F. No. 195/304/13-RA

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. 195/304/13-RA /5232 Date of Issue: 16.09.2024

ORDER NO. 293/2021-CX (WZ) /ASRA/MUMBAI DATED 27.8.2021 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.

Applicant	:	M/s Man Industries (India) Ltd. Anjar-Kutch, Gujarat
Respondent	:	Commissioner of Central Excise & Service Tax, Large Taxpayer Unit, Mumbai
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. BPS/110-118/LTU/MUM/2012 dated 15.10.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), Large Taxpayer Unit, Mumbai

ORDER

This Revision Application has been filed by M/s Man Industries (India) Ltd. Anjar-Kutch, Gujarat (hereinafter referred to as "the applicant") against Orders-in-Appeal No. BPS/110-118/LTU/MUM/2012 dated 15.10.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), Large Taxpayer Unit (LTU), Mumbai

2. The brief facts of the case are that the applicant manufactured and exported submersible ARC Welded Pipes (SAW Pipes) CETH 73051121. They had exported excisable goods under claim of rebate of Central Excise duty in terms of Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the central Excise Rules, 2004 read with Section 11 B of Central Excise Act, 1944 during the during the relevant periods. Besides, the applicants were also availing benefits of exemption from payment of duty in terms of Notification No.39/2001-CE dated 31.07.2001 inasmuch as they were obtaining refund of duty paid through PLA by way of -a-credit /refund under Section 5A of the Central Excise Act, 1944. Nevertheless, they filed several rebate claims(as per details given in Annexure-A to impugned Order) with the jurisdictional Deputy Commissioner of Central Excise, Bhuj Central Excise Division, Bhuj (Gujarat) on the relevant dates, for refunding the entire duty (i.e. duty paid through CENVAT account as well as through PLA.) paid under Notification No.19/2004-CE (NT) dated 6.9.2004, in respect of the Central Excise duties paid on the said excisable goods exported during the relevant periods. It was considered by the jurisdictional Deputy Commissioner of Central Excise, Bhuj that the rebate claims pertaining to the duty paid through PLA, for which re-credits under Section 5A of the Central Excise Act, 1944 had already been obtained by them in terms of Notification No. 39/2001-CE dated 31.07.2001, were not admissible and refund of PLA duty already granted in terms of the Notification No.31/2001-CE made the goods exempted and no rebate could be allowed thereon.

3. Accordingly, Show Cause Notices (SCNs) were issued to the applicant to explain as to why their rebate claims pertaining to the amounts, on which benefits under Notfn. No. 39/2001-CE had already been availed, should not be rejected under Rule 18 of the Central Excise Rules, 2002 read with para (1) of Notification 39/2001-CE dated 31.07.2001 and sub-para (a) of Section 11 B of the Central Excise Act, 1944. The jurisdictional Deputy Commissioner of Central Excise, Bhuj

Central Excise Division, Bhuj (Gujarat), allowed the rebate of duty paid only through CENVAT account on the export of said goods and, except in one matter covered by the SCN No. 03/07-08 dated 28.05.2007 issued under F.No.V73 (10)-285/Reb/2007 for an amount of Rs. 5,49,96,132/-, as referred to in the O-in-O No. LTU/MUM/ CX/ JPS /GLT-6/R-56/2010, dated 08.12.2010, the remaining amount of rebate claims pertaining to duty paid through PLA account as contained in the said SCNs could not be adjudicated and the records relating thereto were transferred to the LTU, Mumbai on 25.02.2011 as a consequence to the joining of the applicant's Unit in the LTU, Mumbai. The applicant thereafter, was required to show cause in these pending matters to the Deputy Commissioner of Central Excise, LTU, Mumbai.

