REGISTERED SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.198/65 & 66/13-RA/1539 Date of Issue: 18/09/2018

ORDER NO.309/2018 /2018-CX (WZ)/ASRA/MUMBAI DATED 17/09/2018 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 : Principal Commissioner of Central Tax, Visakhapatnam Central GST Commissionerate.

Respondent : M/s Bagadiya Brothers Pvt. Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order -in-Appeal No. VIZ-EXCUS-002-APP-151-152-17-18 dt. 28.02.2018 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Visakhapatnam.

ORDER

These revision applications are filed by the Principal Commissioner of Central Tax, Visakhapatnam Central GST Commissionerate (hereinafter referred to as "the applicant") against the Orders in Appeal No. VIZ-EXCUS-002-APP-151-152-17-18 dt. 28.02.2018 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax.

2. The issue in brief is that the M/s. Bagadiya Brothers Pvt Ltd (hereinafter referred to as the respondent), a Merchant Exporter, had filed 16 refund claims on 30.12.2014 and 20 refund claims on 05.05.2015 for Rs.40,32,589/- & Rs.26,90,347/- respectively under Rule 18 of Central Excise Rules, 2002 read with the provisions of Notification No.19/2004-CE (NT) dt.06.09.2004. Verification of the above mentioned rebate claims revealed that (a) the goods i.e 'Mill Scale' was not exported directly from the factory or warehouse; (b) goods were not exported within 6 months from the date cleared for export from the factory; (c) many ARE 1s did not have particulars of manufacturers of goods & their Central Excise registration nos; (d) rebate claims were filed with the wrong jurisdiction; and (e) the claims were filed beyond one year from the relevant date. In view of the above discrepancies, two show cause notices dated 23.04.2015 & 04.08.2015 were issued to the respondent proposing to reject the rebate claims on the grounds mentioned supra and as the rebate claims were not in accordance with the provisions of Section 11B of the Central Excise Act, 1944 & the conditions specified in the said Notification No.19/2004-CE (NT) dt.06.09.2004.

3. The Sanctioning Authority examined the eligibility of the claims filed by the respondent and rejected the same vide his Order in Original No. 384/2016 (R) (16 claims) and 385/82016 (R) (20 claims) both dated 08.08.2016 on the ground that there was a delay in filing the claims, the claimant did not export the goods within 6 months from the date of removal from the factory and thus did not follow the conditions prescribed under Section 11B of Central Excise Act, 1944 and procedure laid out in the Notification No.19/2004-CE (NT) dt.06.09.2004.

4. Being aggrieved by the said rejection, the respondent filed appeals before the Commissioner (Appeals) against the Orders in Original.

5. The Commissioner (Appeals) vide his Orders in Appeal No.VIZ-EXCUS-002-APP-151-152-17-18 dated 28.02.2018 set aside the Orders in Original and allowed the appeals filed by the respondent.

5. Being aggrieved, the Principal Commissioner of Central Tax, Vishakhapatnam CGST Commissionerate, filed aforementioned revision applications against the impugned Orders in Appeal on the following common grounds that :-

5.1 The original adjudicating authority rejected the refund claims on the ground that (1) the rebate claims were time barred as they were filed beyond the prescribed period of one year from the date of export; (2) the goods were cleared in violation of the conditions and the procedure prescribed in the Notification No. 19/2004-CE (NT) viz. (i) the goods were not exported directly from a factory or a warehouse; (ii) goods were cleared for export under self-certification by the Merchant Exporter but not by the owners of the Dealers; (iii) in respect of some ARE-1s the export was not completed within six months from the date of clearance; (iv) Triplicate or Quadruplicate copies of the ARE-1s were not forwarded to the jurisdictional Range Office and (v) in many ARE-1s the Merchant Exporter failed to mention the details of the manufacturers of excisable goods. The same are discussed in detail as under:

5.2 Claims filed beyond one year:

i) Section 11B of the Central Excise Act, 1944 stipulates filing an application for refund with the department, before the expiry of one year from the relevant date in such form and manner as may be prescribed. As per explanation (A) to Section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 subject to the compliance of provisions of Section 11B of the Central Excise Act, 1944.

ii) The explanation to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refund claim is to be filed within one year from the relevant date, the rebate claim is also to be filed within one year from the relevant date. As per Explanation B (a) (i) of Section 11B, the relevant date for filing rebate claim means:

"(a) in the case of goods exported out of India where a refund of excise duty paid is available in

respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods;

(b) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or".....

iii) From this it is very clear that, there is no ambiguity in provision of Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate clams as in the instant case, the Appellate Commissioner has himself gave a finding that, *in the order it was clearly brought out that the Let Export Date was mentioned as (i)11.09.2013 (ii)10.03.2013/31.12.2013, whereas the instant rebate claims were filed on 30.12.2014 & 05.05.2015. This clearly shows that the Rebate claims were filed beyond stipulated time of one year period from the date of export date, as per Explanation (B) of Section 11B of CEA 1944, therefore it was hit by bar of limitation.*

iv) Since the refund claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date as held in:

a) IN RE: Abicor Binzel Productions (India) Pvt Ltd – 2014 (314) E.L.T. 833 (G.O.I)

IN RE: Indo Rama Textiles Ltd – 2015 (330) E.L.T. (G.O.I)

v) The time limit of one year is strictly applicable as held in catena of judgments which stipulate that refunds are time bound and limitation prescribed by the act is being on the revenue as well as on the assessee/claimant. Some of them are illustrated as under:

a) In the case of Assistant Commissioner of Cus Vs Anam Electrical Manufacturing Co., Supreme Court issued guidelines that – Where refund application was filed by manufacturer/purchaser beyond the statutory time limi t of Section 11B – such petitions must be held to be untenable in law, regardless of any directions to be contrary contained in the order in any appeal, suit or writ petition;

b) In the case of Mafatlal Industries Vs Union of India reported in 1997 (89) ELT 247 (SC) Supreme Court gave directions that where a refund application was filed by the

manufacturer/purchaser beyond the period prescribed by the Central Excise Act/Customs Act in that behalf, such petition must be held to be untenable in law..

