate exported goods with goods cleared under Excise documents. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd. Government also notes that, while allowing the Revision application in favour of the applicant, Government at para 12 of its aforementioned Order observed as under:-

"In this regard Govt. further observes that rebate/drawback etc. are export-oriented schemes, A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that, an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, ac



in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned.-This view-of condoning procedural-infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd. - 1998 (99) E.L.T. 387 (Tri.), Alpha Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Tri.), Atma Tube Products - 1998 (103) E.L.T. 270 (Tri.), Creative Mobus - 2003 (58) R.L.T. 111 (G.O.I.), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (G.O.I) and a host of other decisions on this issue".

In the instant case also it appears that the applicants were able to provide sufficient material on record to establish the genuineness of their exports.



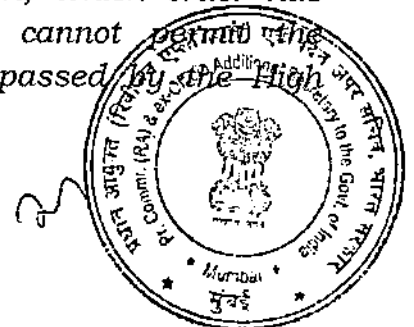
23. Government observes that in the case of *Ishwar Dutt v. Land Acquisition Collector & Anr.* reported in (2005) 7 SCC 190, in paragraphs 29 and 30 the Hon'ble Supreme Court has observed as follows :-

"29. Furthermore, a writ of mandamus is required to be obeyed unless a judgment is overruled or a legislation by way of validating statute is brought into force.

30. In Madan Mohan Pathak and Anr v. Union of India and Ors., the Constitution Bench observed: (SCC p.67, para 9) "Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and Class IV employees."

In another decision of the Hon'ble Supreme Court in the case of *RBF RIG Corporation v. CC (Imports) Mumbai*, reported in 2011 (264) E.L.T. 486 (S.C.), in paragraphs 19, 20 and 21, it is held as follows :-

"19. We hasten to add, if for any reason, the subordinate authority is of the view that the directions issued by the Court is contrary to statutory provision or well established principles of law, it can approach the same Court with necessary application/petition for clarification or modification or approach the superior forum for appropriate reliefs. In the present case, as we have already noticed, the respondents have not questioned the order passed by the High Court, which order has reached finality. In such circumstances, we cannot permit the adjudicating authority to circumvent the order passed by the High Court.



20. Therefore, in our view, the refund claim of appellant has been erroneously rejected by the Deputy Commissioner of Customs vide its order dated 23-12-2014 ignoring the specific directions issued by the Delhi High Court vide its order dated 11-3-2003, to the customs authorities to dispose of the appellant's claim of refund by taking into consideration the Essentiality Certificates issued by the DGH. The Deputy Commissioner of Customs has rejected the refund claim of appellant on the ground of unjust enrichment and failure to challenge the assessment of the Bills of Entry at the appellate stage, without even considering the Essentiality Certificates in the light of specific and binding directions of the High Court.

21. In view of the above, we allow this appeal and direct the Customs authorities to consider the appellant's claim of refund of customs duty paid under protest in accordance with the directions issued by Delhi High Court vide its order dated 11-3-2003 as expeditiously as possible. In the facts and circumstances of the case, we direct the parties to bear their own costs."

24. Government further observes that the Apex Court in Union of India Vs. Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (S.C.)] very clearly held that,

"The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.

Accordingly, the Commissioner (Appeals) should have followed the decision of Hon'ble Bombay High Court in Writ petition No. 10605 of 2011 in the spirit of judicial discipline. Additionally, Government observes that the reliance placed by the Commissioner (Appeals) in his impugned order on the



Hon'ble Supreme Court cases to re-open the already settled issue, is misplaced in view of the different set of facts in each case.

25. In view of the above, Government holds that the Assistant Commissioner (Rebate), Central Excise, Mumbai-I has rightly sanctioned rebate claims of Rs.52,48,940/- (Rupees Fifty Two Lakh Forty Eight Thousand Nine Hundred and Forty only) and denied rebate of sugar cess of Rs.10,15,000/- (Rupees Ten Lakh Fifteen Thousand only) vide Order-in-Original No.53/R/2009 dated 21.10.2009 to the applicant and hence upholds the same. Government accordingly sets aside the impugned Order-in-Appeal No. BR (28-29) MI /2013 dated 13.02.2013 directing for recovery of Rs.52,48,940/- (Rupees Fifty Two Lakh Forty Eight Thousand Nine Hundred and Forty only) from the applicant.

26. Revision application is allowed accordingly.

27. So, ordered.

Ashok Kumar Mehta
67.6.14

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

ORDER No. 198 /2018-CX (WZ) /ASRA/Mumbai

DATED 07-06-2018

To,
M/s Shah Nanji Nagsi Exports Pvt. Ltd.,
Anaj Bazar Itwari,
Nagpur, 440 002.

ATTESTED

S.R. Hirulal
S.R. HIRULAL,
Assistant Commissioner (RA)

Copy to :

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