4. In the mean time, the applicant had filed Special Civil Applications No. 12638/2008 & 12639/2008 filed before the Hon'ble Gujarat High Court of Judicature at Ahmadabad, praying therein to declare Section 88 of the Finance Act, 2008 read with the sixth Schedule thereto, as *'ultra Wires'*, under Article 14, Article 19 (1) (g) and Article 265 of the Constitution of India, were allowed vide Order dated 25.02.2010 with following operative findings:-

> *"28 . Taking overall view of the matter, the court find 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".*

5. The aforesaid Order dated 25.02.2010 of the Hon'ble High Court attained finality as the Hon'ble Supreme Court dismissed the S.L.P. filed by the Union of India against the aforesaid judgement dated 25.02.2010 of the Hon'ble High Court. It was therefore concluded that the claimant availing exemption under Notification No.39/2001-CE dated 31.07.2007 were also eligible for the rebate of duty paid through PLA on the export of goods. The consequential rebate claims of the applicant which had been transferred to the LTU, Mumbai on 25.02.2011 and pending decision thereon, were sanctioned vide nine Orders in Original (OIOs)by holding that the applicant was entitled to the rebate of Central Excise duty paid (including of Education Cess & Higher Education Cess) on the goods exported.

6. The applicant filed 9 appeals against said 9 OIOs with Commissioner(Appeals), LTU as no interest was sanctioned and paid to them on delayed payment of rebate under Section 11BB of the Central Excise Act,1944.

7. The Applicant filed additional grounds and claimed

i. Interest on delayed payment of interest under Section 11 BB of the Central Excise Act, 1944;

ii Rebate of Rs. 15,24,443/- which was neither sanctioned nor rejected;

iii Rebate of Rs.32,93,929/- + Rs.18,43,460/- rejected on grounds that goods were not exported within six months from the clearance from the factory;

iv. Rebate of duty of Rs.98,18,247/- which was rejected on the grounds of short shipment;

v. Interest on delayed payment of rebate sanctioned under OIOs mentioned At Para 4 of RA

8. Vide impugned OIA dated 15.10.2012, the Ld Commissioner(Appeals):-

i. Allowed interest on delayed payment of rebate under Section 11BB of the Central Excise Act, 1944;

ii. Sanctioned rebate of Rs.15,24,443/- along with interest under Section 11BB of the Central Excise Act, 1944;

iii. Allowed rebate of Rs.32,93,929/- + Rs.18,43,480/- along with interest under Section 11 BB of the Central Excise Act, 1944;

iv. Rejected rebate of Rs.98,18,247/- on the grounds of short shipment;

v. Rejected claim for interest on delayed payment of interest under Section 11 BB of the Central Excise Act, 1944;

9. The present Revision Application has been filed by the applicant against the OIA dated 15.10.2012 :

- Rejecting rebate of Rs.98,18,247/- on the grounds of short shipment and

- Rejecting claim for interest on delayed payment of interest under Section 11BB.

10. The applicant has filed this Revision Application mainly on the following grounds:-

11. REBATE OF RS.98,18,247/-

a) The Ld. Commissioner (Appeals), while rejecting the rebate Rs.98,18,247/- under ARE-1 Nos. 66/02.06.2007, 83/16.06.2007, 84/17.06.2007, 86/19.06.2007 and 87/20.07.2007 held that as per the procedure for exporting the goods, the ARE-1 must carry a cross reference of the corresponding Shipping bill and vice-versa. Further, in the present case, though the quantity exported under shipping bill Nos. 6136652 and 6138312 is eventually in excess i.e. 585590 kgs & 528265 kgs of quantity shown in the corresponding ARE-1's, but that excess quantity is not found relatable to the ARE-1's i.e. 66/02.06.2007, 83/16.06.2007, 84/17.06.2007, 86/19.06.2007 and 87/20.07.2007 against which lesser quantity of goods i.e. 394592 kgs & 744659 kgs was shipped under shipping bill Nos.6134902 & 6135721. Hence, Ld Commissioner (Appeals) upheld the OIO rejecting rebate of Rs.98,18,247/-.

b) The issue of short shipment was not raised in SCN prior to rebate sanctioning OIO dated 28.02.2010. The sanctioning authority has not verified all the shipping bills and quantity shipped thereunder. If the entire quantity of all the ARE-1s is compared with all relevant shipping bills, the actual short shipped quantity comes to only 25396 kgs and rebate attributable to said quantity comes to Rs. 2,18,854/-. Accordingly, an amount of rebate of Rs.95,99,393/-(Rs.98,18,247 – Rs.2,18,854) is legally admissible to the applicant.