vi) The law is also very clear that rebate claims filed after one year being time barred cannot be sanctioned as categorically held in a plethora of case laws/judgments which have laid down the principle that in making refund claims before the departmental authorities, an assessee is bound within four corners of the statute, and period of limitation prescribed under Central Excise Act and Rules framed there under must be adhered to and the authorities functioning under the Act are bound by the provisions of the Act. Reliance is placed on the following cases laws:

a) Collector Land Acquisition Anantnag & Others vs Ms. Katji & Others – 1987 (28) ELT 185 (SC);

b) Collector of Central Excise, Chandigarh vs Doaba Co-op Sugar Mills Ltd – 1988 (37) E.L.T. 478 (S.C);

c) M/s. Porcelain Electrical Mfg. Co. Vs Collector of Central Excise, New Delhi – 1998 (98)ELT 583 (SC);

d) The High Court of Judicature at Madras in the case of Hyundai Motors India Ltd vs Dept of Revenue, Ministry of Finance – 2017 (355)E.L.T. 342 (Mad) has also upheld the rejection of claim filed beyond one year of export.

vii) In view of the above, by no stretch of imagination the delay in filing the rebate claims can be treated as a procedural lapse as contended by the claimant and as held by the Commissioner (Appeals) as the law is well settled that filing of rebate claim within one year is a statutory requirement which is mandatorily to be followed. The statutory requirement can be condoned only if there is such provision under Section 11B. Since there are no such provisions, the delay in filing the claims has to be treated as time barred.

5.3 <u>Goods cleared in violation of the conditions and the procedure prescribed in the Notification No. 19/2004-CE (NT), dt. 06.09.2004:</u>

i) The grant of rebate of duty on export of excisable goods is subject to fulfillment of procedures and conditions laid down in the Notification No. 19/2004-CE (NT), dated 06.09.2004. One of the

important conditions at para 2(a) requires that the goods should be exported directly from factory to avail rebate benefit. The relaxation from said condition of direct export from factory has been provided in Board's Circular No. 294/10/97-CX, dated 30-1-1997. However, the applicant has neither exported the goods directly from factory in terms of condition 2(a) of the Notification No. 19/2004-C.E. (N.T.) nor did he follow the procedure mentioned in Circular No. 294/10/97-CX, dated 30-1-1997 which sets a procedure for exporting the goods under claim of rebate from a place other than factory or warehouse. Since the goods were not exported directly from factory or warehouse, the procedure laid down in said circular was required to be followed for becoming eligible to claim rebate of duty under Rule 18 of Central Excise Rules, 2002 and the assessee failed to follow the same.

ii) Since the applicant neither exported the goods directly from factory or warehouse in terms of condition 2(a) of the Notification No. 19/2004-C.E. (N.T.) nor followed the relaxed procedure as prescribed Board's Circular dated 30-01-1997, the rebate claim in respect of the goods which were not exported directly from factory/warehouse, were rightly held inadmissible by the adjudicating authority under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

5.4 Para 2(b) of the Notfn. No. 19/2004-CE (NT) prescribes that the excisable goods shall be exported with 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. The Adjudicating Authority has clearly brought out the details of the ARE-1s in both the orders from which it can be seen that, the goods were not exported within six months from the date of export. In view of the above, the amounts claimed in respect of such Refund Requests is not eligible for sanction, regardless of the ineligibility of the rebate claims on other counts.

5.5 Para 3(iii) of the cited notification as to the sealing of goods and examination at the place of dispatch and export, mandates that, the merchant exporters other than those procuring the goods directly from the factory or warehouse, shall export the goods

sealed at the place of dispatch by a Central Excise Officer. Sub para (v) of para 3 further adds that the said Central Excise Officer shall verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, shall seal each package or the container in the manner as may be specified by the Commissioner of Central Excise and endorse each copy of the application in token of having such examination done. Hence, the Notification No. 19/2004-CE (NT) mandates all exports other than those directly from the factory or warehouse, under the seal and supervision of the central excise authorities and also the satisfaction on the part of the officers as to the identity and duty paid character of the export goods. It is observed that, the assessee has deviated from this procedure.

5.6 With regard to the non-submission of the triplicate and quadruplicate copies of ARE-1s to the jurisdictional Superintendent within 24 hours of removal of the goods, Condition No. 3a (xi) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 stipulates as under:

"where the exporter desires self-sealing and self certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary of the manufacturing unit of the goods or owner of the warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such company, as the case may be, shall certify on all the copies of the application(ARE-1) that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent having Jurisdiction over the factory or warehouse within 24 hours of removal of the goods"

i) Further, Condition No.3b (ii) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 stipulates as under:

"The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of Customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part".

ii) From the above, it is very clear that the triplicate and quadruplicate copies of the ARE-1 are required to be sent to the Superintendent having Jurisdiction over the factory or warehouse

within 24 hours of removal of the goods by the exporter and the rebate sanctioning authority has to compare the duplicate copy of application received from the officer of Customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and sanction the rebate if he is satisfied that the claim is in order.

iii) Further, with regard to submission at triplicate copies of ARE-1, para 8.4 of part 1 of Chapter 8 of the C.B.E. & C. Excise Manual prescribes the following guidelines:-

"After satisfying himself that the goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are 'duty-paid' character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

iv) In the present case, the Jurisdictional Central Excise authorities were not informed about the said export and the goods were cleared for export without supervision/examination by Central Excise Officers, who had to verify the identity of goods and their duty paid character. In such a situation, it cannot be proved that the duty paid goods cleared from factory have actually been exported. The assessee submitted triplicate copy of the ARE-1s much after the stipulated time prescribed in the Notification. Hence, the Adjudicating Authority rightly held that it cannot be correlated with goods stated to have been exported by the assessee.

