

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.198/12/2013-RA | 3021

Date of Issue: 18/06/21

ORDER NO. 205 | 2021-CX (WZ)/ASRA/MUMBAI DATED 25.5.2021 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.

Applicants : Commissioner of Central Excise & Service Tax, LTU, Mumbai

Respondents : M/s Man Industries (India) Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BPS/136-139/LTU/MUM/2012 dated 14.12.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, LTU, Mumbai

ORDER

This Revision Application is filed by the Commissioner, Central Excise, Customs & Service Tax, LTU, Mumbai (hereinafter referred to as "the Applicant") against Order-in-Appeal No. BPS/110-118/LTU/MUM/2012 dated 15.10.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, LTU, Mumbai.

2. The issue in brief is that the M/s Man Industries (India) Ltd., Survey No. 458/2, Anjar-Mundra Highway, Village Khedoi, Anjar, Kutch, Gujarat - 370 130 (herein after as "the Respondent"), manufacture of Submersible Arc Welded Pipes (SAW Pipes) under CSH 73051 121 of Central Excise Tariff Act, 1985.

2.1 The Respondent during the month of March 2007 to June 2007 & August 2007 had cleared excisable goods as per Notification No.39/2001-CE dated 31.07.2001 and had exported them under claim of rebate of Central Excise duty (duty paid through Cenvat and PLA) in terms of Notification No.19/2004-CE (NT) dt. 06.00.2004 issued under Rule 18 of the Central Excise Rules, 2004 read with Section 11B of Central Excise Act, 1944. They had filed rebate claims with the jurisdictional Dy. Commissioner, Central Excise, Bhuj.

2.2 It was observed that the Respondent had availed benefit of refund of duty paid on export goods through PLA by way of re-credit /refund under Section 5A of Central Excise Act, 1944 and at the same time had also claimed the rebate (Refund) of duty paid on export goods under Section 11B of the Central Excise Act, 1944. As refund makes the goods exempted and no rebate can be allowed on exempted goods, the claims appeared to be ineligible under Rule 18 of the Central Excise Rules, 2002 read with para (1) of Notification 39/2001-CE dated 31.07.2001. Hence the Show Cause Notices were issued by jurisdictional Assistant Commissioner, Central Excise, Bhuj to the Respondent. The Show Cause Notices were adjudicated by

jurisdictional Deputy Commissioner who allowed the duty paid only through Cenvat Credit Account on the export of said goods and, except in one rebate claim covered by the SCN No. 03/07-08 dated 28.05.2007 for Rs. 5,49,96,132/-as referred to in the Order-in-Original No. LTU/MUM/CX/JSP/GLT-6/R-56/2010 dated 08.12.2012, the remaining amount of rebate claims pertaining to duty paid through PLA account as mentioned in the said SCNs were not adjudicated and the records relating thereto were transferred to the LTU, Mumbai on 25.02.2011.

- 2.3 In the mean time, the Respondent had filed Special Civil Application No.12638/2008 and No.12639/2008 before High Court, Gujarat praying to declare Section 88 of the Finance Act, 2008 read with the six Schedule thereto, ultra-vices under Article 14, Article 19(1)(g) and Article 265 of the Constitution of India, which were allowed vide Order dated 25.02.2011. In Para 28 of the said judgment, the Hon'ble High Court observed and ordered that –

"28. Taking overall view of the matter, the court finds no merit or substance in any way of the contentions raised by the Respondents in justification of their stand to deny the benefit of rebate under Rule 18 of the Central Excise Rules, in respect of the exports made during the period from 08.12.2005 to 17.09.2007. Both these Petitions are, therefore, allowed to the above extent and the respondents are directed to grant the rebate forthwith as claimed."