The detailed reconciliation chart is submitted as under showing the actual position.

As per Shipping bills				As per ARE-1's					Actual Shipment	
SB No.	Quantity			ARE 1 No	Date	Duantrty			Short	Excess
	Nos.	Mtrs.	Kgs.			Nos	Mtrs	Kgs.		
6134902	71	860	257650	66	02.06.07	180	2177.9	652242	394592	0
6135721	612	7392.51	2214704	83	16.06.07	180	2185.28	654556	0	
				84	17.06.07	222	2691.31	806178	0	
				86	19.06.07	234	2827.82	847151	0	0
				87	20.06.07	180	2174.48	651478	0	0
						816	9878.89	2959363	744659	
6136652	614	7430.08	2225717	76	09.06.07	108	1304.43	390812	0	0

				82	15.06.07	84	1016.05	304379	0	0
				97	26.06.07	168	2037.92	610385	0	0
				99	27.06.07	84	1019.72	305428	0	G
				95	25.06.07	8	97.236	29123	0	0
						452	5475.356	1640127	0	585590
6137225	100	1215.45	364034	95	25.06.07	100	1215.454	364034	0	0
6138312	700	8432.58	2528409	91	21.06.0	198	2390.21	716075	0	0
				93	23.06.07	174	2106.38	630967	0	0
				94	24.06.07	180	2180.33	653102	0	0
						552	6676.92	2000144	0	528265

The actual short shipment (394592 + 744659) - (585590+528265)= 2 53,964 Kgs and the duty attributed to the said quantity is Rs.2,18,854/-

Therefore the difference of rebate to be sanctioned (9818247/- 218854/-) = Rs. 95,99,393/-

c) The following calculation chart would make the position transparent.

SB No & date	Quantity in SB			ARE-1 Nos mentioned in SB	Rebate allowed			
	Nos.	Mtrs.	Kgs		ARE-1	Nos.	Mtrs	Kgs
6138312 dated 09.07.2007	708	8432.58	2528409	52/07.08				
				53/07.08				
				91/07.08	91/07.08	198	2390.91	716075
				93/07.08	93/07.08	174	2106.38	630967
B/L No. AMMLLGOS dated				94/07.08	94/07.08	180	2180.33	653102
	708	8432.58	2528409			552	6676.92	2000144

The rebate not sanctioned on 156 nos pipes measuring 1755.66 Mtrs and weighing 528265 Kgs against SB No.6138312

SB No & date	Quantity in SB			ARE-1 Nos mentioned in SB	Rebate allowed			
	Nos.	Mtrs.	Kgs		ARE-1	Nos.	Mtrs	Kgs
6136652	614	7430.08	2225717	82/07.08	82/07.08	84	1016.05	304379
dated				97/07.08	97/07.08	168	2037.92	610385
29.06.2007				99/07.08	99/07.08	84	1019.72	305428
B/L No. AMMLLGOS				51/07.08				
dated				76/07.08	76/07.08	108	1304.43	390812
22.07.2007				95/07.08	95/07.08	108	1312.690	393157
&								
58.6137225	100	1215.45	364034	95/07.08				
Dt.03.07.2007								
	714	8645.53	2589751			552	6676.92	2000144

Thus from the aforesaid chart it is absolutely clear that the rebate was not sanctioned on 162 Nos. pipes measuring 585590 kgs against SB No.6136652/6137225.

d) It may be noticed from the S/B. No. 6136652 that it exported goods weighing 2225717kgs. In said S/B, ARE-1 Nos. are mentioned as 76. 82, 97, 99, 85 and 51. The goods weighing 665996 kgs covered under ARE-1 No.51/07-08 had already exported under S/B No.6129642. Therefore, the ARE-1No.51/07-08 was inadvertently referred in S/B No.6136652.