v) In a case where the goods were not exported directly from factory/ warehouse and triplicate copies of the ARE1 were not submitted to the jurisdictional Range Officer, the Govt of India vide Order Nos. 1258-1260/2013-CX dated 16.09.2013 in F.No. 195/1105-1107/2011-RA (CX) rejected the Revision Applications filed by M/s. L'Amar Exports Pvt Ltd., [reported in 2014(311) ELT 941(GOI)].

vi) The Hon'ble High Court of Judicature at Madras, in the matter case of M/s Amaravathi Co-op Sugar Mills Ltd Vs. Joint Secretary, MF.(D.R.), New Delhi reported in 2016 (331) E.L.T. 245 (Mad.) held as under:

"Petitioner committed serious lapses and miserably failed to comply with conditions of notification and the very basic condition that goods cleared on payment of duty for home consumption are the same which were subsequently exported through the shipping bills and thereby it is proved beyond reasonable doubt that the goods exported are the same which were cleared on payment of duty and this co-requirement was not discharged in order to claim refund of duty - Petition dismissed"

Since the assessee failed to comply with the above mentioned important conditions laid down under Notification No.19/2004 CE (NT) dated 06.09.2004 while claiming the rebate, the benefit of the said Notification cannot be extended to the assessee and hence allowing the rebate to the assessee by the Appellate Authority is not legal and proper.

5.6 The case law i.e. M/s Harison Chemicals reported in 2006(200) ELT 171 (GOI) quoted by the Appellate Authority while allowing the rebate to the assessee is distinguishable from the present case. The issue in the case of M/s. Harison Chemicals is non-export of goods within the stipulated period of six months from the date of clearance from factory. The other case law i.e. M/s .Sanket Industries Ltd reported in 2011(268) ELT 125 (GOI) referred to by the Appellate Authority cannot be relied upon as the Government of India Order No.198/2011-CX, dated 24.02.2011 passed by the Joint Secretary to the Government of India, New Delhi was not accepted by the Department and a Writ Petition (No.7696/2011) was filed by the Department in the Hon'ble High Court of Bombay, Aurangabad Bench and the case is still pending in the Hon'ble High Court of Bombay, Aurangabad Bench.

5.7 The lapses on the part of the assessee mentioned above cannot be treated as procedural lapses as held by the Appellate Authority. The conditions laid down in Notification No. 19/2004-(NT) dated 06.09.2004 and circulars on the issue are substantive conditions to ensure the nexus between the goods which are cleared from the factory/warehouse and the goods actually exported. Hence, allowing the rebate by considering the violations to be procedural in nature will render the said substantial requirements redundant. Therefore, the impugned order passed by the Commissioner (Appeals) does not appear to be correct and legal and proper.

5.8 In this connection, the High Court of Judicature at Allahabad in the case of M/s. Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. Vs.

UNION OF INDIA reported in 2014 (1) ECS (15) (HC – All.) held that *"Rebate under Rule 18 of Central Excise Rules 2002- Procedure under Notfn. 19/2004-CE (NT) dated 06.09.2004 mandatory in order to entitle a person to claim rebate, it is open to Government of India by notification to provide a procedure for claiming rebate benefit. It is in purported exercise of power there under that the notification dated 06.09.2004 has been issued which specifically contemplates filing of ARE-1, verification of goods sought to be exported and sealing of goods after such verification by authorities on the spot, i.e., factory premises etc. In case the procedure of filing ARE-1 is given a go-bye, the authorities available on spot shall not be able to verify that the goods sought to be exported are same, the description whereof has been mentioned in the vouchers or not. The objective is very clear. It is to avoid surreptitious and bogus export and also to mitigate any paper transaction."*

5.9 The Hon'ble High Court further held that *"It also cannot be doubted that ignorance of law is no excuse to follow something which is required to be done by law in a particular manner. It is well established that when law requires something to be done in a particular manner, any other procedure adopted or the procedure deviated or not followed would be illegal inasmuch as, one has to proceed only in the manner prescribed under law"* and that *"The notification dated 06.09.2004 very clearly has said that rebate can be claimed in the manner the procedure has been laid down therein. It is difficult to hold that detail procedure regarding filing of ARE-I, which is the foundation in respect of verification of commodity sought to be exported and its exportability etc. is not mandatory but directory or condonable. I find no hesitation in confirming the view taken by respondent no. 1 that the procedure laid down in notification dated 06.09.2004 with respect to filing of ARE-I is mandatory."*

5.10 The notification No.19/2004 CE (NT) dated 06.09.2004 under which the assessee claimed the instant rebate, requires export of goods, after payment of duty, directly from a factory or a warehouse and submission of triplicate and quadruplicate copies of the ARE-1 to the Superintendent having jurisdiction over the factory or warehouse within 24 hours of removal of goods. Since the availment of the Notification is governed by procedure prescribed and fulfillment of conditions laid down therein, the assessees are not eligible to avail the said Notification inasmuch as

they failed to follow the procedure prescribed under the Notification. In this connection, the Hon'ble Supreme Court of India in the case of CCE, New Delhi Vs.Hari chand shri Gopal reported in 2010 (260) ELT 3 (S.C.) held inter alia that *"provision granting exemption, concession or exception to be construed strictly with certain exceptions depending upon settings on which provision placed in statute and object and purpose to be achieved."* In the instant case, the assessees failed to comply with the substantial requirements of the Notification No. 19/2004 CE (NT) dated 06.09.2004 thereby rendering themselves not entitled for rebate. Thus, the Appellate Authority failed to appreciate the facts on record and allowed the rebate for which the assessees are not eligible.

5.11 Commissioner's finding is that *"the delay in filing the rebate claims with sanctioning authority is not to be viewed seriously, as it is a condonable mistake hence the substantial benefit of export incentive conferred under the statue cannot be denied under trivial procedural lapses"*. This finding of the Appellate Commissioner is against the principle that, *if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, explanation B(a)(i) of Section 11B, stipulates the relevant date for computing the one year period for filing rebate claims. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute* as held in the case of M/s. Hundai Motors India Limited vs. The Department of Revenue – 2017 (355) E.L.T. 342 (Mad.).