- 2.4 The Department filed SLP against the said order passed by Hon'ble High Court. The Hon'ble Supreme Court vide order dated 23.07.2010 dismissed the said SLP. Thus the order of Hon'ble High Court had attained finality.
- 2.5 The consequential rebate claims which had been transferred to the LTU, Mumbai on 25.02.2011, and pending decision thereon, were accordingly taken up for adjudication by the Deputy Commissioner (CX), LTU, Mumbai, who observed that, the Respondent had cleared the excisable goods in respect of ARE-1 No.17/03.05.2007, 55/26.05.2007, 58/27.05.2007 and 59/28.05.2007 from the factory

of manufacturer during 03.05.2007 to 28.05.2007 and were exported on 14.12.2007 and in respect of ARE-I No. 620 dated 27.03.2007, the goods were cleared from the factory of the manufacturer on 27.03.2007 and the same was exported on 18.01.2008 i.e. all after six months from the clearance of goods from the factory of manufacturer, for which no permission for extension of validity of these ARE-1s was granted. Therefore, the adjudicating authority rejected the rebate claims amounting to Rs.32,93,929/- and Rs. 18,43,460/- vide Order-in-Original Nos. LTU/MUM/GLT-6/JSP/R-68/2010 dated 02.02.2011 and LTU/MUM/CX/GLT-6/R-72/2010 dated 28.02.2011 respectively and sanctioned the rest of the rebate claims. The details are as given below:

| Sr.No. | Rebate claim | OIO No & dt | Rebate amount (Rs) | | OIA No & dat |
|--------|--------------|---|--------------------|-------------|---|
| | | | Sanctioned | rejected | |
| 1 | 04.05.2007 | LTU/MUM/CX/GLT-6/JPS/R-56/2010 dt 08.12.2010 | 2,48,73,292 | | BPS/110-118/LTU/MUM/2012 dated 15.10.2012 |
| | 10.05.2007 | | 3,01,22,840 | | |
| 2 | 12.12.2007 | LTU/MUM/CX/GLT-6/JPS/R-58/2010 dt 21.12.2010 | 2,41,47,430 | | |
| 3 | 24.10.2007 | LTU/MUM/CX/GLT-6/JPS/R-58/2010 dt 21.12.2010 | 27,04,39,560 | | |
| 4 | 30.07.2007 | LTU/MUM/CX/GLT-6/JPS/R-67/2010 dt 31.01.2011 | 3,51,31,196 | | |
| 5 | 31.03.2008 | LTU/MUM/CX/GLT-6/JPS/R-68/2010 dt 02.02.2011 | 2,48,73,959 | 18,43,460 | |
| | 12.06.2008 | | | | |
| 6 | 07.07.2008 | LTU/MUM/CX/GLT-6/JPS/R-69/2010 dt 02.02.2011 | 3,16,37,269 | | |
| | 22.07.2008 | | 35,47,147 | | |
| 7 | 14.03.2008 | LTU/MUM/CX/GLT-6/JPS/R-72/2010 dt 28.02.2011 | 14,79,33,150 | 1,31,12,176 | |
| 8 | 08.01.2008 | LTU/MUM/CX/GLT-6/JPS/R-83/2010 dt 08.04.2011 | 47,77,835 | | |
| 9 | 08.01.2008 | LTU/MUM/CX/GLT-6/JPS/R-79/2010 dt 16.03.2011 | 2,23,43,791 | | |
| | 22.01.2008 | | 1,58,73,637 | | |

2.6 Aggrieved, the Respondent filed appeals before the Commissioner(Appeals), Central Excise & Service Tax, LTU Mumbai on the following grounds:

- (i) The interest on delayed sanction of rebate claims after the expiry of three months from the date of receipt of such application till the refund of such duty was not sanctioned by adjudicating authority under Section 11BB of Central Excise Act, 1944.
- (ii) The adjudicating authority had neither allowed nor rejected the rebate claim of Excise duty of Rs. 15,24,443/- in r/o ARE-1 No. 66 dated 02.06.2007, which was paid through their Cenvat account.
- (iii) The total amount of rebate claim covered under ARE-1 No 620/27.03.2002 involving Central Excise duty of Rs. 32,93,929/- and rebate claim amounting to Rs.18,43,460/- relating the excisable goods covered under ARE-1 Nos. 17/03.05.2007, 55/26.05.2007, 58/27.05.2007 and 59/29.05.2007 were rejected by the adjudicating authority vide Order-in-Original Nos. LTU/MUM/CX/GLT-6/R-72/2010 dated 28.02.2011 and LTU/MUM/CX/GLT-6/JPS/R-68/2010 dated 02.02.2011 on the ground that the goods were exported beyond six months from the date of their removal from the factory. However, Respondent contended that same were covered under respective Shipping Bills & Bills of Lading, though the goods were exported beyond six months and there is no dispute that the goods were actually exported by them. Hence the rebate on these goods may be granted.
- (iv) Rejection of the rebate claim, by the adjudicating authority, amounting to Rs. 98,18,247.33 on the grounds of alleged short shipment was never raised in Show Cause Notice issued to the Respondent. They appealed that adjudicating authority has to verify all the Shipping Bills and quantity shipped there under as the alleged short shipment appears to be in Shipping Bill Nos.

6134902 and 6135721 to the extent of 25396 Kgs. and rebate attributable to the same comes to Rs. 2,18,854/- only.

- (v) They are entitled for interest on the delayed payment of interest up to the date of interest.

2.7 The Commissioner(Appeals) considered the grounds of appeal partially allowed the Respondent's appeals as under:

- (i) Allowed interest on delayed sanction of rebate claims;
- (ii) Allowed rebate of Rs 15,24,443/- and directed to sanction the amount of rebate involved in ARE-1 No. 66/02.06.2007;
- (iii) Allowed amount of rebate claim of Rs.32,93,926/- involved in ARE- 1 No. 620/27.03.2007 and Rs. 18,43,460/ relating to their excisable goods covered under ARE-1 Nos.17/03.05.2007, 55/26.05,2007, 58/27 05.2007 and 59/29.05.2007 on account of delay in export of goods beyond six months period from the date of removal of the excisable goods from the factory;
- (iv) Upheld the Order of adjudicating authorities on rejection of rebate claim for short shipment of goods amounting to Rs.98,18,247.33 and;
- (v) Rejected the demand of interest on the statutory interest on account of delayed payment of interest up to the date of payment.

3. On examination of the facts and the said Order-in-Appeal, the Commissioner, LTU, Mumbai was satisfied that, the part of Order-in-Appeal, directing rebate claim of Rs. 32,93,929/- + Rs.18,43,460/- on account of goods exported beyond six months from the date of removal, is not legal, proper and correct and filed the current Revision Application of the following grounds:

- (i) The Respondent had cleared the excisable goods from the factory of manufacture and exported the same after six months. Thereafter, they

filed rebate claims. The rebate sanctioning authority disallowed the rebate amount of duty vide Order-in-Original Nos. LTU/MUM/CX/GLT-6/R-68/2010 dated 28.02.2011 and LTU/MUM/CX/GLT-6/R-72/2010 dt.28.02.2011. However, the Commissioner (Appeals) allowed the same and ordered that these rebate claims may be paid. However, under Rule 18 of the Central Excise Rules, 2002, the Central Government has issued a Notification No.19/2004- CE (NT) dated 06.09.2004 prescribing the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that, the excisable goods shall be exported within six months from the date on which they were cleared from the factory of manufacture or warehouse. Thus this mandatory requirement is not fulfilled by the Respondent.

- (ii) In view of above, the Respondent had failed to fulfill the condition No.(2)(b) of Notification No.19/2004-CE (NT) dt. 06.09.2004 and by not getting the required permission from the Commissioner, for exporting the goods beyond a period of six months and thus the mandatory requirement is not fulfilled. Hence the order of Commissioner (Appeals), was not correct, proper and legal.
- (iii) The Applicant prayed that the Order-in-Appeal, allowing amount of rebate claim of Rs.32,93,926/- and Rs. 18,43,460/- relating to their excisable goods on account of delay in export of goods beyond six months period from the date of removal of the excisable goods from the factory, be set aside and suitable orders may be issued considering the above points.