Similarly, a quantity of 2528409 kgs exported under SIB No 6138312, the corresponding ARE-1 shown are No.91/20.06.2007, 93/23.06.2007, 94/24.07.2007, 52/24.05.2007 and 53/25.05.2007. Whereas, goods weighing at 575155 kgs (34483+540672) covered under ARE-1 No. 52 & 53 had already exported under S/B No. 6129642 & 6129801 respectively. Therefore, these ARE-1s 52 &53 had been inadvertently mentioned in the S/B No.6138312.

Therefore, the excess quantity of 585590 kgs and 528265 kgs actually exported pertains to those 5 ARE-1s i.e. 66,83,84,86 & 87 against which short shipment has been alleged to have been made under S/B No.6134902 and 6135721.

e) Export under all the S/B Nos. 6136652, 6138312, 6134902, 6135721 and 6137225 were consigned to :-

i. a single foreign buyer viz Nigerian Gas Co. Ltd.;
ii. same port of Destination-Tin can/Lagos, Nigeria:
iii Bill of Lading for all S/Bs was- AMMLLGOS/22.07.2007;
iv Short shipment under S/B Nos.6134902 & 6135721 had made good the shortage by exporting excess quantity under S/B Nos. 6136652, 6137225 & 6138312 on the same day i.e. 22.07.2007.
v They are entitled for rebate of duty paid on goods exported as evidenced from S/B, B/L even if there is any clerical error in ARE-1 & S/B.
vi. The Ld Commissioner (Appeals) admitted that quantity exported under S/B 6136652 & 6138312 is in excess of quantity shown in respective ARE-1s.
vii. As such, they are entitled for rebate of quantity 528265 kgs under S/B 6138312/09.07.2007 & 6136652/29.06.2007.

From the clarification charts shown above it is absolutely clear that rebate was not sanctioned on 156+162 nos. pipes measuring 528265 kgs +585590 kgs against SIB Nos. 6136652, 6138312 and 6137225.

f) Even though there was short shipment of 394592 kgs and 744659 kgs (total 1139251 kgs) against S/B Nos. 6134902 and 613572, it is an admitted fact that the applicant did not gate rebate on 528265 kgs against S/B No.6138312 and 585590 kgs against S/B Nos.6136652 & 6137225 (total 1113855 kgs). Therefore final position emerges that there was actual short shipment of 25396 kgs (1139251-1113855). Therefore the rebate claim of Rs. 2,18,867/-(Rs.98,18,247 divide by 1139251 kgs multiply by 25396 kgs) could only be liable for rejection and balance rebate of Rs.95,99,380/- (98,18,247 -2,18,867) has to be sanctioned to the applicant.

g) The non-fulfillment of the procedure can not lead to denial of the benefit under beneficial legislation provided for export benefits as held in — 2009 (16) STR. 198 (Tri .-Del.).

h) Claim of rebate cannot be denied when the export of the goods is not in doubt as held in:-

(i) 2012(276) ELT.113 (GOI) (ii) 2012(276) ELT.131 (GOI), (iii) 2012(276) ELT.116 (GOI), (iv). 2012(276) ELT.127 (GOI), (v) 2011(268) ELT.111 (GOI), (vi) 2006(204) ELT.632 (GOI).

i) In the event the rebate is sanctioned to them, they will also be eligible for interest under Section 11 BB for the period from three months from filing application till the payment of rebate as held in 2011(273) ELT 3 (SC).

CLAIM OF INTEREST ON DELAYED PAYMENT OF INTEREST UNDER SEC.11BB

j) They had contested before the Ld. Commissioner(Appeals) that they are entitled for grant of interest for delayed payment of interest in terms of Hon'ble Supreme Court judgment in case of Sandvik Asia Ltd V/s Commissioner Income Tax-I, Pune [2006(196)ELT.257(SC)]. However the Ld Commissioner held that this case is not applicable as relates to Income Tax. Further, the Central Excise Act do not provide for grant of such interest. As such rejected the request.