5.12 Moreover, Commissioner (Appeals) is a creature of the statute and has to function within the legal boundaries mandated under the Central Excise & Customs Acts, as held in the case of Assistant Commissioner of Customs & Central Excise Versus Acalmar Oils & Fats Ltd – 2017 (357) E.L.T. 1084 (Tri.-Hyd).

view of the above, he should not have gone against the statutory provisions.

5.13 The issue involves refund of substantial amounts of rebate to the tune of Rs.67,22,936/- as per the Order-in-Appeal, which appears to be not legal and proper in view of the submissions made as above. Since the respondent being a merchant exporter, refund of the same adversely affect the interest of the exchequer.

6. A personal hearing in the revision application was held on 18.7.2018. Shri G Dharmaraj, Asstt. Commissioner, Vizakhapatnam, Central GST Commissionerate appeared on behalf of the applicant and reiterated the submissions made in the revision application, written submission filed today along with the order of the Asstt. Commissioner, He also prayed that in view of submission, Order-in-appeal be set aside and Revision Application be allowed. Shri R.K. Tomar, Advocate, on behalf of the respondent vide his letter dated 12.07.2018 requested for adjournment of the hearing in this matter by two weeks due to huge volume of the documents which was granted and the hearing was adjourned to 30.7.2018.

7. On 30.7.2018 Shri R.K. Tomar, Advocate, appeared for the hearing on behalf of the respondent and reiterated the order of the Order of Commissioner (Appeals) and sought adjournment to file written submission. The case was adjourned till 06.08.2018.

8. On 06.08.2018 Shri R.K. Tomar, Advocate, appeared for personal hearing, and reiterated the submissions made in the cross objections filed on the same day and pleaded that in view of the submissions and case laws Order-in-Appeal be upheld and Revision Application be dismissed.

9. The respondent in their cross objections submitted that

9.1 The objections raised in the said RA by the applicant are that

(i). the claims filed by them are hit by limitation as the same have been filed beyond one year;

(ii). the Export goods have been cleared in violation of the conditions and the procedure prescribed in Notification No. 19/2004-CE (NT) dated 06-09-2004 ("the said Notification") on the following counts that :

(a) the goods have not been exported directly from a factory or a warehouse except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

(b). the export goods have not been exported within six months from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may allow in any particular case;

(c). they had deviated from the procedure prescribed in the said Notification that all exports other than those directly from the factory or warehouse, under the seal and supervision of the Central Excise authorities and also to the satisfaction on the part of the officers as to the identity of and duty paid character of the export goods.

(d). the ARE-1 copies were submitted much later than the period as prescribed under the said Notification and therefore the nature of the goods cannot be correlated with the goods stated to have been exported;

9.2. the main ground taken by the department is that the refund claims were not filed by them within the limitation as provided under Section 11 B of the Central Excise Act, 1994. They submitted that they had filed the said claims within the stipulated time limit of one year as detailed below:

SCN No. V/18/507/2014-Reb dated 24.03.2015				
S.No.	Refund Ref.No.	Amount of claim (Rs)	Date of initial filing	Date of submission of documents
1	P-001A	4,36,651/-	17.10.2014	30.12.2014
2	P-001B	4,35,788/-	17.10.2014	30.12.2014
3	P-002A	4,93,683/-	17.10.2014	30.12.2014
4	P-002B	2,44,784/-	17.10.2014	30.12.2014
5	P-003	79,979/-	17.10.2014	30.12.2014
6	GM-010	1,58,120/-	20.10.2014	30.12.2014
7	GM-01	7,644/-	20.10.2014	30.12.2014
8	GM-002A	2,91.702/-	20.10.2014	30.12.2014
9	GM-002B	2,41,669/-	20.10.2014	30.12.2014
10	GM-003	2,96,232/-	20.10.2014	30.12.2014
11	GM-004	83,396/-	20.10.2014	30.12.2014
12	GM-005	2,17,071/-	20.10.2014	30.12.2014
13	GM-006	3,72,347/-	20.10.2014	30.12.2014
14	GM-007	3,24,984/-	20.10.2014	30.12.2014
15	GM-008	1,57,515/-	20.10.2014	30.12.2014
16	GM-009	1,91,024/-	20.10.2014	30.12.2014
	Total	40,32,589/-		

SCN No. V/18/208-227/2015-Reb dated 04-08-2015					
S.No.	Refund Request No	Amount of Claim (Rs)	Date of Shipment	Date of initial filing	Date of filing in division office
1	AB-001	3,79,737/-	06.03.2014	25.08.2014	05.05.2015

2	AB-007	69,662/-	06.03.2014	25.08.2014	05.05.2015
3	C-001	1,78,468/-	29.12.2013	12.08.2014	05.05.2015
4	C-003	1,87,156/-	29.12.2013	04.08.2014	05.05.2015
5	C-002	2,63,714/-	29.12.2013	04.08.2014	05.05.2015
6	C-005	96,672/-	29.12.2013	12.08.2014	05.05.2015
7	C003A	98,451/-	29.12.2013	12.08.2014	05.05.2015
8	C-001B	39,509/-	29.12.2013	04.08.2014	05.05.2015
9	C-003B	56,911/-	29.12.2013	12.08.2014	05.05.2015
10	C-004	20,113/-	29.12.2013	12.08.2014	05.05.2015
11	AB-006	1,57,794/-	06.03.2014	25.08.2014	05.05.2015
12	C-0001A	43,300/-	29.12.2013	04.08.2014	05.05.2015
13	C-006	14,339/-	29.12.2013	12.08.2014	05.05.2015
14	C-004	2,98,125/-	29.12.2013	04.08.2014	05.05.2015
15	C-002	25,782/-	29.12.2013	04.08.2014	05.05.2015
16	C-001	2,95,737/-	29.12.2013	04.08.2014	05.05.2015
17	AB-005	1,13,301/-	06.03.2014	25.08.2014	05.05.2015
18	AB-003	1,67,296/-	06.03.2014	25.08.2014	05.05.2015
19	AB-004	1,34,044/-	06.03.2014	25.08.2014	05.05.2015
20	AB-002	50,236/-	06.03.2014	25.08.2014	05.05.2015
	TOTAL	26,90,347/-			