6. The Applicant Department delayed filing the Revision Application, details of which is given below:

| Sl. No. | OIA No. & dt | CESTAT filed on | CESTAT Order | Date RA / COD recd | No. of delay |
|---------|---|-----------------|--|--------------------|--------------|
| 1 | BPS/110-118/LTU/MUM/2012 dt. 15.10.2012 (Recd on 14.11.2012) | 12.02.2013 | Technical Officer, Cestat letter F.No. CESTAT/TO/Misc.Corr./2013 dt 18.02.2013 (Recd on 25.02.2013) | 11.03.2013 | 90+14 |

Appellants filed the Revision Application and the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

5. Personal hearing in the case was fixed on 22.01.2018, 23.02.2018 and 20.11.2019/28.11.2019. On behalf of the Applicant, the Superintendent, CGST, Gandhidam vide letter 09.10.2019 requested for adjournment of the personal hearing for a month, as they need time to through the documents. On 20.11.2019, Shri B.B. Mohite, Advocate attended the hearing on behalf of the Respondent. He submitted written submission and stated that the Commissioner(Appeals) had allowed the procedural lapse. However, there was a change in the Revisionary Authority, hence personal hearing was fixed on 11.01.2021, 18.01.2021, 25.02.2021. On 11.01.2021, Shri Bhanudas Mohite, Consultant attended the hearing on behalf of the Respondent. He reiterated his cross objections and reiterated synopses dated 20.11.2019. On being asked

- (i) whether any request was made to the Commissioner to extend time limit for export as required under Notification No. 19/2004-CE(NT);
- (ii) whether any case law has held that requirement of time limit, either to export or to file a rebate claim, is a procedural requirement;

he sought one week time to file additional submissions. No one appeared on behalf of the Applicant Department.

5. The Respondent submitted written submissions and synopses on the following grounds:

- (i) The authorization given by the Committee of Commissioners merely states that the Order-in-Appeal was found to be not legal and proper without any opinion expressing as to why the order to be challenged is not legally sustainable and therefore the appeal is devoid of any merits. It is also submitted that the authorization is undated and

hence not proper. Thus the application out to be rejected on this ground alone. Respondent relies upon the following decisions in support of their above contentions:

- (a) CCE. & CUS., Surat-I Vs Shri Ganesh Dying & Pting. Works [2008(232) ELT 775 (Guj.)]-.
 - (b) CCE Delhi-III Vs B.E. Office Automation Product Pvt Ltd. [2010 (249) ELT 24 (P & H)].
 - (c) CCE, Meerut V/s Daurala Sugar Works [2010 (254) ELT 495(Tri. Delhi)].
 - (d) CCE, MEERUT Vs Avadh Alloys (P) LTD. [2012 (279) ELT 304 (Tri.- Del.)].
 - (e) CCE, Delhi-III Vs IMT Cable Pvt. Ltd. [2016 (339) E.L.T. 139 (Tri. - Del.)].
- (ii) The Applicant had also filed the application for condonation of delay of 27 days in filing the present revision application. It has been stated that inadvertently the appeal in form EA-3 was filed before CESTAT, WZB. Mumbai on 12.02.2013 which was within the time limit. The Technical Officer, Cestat vide letter dated 18.02.2013 informed that on such matter of rebate claims proper authority is Revision Authority. The said letter has been stated to have been received by Applicant on 25.12.2013 and then the Applicant filed their application within further period of three months claiming to be condonable. The Respondent submitted that the said application is undated. The Applicant had mentioned the date of receipt of letter dated 18.02.2013 as 25.12.2013, which again is fictitious since December is too far. It is settled position that ignorance of law is no excuse. In view of above, the Application for condonation of delay has no merit hence to be out rightly rejected.
- (iii) It is undisputed that the aforesaid goods were cleared from the factory on payment of appropriate central excise duty and the export of the said goods was also not in dispute. The Commissioner(Appeals) had examined this aspect in Para 22 of the said Order-in-Appeal and held that once the duty payment on the goods exported and their physical

export is established beyond doubt, the substantive right to get rebate of duty already suffered on such goods gets accrued to the claimant. It is already settled law that substantive benefit can not be denied on account of minor procedural infractions. He relied upon the case laws cited by Respondent and also decision in case of IN RE. Alcon Biosciences Pvt. Ltd. [2012(281) ELT 732 (G.O.I.)].