However the applicant submit that the Hon'ble Supreme Court in the case referred held that "This compensation includes interest on interse wrongly withheld irrespective of absence of any statutory provision granting same." As such, applicant is entitled for interest on delayed payment of Interest.

Relying on above decision, the Tribunals in following cases held that interest on interest is admissible: 2008(225)ELT.375(Tri. Bang), 2010(253)ELT. 160 (Tri. Chennai), 2009(16)STR.228 (Tri.Bang).

The Honble High Court of Allahabad categorically held that lower formations cannot distinguish judgments of Supreme Court on facts and interpretation of law- 2011(272)ELT.11(All.).

k) Therefore, it is prayed for modification of the impugned OIA and

(i) the rebate of Rs.95,99,393/- along with interest under Section 11BB be allowed to applicant, and

(ii) Interest on delayed payment of interest may also be allowed.

8. A personal hearing in the matter was held on 24.02.2021 through video conferencing which was attended online by Shri B.B. Mohite, Advocate on behalf of the applicant. He re-iterated the points made in Revision Application and further submitted that short shipment was minor and denial of total rebate was not correct. He submitted that Commissioner (Appeals) did not accept their submissions on the grounds that no explanation has been given to short shipment and evidences submitted are not relatable to export. He requested for allowing interest only.

9. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused Orders-in-Original and the impugned Order-in-Appeal. Government observes that both the Department as well as the applicant assessee have filed revision applications against the impugned OIA.

The revision application filed by the Department has already been decided vide Order No. 205/2021-CX(WZ)/ASRA/MUMBAI dated 25.05.2021.

10. The Department had filed revision application against the impugned OIA for allowing rebate on goods which had not been exported within six months from the date of their clearance from the factory. In the instant proceedings, the applicant has filed for revision against the rejection of rebate of Rs. 98,18,247/- on grounds of short shipment and the rejection of claim for interest on delayed payment of interest under Section 11BB of the CEA, 1944.

11.1 Government finds that the applicant has set out a table and given explanations in an attempt to co-relate the total quantity covered under the shipping bills and the ARE-1's under which the goods have purportedly been exported. It is observed that the issue of the disallowance of rebate on the ground of short shipment was discussed in detail by the Commissioner(Appeals). The relevant text is reproduced below.

> *"25. The explanations, tendered by the Appellants regarding the alleged short shipment as pointed out by the adjudicating authority in the impugned order No. R/72, may appear convincing in the first glance inasmuch as the quantity of goods, allegedly found short-shipped in the Shipping Bill Nos. 6134902 & 6135721 may be adjusted against the excess quantity of goods shipped under Shipping Bill Nos. 6136652 and 6138312 as against the quantity shown in the corresponding ARE-1's. But, a closer scrutiny of the above chart in the light of the corresponding Shipping Bills and ARE-1's, copies of which have been produced by the Appellants along with their Appeals & Additional Submissions, as referred to supra, would reveal a different story.*
>
> *26. The excess quantity of excisable goods is shown to have been exported under Shipping Bill Nos. 6136652 and 6138312. It may be seen from the photo copy of the Shipping Bill No. 6136652 that it exported goods weighing at 2225717 Kgs. attributable to ARE-1 Nos. 76, 82, 97, 99, 95 and 51, as mentioned therein. However, the Appellants have claimed that goods weighing 665996 Kgs. against ARE-1 No. 51/07-08 had already been shipped under another Shipping Bill No. 6129642 and as such the ARE-1 No. 51/07-08 was inadvertently referred to in the Shipping Bill No. 8136652.*

27. Similarly, a quantity of 2528409 Kgs is shown to have been exported under Shipping Bill No. 6138312. The corresponding ARE-1s shown therein were ARE-1 Nos. 91/21.06.07; 93/23.06.07; 94/24.06.07; 52/24.05.07 and 53/25.05.07. Here again, it is claimed that goods, weighing at 575156 Kgs covered under ARE-1 No. 52 & 53 had already been exported under another Shipping Bill No. 6129642 & 6129801 respectively. Therefore, these ARE-1s i.e. 52 & 53 had been inadvertently mentioned in the Shipping Bill No. 6138312. If the Appellants' view point is considered correct, then a presumption might arise that the excess quantity of 585590 Kgs and 528265 Kgs actually exported against the above-mentioned two Shipping Bills Nos 6136652 and 6138312, was pertaining to those 5 ARE-1's (i.e. 66,83,84,86 & 87) against which short shipment has been alleged to have been made under Shipping Bills Nos. 6134902 and 6135721.