9.3 However, the said claims were filed before the Marine Commissioner who returned the same stating that they did not have the jurisdiction to entertain/process the said claims. Thereafter the said claims were submitted to the jurisdictional Asstt./Dy. Commissioners of Central Excise. Under the circumstances, they had filed the said claims within the stipulated time limits (though before an authority which did not have the jurisdiction), it was not the correct to say that the claims were barred by limitation. Instead of returning the said claims, the office of the Marine Commissioner was required to forward the said claims to the authority having jurisdiction over the matter. The incorrect and improper act of the office of Marine Commissioner cannot lead to an adverse conclusion against them. They relied on the order of the Hon'ble CESTAT, New Delhi in the matter of Rathi Steel & Power Ltd. Vs. Commissioner of C. Ex., Ghaziabad (2014 (308) E.L.T. 163 (Tri.-Del.)), The relevant part of the same is re-produced hereunder:

> *Refund - Limitation - Delay in filing - Refund claim filed in time but before wrong authority - Refund claim filed on 9-1-2012 before jurisdictional Deputy Commissioner returned for filing before proper officer - HELD : Initial application dated 9-1-2012 to be taken as proper application for purpose of limitation - This is also on ground that instead of returning application, it could have been forwarded to concerned authority - Impugned order set aside - Section 27 of Customs Act, 1962. [paras 5, 6]*

9.4. At the time of filing the said claims, there was no such stipulation in the said Notification which mandated filing of, rebate claims within the limitation period of one year as stipulated under Section 11 B of the Central Excise Act, 1944 ("the Acts). The Hon'ble High Courts of various States have unambiguously held that in respect of rebate claims there is no stipulation of limitation. In order to take care of the said limitation provision as stated under Section 11B of the Act, the said Notification was amended vide Notification No.18/2016-CE (NT) dated 01.03.2016 which came into effect from 01.03.2016, thereby inserting the relevant clause on limitation.

9.5. The applicant in the R.A. has conveniently ignored the said legal position except citing old decisions wherein the issue was not discussed and without even distinguishing the same. Since exports of the theirs and filing of the rebate claims by them pre-dates the said amendment Notification No. 18/2016-CE (NT) dated 01.03.2016, the limitation of one year will not apply to them. They relied on the judgment of the Hon'ble Madras High Court in the matter of Dy. Commissioner of C. Ex., Chennai Vs. Dorcas Market Makers Pvt. Ltd. (2015 (321) E.L.T. 45 (Mad.))-

> *Export - Rebate/Refund - Limitation - Relevant date - Question of rebate of duty is governed separately by Section 12 of Central Excise Act, 1944 and the entitlement to rebate would arise only out of a notification under Section 12(1) ibid - Rule 18 of Central Excise Rules, 2002 is to be construed independently - Rebate of duty under Rule 18 ibid should be as per the notification issued by Central Government - Notification No. 19/2004-CE., dated 6-9-2004 which supersede the previous Notification No. 41/94-CS. did not contain the prescription regarding limitation, a conscious decision taken by Central Government - Assessee , actually exported the goods - Their entitlement to refund is not at all in doubt - In absence of any prescription in the scheme, the rejection of application for refund as time-barred is unjustified - Section 11B ibid. [paras 13, 14, 15, 31]*

9.6. The above cited judgment has been upheld by the Hon'ble Supreme Court as reported vide 2015 (325) F.L.T. A104 (S.C). The same view has been expressed by the Hon'ble Gujarat High Court and Punjab & Haryana High Court, in the below cases

(i). Apar Industries (Polymer Division) Vs. Union of India reported vide 2013 (333) EL.T. 246 (Guj.);

(ii). JSL Lifestyle Ltd. Vs. Union of India reported vide 2015 (326) E.L.T. 265 (P & H).

9.7. The Appellate Authority has given a clear reasoning for allowing the rebate claims even assuming that the claims were filed one year after the date of export. The finding of the learned Commissioner (Appeals) is based on the settled legal position which was based on various decisions of Hon'ble High Court and Supreme Court. However, the fact remains that the claims were filed within the limitation period even though the same did not apply to them.

9.8. Regarding procedural anomalies, the same cannot be grounds for rejection of substantive benefits which are otherwise' admissible to them. In respect of dutiability and identification of the export goods, the cross reference to ARE-I and Shipping Bills is available on the face of the records. Under these circumstances, the rebate claim cannot be denied. They relied on the case law in the matter of IN RE: Jubilant Organosys Ltd. (2012 (286) F.L.T. 455 (GOI)-

> *Export - Rebate/Refund - Limitation - Relevant date - Question of rebate of duty is governed separately by Section 12 of Central Excise Act, 1944 and the entitlement to rebate would arise only out of a not under Section 12(1) ibid - Rule 18 of Central Excise Rules, 2002 is to be construed independently - Rebate of duty under Rule 18 ibid should be as per the not issued by Central Government -*

Notificadon No. 19/2004-C.E., dated 6-9-2004 which supersede the previous Notification exported the goods - Their entitlement to refund is not at all in doubt - In absence of any prescription in the scheme, the rejection of application for refund as time-barred is unjustified - Section 1113 ibid. [parai 13, 14, 15, 31]

9.9. under the circumstances, none of the grounds taken by the department are applicable. Accordingly, it is prayed that the Revision Application may be rejected and may be directed to sanction the rebate claims and disburse to them.