(iv) The Commissioner(Appeals) was correct in allowing the rebate because for the simple reason of delay in export beyond the period of six months, the export incentive cannot be denied when the export of goods on payment of duty has been established. Respondent relied upon following caselaws:

- (a) Sambhaji Vs Gangabhai [2009 (240) ELT 161 (S.C.)]
- (b) IN RE : Harison Chemicals [2006 (200) ELT 171 (GOI)]
- (c) CCE Kolkata-I Vs Rahul Complex P. Ltd. [2007 (208) ELT 296 (Tri. - Kolkata)].
- (d) Birla VXL Ltd. Vs CCE. Chanigarh [1998 (99) ELT 387 (Tri.)].
- (e) IN RE : Modern Process Printers [2006 (204) ELT 632 (GOI.)]
- (f) In RE : Non-Ferrous Materials Technology Development Centre. [1994 (71) ELT 1081 (GOI)].
- (g) IN RE. Alcon Biosciences Pvt. Ltd. [2012(281) ELT 732 (GOI)].

(v) In view of the above the Order-in-Appeal allowing rebate of Rs. 51,37,389/- is correct and legal. The review order and Revision application are both infructuous. The application for condonation of delay is on unreasonable grounds hence not deserve any consideration. Therefore, revision application filed by the Applicant in this case out to be dismissed.

6. The Respondent vide their email dated 18.01.2021 submitted the following clarifications and requested to condone the delay in export and allow the rebate:

- (i) whether any request was made to the Commissioner to extend time limit for export as required under Notification No. 19/2004-CE(NT) –

the Respondent submitted that they had not made any application for extension of time period beyond six months as there was probability of export within time limit. However, due to the following reasons there was delay in exports:

- (a) The shipment to Iraq was delayed as the Iraq was war Zone Country and they had severe problem in getting the vessels for shipment. Also the client could not extend the LC due to war problems and the country was financially affected.
 - (b) The shipment to Iran was delayed due to sanction imposed by USA on Iran. They submitted a copy of Swift Message from SBI New York to SBI India for reference.
- (ii) whether any case law has held that requirement of time limit, either to export or to file a rebate claim, is a procedural requirement –The Respondent relied upon judgments:
- (a) IN RE: Harison Chemicals [2006 (200) ELT 171 (GOI)];
 - (b) Commissioner of C.Ec. Kolkata-I Vs Rahul Computex Pvt Ltd. [2007 (208) ELT 296 (Tri. Kolkata);
 - (c) IN RE: Pearson Drum & Barrels Pvt. Ltd. [2014 (313) ELT 998 (GOI)]

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

8. Government first proceeds to discuss the issue of delay in filing the revision application. It is clear that Applicant Department has filed the revision application after 3 months + 14 days, when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. In view of judicial precedence that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of

Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

9. On perusal of records, it is noted that the total amount of rebate claim covered under ARE-1 No 620/27.03.2002 involving Central Excise duty of Rs. 32,93,929/- and rebate claim amounting to Rs.18,43,460/- relating the excisable goods covered under ARE-1 Nos. 17/03.05.2007, 55/26.05.2007, 58/27.05.2007 and 59/29.05.2007 was rejected by the adjudicating authority vide Order-in-Original Nos. LTU/MUM/CX/GLT-6/R-72/2010 dated 28.02.2011 and LTU/MUM/CX/GLT-6/JPS/R-68/2010 dated 02.02.2011 on the ground that the goods were exported beyond six months from the date of their removal from the factory. Respondent had cleared the excisable goods from the factory of manufacture and exported the same after six months. Thereafter, they filed rebate claims and the rebate sanctioning authority disallowed the rebate amount of duty. However, the Commissioner (Appeals) allowed the same and ordered that these rebate claims may be paid along with interest.