28. As per the procedure for exporting excisable goods, the ARE-1 must carry a cross reference of the corresponding Shipping Bill under which the said goods are exported and vice-versa. I do not find any no cross reference of the relevant ARE-1s, against which the quantity of goods had been allegedly short-shipped in the Shipping Bill Nos. 6134902 & 6135721. In the corresponding ARE-1s of which the goods were shipped under Shipping Bill Nos. 6136652 and 6138312 in excess of the quantity shown in the corresponding ARE-1s. In the present case, though the quantity, exported under Shipping Bill Nos. 6136652 and 6138312 is, evidently, in excess of the quantity shown in the corresponding ARE-1s, but that excess quantity is not found relatable to the ARE-1s wherein short shipment has been noticed. In absence of cross reference of such ARE-1s in the Shipping Bills/ARE-1s. It cannot be concluded beyond doubt that the said excess quantity shipped under Shipping Bills Nos. 6136652 and 6138312 actually pertained to the earlier ARE-1s e.g. 66/02.06.2007; 83/16.06.2007; 84/17.06.2007, 86/19.06.2007; and 87/20.06.2007 against which lesser quantity of goods was shipped under Shipping Bill Nos. 6134902 & 613575721. Therefore, in the absence of corresponding documentary evidence to support the contention that the excess quantity shipped later was nothing but the short shipped quantity of the previous Shipping Bills, is not tenable and no relief on the above account can possibly be extended to the Appellants. The reduction of rebate claims by an amount of Rs. 9818247.33/- is, therefore, upheld."

11.2 Aside from these findings recorded by the Commissioner(Appeals), Government finds that the rebate of duty on the export goods is allowed under Notification No. 19/2004-C.E. subject to the conditions, limitations and procedures specified in Para 2 and Para 3 thereof. While the conditions and limitations are

specified in Para 2, the procedure to be followed is specified in Para 3 of this notification. It is evident from the use of the word "shall" in Para 2(a) to 2(g) of the notification that all the conditions and limitations mentioned in Para 2 are mandatory and non-negotiable. Further the condition that the excisable goods shall be exported after payment of duty is a substantive condition for claiming the rebate of duty. Similarly the procedure relating to sealing of goods and examination at the place of dispatch and export thereof specified in Para 3(a)(i), ((ii) and (iii) of the notification are also mandatory. The essence of these conditions and the procedure prescribed is to establish the identity and the duty paid character of export goods which has not been done in the present case which is a substantive condition of notification. The basic condition for admissibility of refund of rebate is that the goods should be duty paid. In the present case, the duty paid character of the goods is uncertain. Moreover, the commodity which has been exported is submersible arc welded pipes(saw pipes). It is seen from the ARE-1 enclosed with the revision application that the goods do not bear any distinguishing marks. The products are not such that they have an exclusive serial no. or mark by which they could be identified as specifically manufactured by the applicant and co-related with the duty paying invoice.