10. 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. The issue involved in both these Revision Applications being common, they are taken up together and are disposed of vide this common order.

11. Government notes that the original adjudicating authority has rejected the refund claims filed by the respondents on the ground that

(1) the rebate claims were time barred as they were filed beyond the prescribed period of one year from the date of export;

(2) the goods were cleared in violation of the conditions and the procedure prescribed in the Notification No. 19/2004-CE (NT) viz.

(i) the goods were not exported directly from a factory or a warehouse;

(ii) goods were cleared for export under self-certification by the Merchant Exporter but not by the owners of the Dealers;

(iii) in respect of some ARE-1s the export was not completed within six months from the date of clearance;

(iv) Triplicate or Quadruplicate copies of the ARE-1s were not forwarded to the jurisdictional Range Office and

(v) in many ARE-1s the Merchant Exporter failed to mention the details of the manufacturers of excisable goods.

12. Government further observes that while allowing the appeals filed by the respondents against the aforestated Orders in Original Commissioner (Appeals) relying on the ruling of Hon'ble High Court Madras [2015(321) ELT 45 (Mad)] which stated that in respect of goods exported under rebate claim the limitation does not apply and the Rule 18 of Central Excise Rules 2002 has to be construed independently, and which was upheld by Hon'ble Supreme Court observed that "*claimant causing delay in filing the instant rebate claims with sanctioning authority is not to be viewed seriously, as it is condonable mistake, hence substantial benefit of export incentive conferred under the statute cannot be denied under trivial procedural lapses*".

13. Further in regard to the technical infirmities based on which the rebate was rejected, the Commissioner (Appeals) observed that

> *"I find the fact that the goods cleared were exported on which the applicable Excise duty has been paid, was not negated by the authority. The only averment was procedural lapse. When the claimant had established proof of export and the claim of rebate was filed seeking the CE duty paid on such goods exported, I find the appellant is eligible for sanction of rebate, therefore I am constrained to differ with the lower authority's decision of rejection of rebate in the impugned orders. In view of the above facts and circumstances, I hold that the appellant is eligible for rebate as claimed. Hence the impugned Orders in Original are set aside and the party appeals were allowed".*

14. Now, the department has filed the Revision Application on the grounds mentioned at Para 5 above.

15. Government now addresses above issues one by one.

15.1 Claims filed beyond one year:

Government observes that it is the contention of the department that Let Export Date was mentioned as (i) 11.09.2013 [in Order in Original No. 384/2016(R)] (ii)10.03.2013/31.12.2013 [(in Order in Original No. 385/2016(R)], whereas the instant rebate claims were filed on 30.12.2014 & 05.05.2015. This clearly showed that the Rebate claims were filed beyond stipulated time of one year period from the date of export date, as per Explanation (B) of Section 11B of CEA 1944, therefore it was hit by bar of limitation. In their cross objections the respondent argued that

> *"at the time of filing the said claims, there was no such stipulation in the said Notification which mandated filing of, rebate claims within the limitation period of one year as stipulated under Section 11 B of the Central Excise Act, 1944 ("the Acts). The Hon'ble High Courts of various States have unambiguously held that in respect of rebate claims there is no stipulation of limitation. In order to take care of the said limitation provision as stated under Section 11B of the Act, the said Notification was amended vide Notification No.18/2016-CE (NT) dated 01.03.2016 which came into effect from 01.03.2016, thereby inserting the relevant clause on limitation. Since exports of the theirs and filing of the rebate claims by them pre-dates the said amendment Notification No. 18/2016-CE (NT) dated 01.03.2016, the limitation of one year will not apply to them. They relied on the judgment of the Hon'ble Madras High Court in the matter of Dy. Commissioner of C. Ex., Chennai Vs. Dorcas Market Makers Pvt. Ltd.*

(2015 (321) E.L.T. 45 (Mad.))- which is upheld by the Hon'ble Supreme Court".

15.2 Government in this regard observes that the same Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd. and upholding the rejection of rebate claim filed beyond one year of export [reported in 2017 (355) E.L.T. 342 (Mad.)] in its order dated 18.04.2017 by citing the judgment of same Hon'ble High Court Madras In Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), which noted as under :-

5. The claim for refund made by the appellant was in terms of Section 11B. Under sub-section (1) of Section 11B, any person claiming refund of any duty of excise, should make an application before the expiry of six months from the relevant date in such form and manner as may be prescribed. The expression "relevant date" is explained in Explanation (B). Explanation (B) reads as follows :-

"(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;

(ea) in the case of goods, which are exempt from payment of duty by a special order issued under sub-section (2) of Section 5A, the date of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(f) in any other case, the date of payment of duty."

* * *

"8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

15.3 Government applying the ratio of the aforesaid judgment observes that in the instant case, explanation B(a)(i) of Section 11B, stipulates the relevant date for computing the one year period for filing rebate claims. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. It is pertinent to note here that Hon'ble High Court Madras while holding that the rules cannot occupy a field that is already occupied by the statute in the case of M/s. Hyundai Motors India Limited vs. The Department of Revenue [2017 (355) E.L.T. 342 (Mad.)] has also referred to Deputy Commissioner v. Dorcas Market Makers Pvt. Ltd. — 2015 (321) E.L.T. 45 (Mad.) which is relied by the respondents in their cross objection.

In the aforesaid circumstances, Government observes that the time bar under Section 11B precisely applies to the rebate claims filed under Rule 18 and Notification No. 19/2004 and hence the order of the Commissioner of Central Excise (Appeals) allowing the refund beyond prescribed period is illegal and is liable to be set aside.