10.1 Government observes that the Commissioner(Appeals) has allowed the rebate of central excise duty paid on goods which have not been exported within six months of their clearance from the factory on the ground that there was no dispute about the duty paid nature of the goods, that the respondent could not be deprived of substantive benefits for minor procedural infractions, that there was substantial compliance. Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional Commissioner for extension of the prescribed time limit. In the present case, the Respondent has not made any such effort.

10.2 Respondent has contested that requirement of time is procedural and substantive benefit cannot be denied on minor procedural infractions as the goods were cleared from the factory on payment of appropriate central excise duty and the export of the said goods was also not in disputed. Government finds that Notification No. 19/2004-CE (NT) dated 06.09.004 prescribes the condition and limitations upon which a claim for rebate can be granted:

“(2) Conditions and limitations : -

(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

(b) the excisable goods shall be 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;”

Government notes that the Respondent had failed to fulfill the condition No.(2)(b) of said notification and by not getting the required permission from the Commissioner, for exporting the goods beyond a period of six months. Further this is a condition and not procedure which can be condoned. Hence rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-C.E. (N.T.) was not complied with.

10.3 Respondent has contested that authorization given by the Committee of Commissioners was not legal and proper without any opinion expressing as to why the order to be challenged is not legally sustainable and therefore the appeal is devoid of any merits. Government finds that based on the reviewing orders of the Committee of Commissioners, the Applicant Department had filed the “*Grounds of Application*” before the revisionary authority. Hence the authorization given by the Committee of Commissioners is legal and proper.

11. There has been failure on the part of an established manufacturer in not even applying to competent authority for extension of time, which

cannot be justified. The Respondent has exhibited utter disregard for the conditions laid down. The judgments relied upon by the Commissioner(Appeals) are not on the specific issue involved in these proceedings and are therefore distinguishable. However, the Hon'ble Bombay High Court has in the case of Cadila Healthcare Ltd. vs. UOI [2015(320)ELT 287(Bom)] while interpreting the amplitude of condition 2(b) held that the Maritime Commissioner(Rebate) had rightly rejected the rebate claim where permission granting extension could not be produced by the exporter. In spite of the fact that the petitioner in that case was on a better footing as they had tried to obtain permission from the Commissioner for extension of time limit of six months, their Lordships did not extend any relief. The judgment of the Hon'ble Bombay High Court being a judgment rendered by the jurisdictional High Court is binding and therefore the order of the Commissioner(Appeals) allowing the rebate in respect of exports which were not effected within permitted period of six months from the date of clearance of goods from the factory cannot sustain.

12. Government also relies on GOI Order No. 390/2013-CX. dated 17-5-2013 [2014 (312) E.L.T. 865 (G.O.I.)] in Re: Ind Swift Laboratories Ltd. involving identical issue wherein Government held as under:

“Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The respondents have categorically admitted that goods were exported after six months’ time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-C.E. (N.T.), dated 6-9-2004. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-C.E. (N.T.) is not complied with. Government accordingly sets aside the order of Commissioner (Appeals) and restores the impugned Order-in-Original.”

13. In view of the above discussions and findings, Government sets aside the Orders-in-Appeal No. BPS/110-118/LTU/MUM/2012 dated 15.10.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, LTU, Mumbai to that extent and restores the impugned Order-in-Original Nos. LTU/MUM/CX/GLT-6/R-68/2010 dated 28.02.2011 and LTU/MUM/CX/GLT-6/R-72/2010 dt.28.02.201.

14. Revision Application is allowed in terms of above.

Shrawan
25/5/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 205/2021-CX (WZ)/ASRA/Mumbai Dated 25.5.2021

To,

The Commissioner of CGST & CX.,
Mumbai South,
13th Floor, Air India Building,
Nariman Point,
Mumbai 400 021.

- Copy to :
1. M/s Man Industries (India) Ltd., Survey No. 458/2, Anjar-Mundra Highway, Village Khedoi, Anjar, Kutch, Gujarat -370 130.
 2. The Commissioner of CGST & CX., Kutch, Gujarat.
 3. Sr. P.S. to AS (RA), Mumbai.
 4. Guard file.
 - ~~5.~~ Spare Copy.