11.3 The submission of the applicant that they should be allowed rebate of the quantity of goods which were found to have been short shipped is based on an arithmetical calculation based on addition and subtraction. It does not actually realign clearances under different ARE-1's against specific shipping bills to show that the quantities tally exactly. It is also a fact on record that the shipping bills bearing the ARE-1 details have been attested to by the Customs Officer issuing Let Export Order. The applicant has tried to cast the onus of the clearly incorrect claims filed by them by contending that the rebate sanctioning authority ought to have verified all the shipping bills and quantity shipped thereunder. This argument cannot be given any credence. Surely the rebate sanctioning authority cannot be expected to sit with different claims and to co-relate them ARE-1 by ARE-1 where the quantity exported does not tally with the quantity mentioned in the corresponding shipping bill. The applicant also expects that the rebate sanctioning authority would then find out the shipping bill where excess quantity has been shipped and allow rebate on quantity corresponding to such ARE-1's. It is also pertinent to note that the serial no. of certain ARE-1's are appearing in more than

one shipping bill. It is also pertinent that inspite of these adjustments which the applicant has sought to base his arguments for allowing rebate on, the applicant themselves have conceded to actual short shipment of 25396 kgs and relinquished their claim to corresponding rebate claimed amounting to Rs. 2,18,867/-. The inference that ensues is that the applicant is admitting to having filed rebate claim in respect of goods which had never been exported. If not for the scrutiny of the rebate claims by the lower authorities, the applicant would have been sanctioned the rebate claimed. The very fact that the quantity does not tally with the shipping bills inspite of the jugglery with figures resorted to by the applicant confirms the hollowness of these contentions.

11.4 The applicant expects that the rebate sanctioning authority who is also a revenue officer vested with the duty to protect government revenue would go by their assertions and allow rebate of such huge amounts on the basis of contrived arithmetical calculations which are based on presumption rather than factual evidences. In a situation where the goods have been removed without central excise supervision, the applicant has not made any effort to obtain clarification from the Customs authorities to certify the correctness of these far-fetched contentions. Needless to say, a diligent assessee would have put in their best efforts to give their assertions a measure of credibility. No such effort has been made by the applicant. In view of the findings recorded hereinbefore and the detailed observations recorded by the Commissioner(Appeals) in the impugned order, the rebate claimed by the applicant in respect of short shipment of goods is not admissible. Government therefore concurs with the order of the Commissioner(Appeals) rejecting the rebate claimed amounting to Rs. 98,18,247.33.

12. In so far as the ground made out by the applicant claiming interest on delayed payment of interest under Section 11BB of the CEA, 1944 on the basis of the judgment of the Hon'ble Supreme Court in the case of Sandvik Asia Ltd. vs. Commissioner of Income Tax-I, Pune[2006(196)ELT 257(SC)], Government observes that there are vast powers vested in the Supreme Court of India and other courts of law by the Constitution of India. The courts may in their wisdom exercise such powers and grant relief where their Lordships may deem fit. However, the powers exercised by the Government in revisionary proceedings are in terms of Section 35EE of the CEA, 1944 and Section 129DD of the CA, 1962. These powers are

confined to the scope of the CEA, 1944 and the CA, 1962. In the present case, the applicant is seeking interest on the delayed payment of interest which has not been provided for in the statute. The applicant has also relied upon decisions of the CESTAT which have allowed interest on delayed payment of interest. Government refrains from recording any observations about these decisions and reiterates that it cannot exceed the scope of the CEA, 1944 and the rules in the revisionary proceedings. The claim of the applicant for grant of interest on delayed payment of interest is rejected.

13. In the result, Government does not find any reason to interfere with the impugned OIA No. BPS/110-118/LTU/MUM/2012 dated 15.10.2012 to the extent that it rejects rebate amounting to Rs. 98,18,247/- and the claim for interest on delayed payment of interest under Section 11BB of the CEA, 1944.

14. Revision Application filed by the applicant is hereby rejected.

Shrawan 27/8/21

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

ORDER No 293/2021-CX (WZ) /ASRA/Mumbai DATED 27.8.2021

To,
M/s Man Industries (India) Ltd.
Survey No. 4585/2,
Anjar-Mundra Highway,
Village Khedoi,
Tal : Anjar-Kutch, Gujarat

Copy to:
1. The Commissioner of CGST and Central Excise, Mumbai South, 13th Floor, Air India Bldg. Nariman Point, Mumbai 400 021
2. The Commissioner of CGST & Central Excise, (Appeals-I) 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai-400 012
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Spare Copy