15.4 However, Government also observes from the Order in original No. 384/2016 dated 08.08.2016 that in respect of 16 rebate claims the initial date of filing the rebate claims is 17.10.2014/20.10.2014 and submissions of original documents by the respondent is 30.12.2014. Similarly, in respect of Order in original No. 385/2016 dated 08.08.2016 the date of initial filing of Rebate claims before Maritime Commissioner is 04.08.2014, 12.08.2014 and 25.08.2014 whereas the date of filing in Divisional Office is 05.05.2015. In their cross objections the respondent has contended that said claims were filed before the Marine Commissioner who returned the same stating that they did not have the jurisdiction to entertain/process the said claims. Thereafter the said claims were submitted to the jurisdictional Asstt./Dy. Commissioners of Central Excise. Under the circumstances, they had filed the said claims within the stipulated time limits (though before an authority which did not have the jurisdiction), it was not the correct to say that the claims were barred by limitation. Instead of returning the said claims, the office of the Marine Commissioner was required to forward the said claims to the authority having jurisdiction over the matter. The incorrect and improper act of the office of Marine Commissioner cannot lead to an adverse conclusion against them.

15.5 Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court Tribunal and GOI, have held in following cases that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

> *"Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944."*

Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

> *"claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which*

refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962."

15.6 Government also observes that in the matter Hon'ble CESTAT, New Delhi in the matter of Rathi Steel & Power Ltd. Vs. Commissioner of C. Ex., Ghaziabad (2014 (308) E.L.T. 163 (Tri.-Del.)), held that Refund claim filed in time but before wrong authority; initial application dated 9-1-2012 to be taken as proper application for purpose of limitation - This is also on ground that instead of returning application, it could have been forwarded to concerned authority. Government of India vide Order No. 878-928/13-CX dated 11.07.2013 in RE: Dr. Reddy's Laboratories Ltd. also observed that

> *"So it is clear that the rebate claims were otherwise admissible as per law. Government is of considered opinion that substantial benefit of rebate legally due to applicant cannot be denied straightway just for lack of jurisdiction of rebate sanctioning authority. In said cases, the original authority has erred in sanctioning the rebate claims. In fact ACCE should have transferred the rebate claim papers to the proper rebate sanctioning authority at the relevant time itself rather than sanctioning the claims without any jurisdiction. So there is a lapse on the part of department also. Therefore, the rebate claim papers of all these cases may be transferred to the proper rebate sanctioning authority either ACCE/DCCE having jurisdiction over factory of manufacture or Maritime Commissioner as requested by applicant. The proper rebate sanctioning authority will consider these claims as filed in time as the initial date of filing claims is to be taken as date of filing rebate claims for the purpose of time limitation prescribed under section 11B of CEA 1944. Keeping in view the prolonged litigation in matter, the proper rebate sanctioning authority will decide these cases on merit in accordance with law as early as possible preferably within one month of the receipt of claim papers. The ACCE Division-B Hyderabad-I will transfer the claims to proper rebate sanctioning authority within two weeks of the receipt of this order. The impugned orders-in-appeal are modified to this extent".*

15.7. In view of the foregoing discussion, Government remands the matter to the original authority. The respondent is directed to produce all the evidence showing they had indeed filed the rebate claims on the initial date of filing appearing in their cross objections. If satisfied with the evidence so produced, the original adjudicating authority will consider the date of initial filing of rebate claims to decide whether these claims are barred by limitation under Section 11-B of the Central Excises and Salt Act, 1944

16. Goods cleared in violation of the conditions and the procedure prescribed in the Notification No. 19/2004-CE (NT), dt. 06.09.2004 in as much as

(i) the goods were not exported directly from a factory or a warehouse;

(ii) goods were cleared for export under self-certification by the Merchant Exporter but not by the owners of the Dealers;

(iii) in respect of some ARE-1s the export was not completed within six months from the date of clearance;

(iv) Triplicate or Quadruplicate copies of the ARE-1s were not forwarded to the jurisdictional Range Office and

(v) in many ARE-1s the Merchant Exporter failed to mention the details of the manufacturers of excisable goods

16.1 Government observes that the rebate claims filed by the applicant were held inadmissible by the adjudicating authority since the applicant neither exported the goods directly from factory or warehouse in terms of condition 2(a) of the Notification No. 19/2004-C.E. (N.T.) nor followed the relaxed procedure as prescribed under Board's Circular No. 294/10/97-CX, dated 30-01-1997.

16.2 Government notes that in the instant case the goods were not exported directly from the factory of the manufacturer or the warehouse of the applicant. Whereas, as per condition 2(a) of the Notification No. 19/2004, the rebate of the duty shall be available only if the goods are exported directly from the factory or warehouse except as otherwise permitted by the C.B.E. & C. by a general or special order. However, it is claimed by the respondent that they purchased mill scale from the dealers and also exported goods from the premises of registered dealers. It was further argued by the respondent that a dealer's premises registered under Rule 9 is a warehouse and accordingly their place of export, being a registered place under Rule 9 as a dealer, is also a warehouse as envisaged in the above condition of Notification No. 19/2004. However, apart from the condition that the goods should be cleared directly from a factory or warehouse for the export thereof, the first and the foremost condition specified at Para 2(a) of Notification No. 19/2004 is that the excisable goods must be exported after payment of duty and thus should be established that the goods exported are duty paid. The compliance of this condition requires that the respondent has to produce any evidence, documentary or otherwise, to prove conclusively that the exported goods are clearly identifiable and correlated with the goods cleared from the factory on payment of duty, and/or by which it can be established that the same goods which have suffered duty at the time of clearance from the factory have actually been exported and not merely on the basis of unsubstantiated written submissions". In their cross objections also the respondent has merely claimed that "in respect of dutiability and identification of the export goods, the cross reference to ARE-1 and Shipping Bill is available on the face of records". However, Government observes that the subject goods were exported from a dealers premises under Self Certification and sealing without supervision of the jurisdictional Central Excise officers and even self-sealing procedure is not followed properly in as

much as goods were cleared for export under self-certification by the Merchant Exporter but not by the owners of the Dealers and in many ARE-1s the Merchant Exporter failed to mention the details of the manufacturers of excisable goods. Government observes that Para (3)(a)(xi) Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides, where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods. From the above Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure has been prescribed in relation to identify and correlation of export goods at the place of dispatch. Since in respect of rebate claims under reference in the present case the procedure prescribed under Notification No. 19/2004-C.E. (N.T.) has not been followed scrupulously by the respondent as discussed above, and therefore correlation between the excisable goods claimed to have been cleared for export from factory of manufacturer and the export documents as relevant to such export clearances cannot be established.

16.3 As regards the goods which were not exported by the respondent within six months from the date of clearance from the factory of manufacture or warehouse, Government observes that Para 2(b) of the Notfn. No. 19/2004-CE (NT) prescribes that the excisable goods shall be exported with 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. The Adjudicating Authority has clearly brought out the details of the ARE-1s in both the orders from which it can be seen that, the goods were not exported within six months from the date of removal from the factory of manufacture. In the present case Government observes that the respondent did not follow the proper procedure under notification 19/2004 CE (N.T.) dated 06.09.2004 by failing to obtain extension of validity of ARE.1. Further, aforementioned issue stands decided in the case of M/s Cipla Ltd. vide GOI Order No. 40/2012-CX dated 16.01.2012. After discussing the issue at length, the Government at para 9 of its order observed as under: -

"9. Government notes that as per provision of Condition2(b) of notification No. 19/04-CE (NT) dated 06.09.04, the excisable goods shall be exported within 6 months from the date on which they were cleared for export from the factory of manufacturer or within extended period as allowed by commissioner of Central Excise. In this case, undisputedly, goods were exported after lapse of aforesaid period of 6 months and applicant has not been granted any extension beyond 6 months by Commissioner of Central Excise. This is a mandatory condition to be complied with. Since the mandatory condition is not satisfied the rebate claim on goods exported after 6 months of their clearance from factory is not admissible under Rule 18 read with Notification 19/04 CE (NT) dated 06.09.2004".

In view of the foregoing, Government holds that the respondent is not entitled to rebate of duty paid on goods exported after six months of clearance from factory.

16.4 Government observes that the rebate of duty can be allowed only when it is established that the goods exported by the merchant-exporter from a place other than the factory have been duty paid. As discussed above in detail, the rebate of duty in this case has not been rejected merely on the ground that the goods were not exported directly from the factory of the principal manufacturer, but it has also been rejected for the reason that the respondent has not been able to establish that the goods exported by them from a place other than the place of manufacture are the same which were originally cleared by the principal manufacturer from its factory on payment of central excise duty. As regards Triplicate or Quadruplicate copies of the ARE-1s were not forwarded to the jurisdictional Range Office Government observes that Where the exporter desires self-sealing, the authorized person shall certify on all copies of ARE-1 that goods have been sealed in his presence and shall send the original and duplicate copies along with the goods to place of export and the triplicate and quadruplicate copies to the jurisdictional Superintendent or Inspector of Central Excise within 24 hours of the removal of the goods. In the instant case Government observes that the respondent did not send the triplicate and quadruplicate copies of ARE-1s to the Supdt. or Inspector of Central Excise having jurisdiction over the factory or warehouse within the twenty four hours of removal of goods for export. The fundamental requirement for determining admissibility of rebate claim is that export of duty paid goods is proved beyond doubt. In this case the duty paid nature of goods is not proved and therefore Government holds that rebate claim are rightly held inadmissible to the respondent under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

16.5 Government also refers to and rely on GOI Order No. 166/2015-CX dated 4-12-2015 In IN RE: KEC INTERNATIONAL LTD. [2016 (343) E.L.T. 849

(G.O.I.)] wherein Government upheld the order of the Commissioner (Appeals) by observing that the goods were not exported directly from factory of manufacturer; nor procedure prescribed in C.B.E. & C. Circular No. 294/10/97-CX, dated 30-1-1997 followed ; Endorsement of Central Excise Officers not obtained in ARE-1; Triplicate copy of ARE-1 also not submitted, Export of goods not established and rebate claim not admissible under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.).

16.6 From the aforesaid discussion Government is of the considered opinion that the procedural lapses discussed herein above at para 16.2 to 16.4 cannot be treated as trivial or condonable mistakes as held by the Commissioner (Appeals).

17. Government accordingly, sets aside the impugned order-in-appeal No. VIZ-EXCUS-002-APP-151-152-17-18 dt. 28.02.2018 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Visakhapatnam and remands the matter to the original adjudicating authority to decide the issue of limitation. The respondent are directed to produce all the evidence regarding dates of initial filings of their rebate claims as discussed hereinabove and original adjudicating authority is directed to pass appropriate order in accordance with law after following the principles of natural justice, within 8 weeks from the receipt of this order. While deciding the rebate claims the observations of the Government on all the issues, as discussed hereinabove, should be kept in mind.

18. Revision Applications are disposed off in above terms.

19. So, ordered

17.9.18

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

ORDER No.309/319/2018-CX (SZ)/ASRA/Mumbai DATED 17/09/2018.

To,
The Principal Commissioner of Central Tax,
Vishakhapatnam, Central GST Commissionerate,
GST Bhawan, Port Area,
Vishakhapatnam-530035

ATTESTED

17/9/18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner, (Appeals) Customs, Central Excise & Service Tax, 4th Floor, Custom House, Port Area, Visakhapatnam 530 035

2. M/s Bagadiya Brothers Pvt. Ltd.,Ground Floor, Bagadiya Mansion, Jawaharnagar, Raipur, Chattisgarh 492 001.

3. Assistant Commissioner, Central Tax, Central GST-Visakhapatnam South Division, 2nd Floor, S.V.C. Complex, 1st Lane Dwarkanagar, Visakhapatnam-530035

4. Shri R.K. Tomar, Advocate,, 403,4th Floor, Vikas Premises, 11 N.G.N. Vaidya Marg (Bank Street) Fort, Mumbai 400 023.

5. Sr. P.S. to AS (RA), Mumbai.

6. Guard File.

7. Spare Copy.