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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. 195/117-133/15-RA/1607 Date of Issue: 03/10/2018.

ORDER NO.313-329/2018-CX (SZ)/ASRA/MUMBAI DATED 27.09.2018 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Tejas Networks Ltd., Plot No.25, JP Software Park, Electronics City, Phase-1, Hosur Road, Bangalore – 560 085.

Respondent : Assistant Commissioner of Central Excise, Cuddalore Division

Subject : Revision Application filed under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No.09-25/2015 dated 30.01.2015 passed by the Commissioner (Appeals), Large Tax payer Unit, Bangalore.

ORDER

These 17 Revision Applications have been filed by M/s. Tejas Network Ltd., RS No.150/2 Abhishekapakkam Road, Thavalakuppam, Puducherry – 605 007 (hereinafter referred to as " the Applicant") against the Order -in-Appeals bearing number 9-25/2015 dated 30.01.2015 passed by the Commissioner (Appeals) Large Taxpayer Unit, Bangalore.

2. Brief facts of the case are that the Applicant holds Central Excise Registration No.AABCT1670MXM005 for the manufacture of Multiplexers and Part of Multiplexers falling under CSH Nos.85176270 and 85177090 respectively, of the First Schedule to the Central Excise Tariff Act, 1985. They are availing the CENVAT credit facility under CENVAT Credit Rules, 2004 and are clearing goods for Home consumption and for Export, on payment of duty, under claim for rebate of duty, by utilising the CENVAT credit taken.

3. The Applicant had filed 17 Rebate claims for the export clearances made under various ARE-1s, on payment of duty utilising the CENVAT credit, under Rule 18 of the Central Excise Rules, 2002. The details of the Rebate claimed by the Applicant, and Rebate sanctioned and rejected by the the Assistant Commissioner of Central Excise, Cuddalore (Lower Authority), vide 17 orders in original are as indicated below :

Sl. No	Amount of Rebate claimed. Rs.	OIO No.	OIO Date	Amount of Rebate Sanctioned Rs.	Amount of Rebate Rejected for not having sufficient balance in CENVAT credit Account when export was effected (Rs.)
1	2	3	4	5	6
1	3102910	49/2014	21.08.14	28,19,047	2,83,861
2	2675485	51/2014	16.09.14	10,48,611	16,26,874
3	497032	52/2014	25.08.14	1,30,148	3,66,884
4	478457	53/2014	25.08.14	2,57,784	2,20,673
5	445229	54/2014	25.08.14	-	4,45,229
6	383457	55/2014	25.08.14	2,49,292	1,34,165
7	86505	56/2014	25.08.14	-	86,505
8	1848015	57/2014	25.08.14	4,85,157	13,62,858

9	1588033	58/2014	25.08.14	-	15,88,033
10	8405028	59/2014	25.08.14	-	84,05,028
11	2453471	60/2014	25.08.14	1,26,540	23,26,929
12	4230498	61/2014	26.08.14	-	42,30,498
13	778947	62/2014	26.08.14	-	7,78,947
14	1073695	63/2014	26.08.14	-	10,73,695
15	274414	64/2014	26.08.14	30,822	2,43,595
16	345452	65/2014	26.08.14	-	3,45,452
17	384171	66/2014	26.08.14	10,332	10,332
				TOTAL	**Rs.2,35,29,558**

4. The Applicant, based on the report furnished by the Range Officer, on verifying the credentials of the duty payment made by the Applicant, through debits from their CENVAT account, for their exports, (which revealed that for the payment of duty involved on the goods exported, the Applicant had utilised the wrongly availed of CENVAT credit) were issued show Cause Notices in all the 17 cases, proposing to reject the rebate claimed partially, in some cases, and fully in other cases as this amounted to the Applicant not following the procedures prescribed under the provisions of the Rule 18 of the Central Excise Rules, 2002. The Lower Authority, on adjudication, rejected the rebate claimed partially in some cases and fully in other cases as detailed at table above.

5. Being aggrieved, the Applicant filed 17 Appeals before Commissioner (Appeals) Large Taxpayer Unit, Bangalore who vide impugned Order -in-Appeal No. 9-25/2015 dated 30.01.2015 rejected the appeal and upheld all 17 Orders in Original,

6. Being aggrieved with the impugned order in appeal, the Applicant has filed these Revision Applications on the following grounds :

6.1 The Commissioner (Appeals) (LTU) has without proper application of mind just blindly followed the findings of the lower authority and not given any independent reasons for rejection of the rebate claims. Such an order passed without application of mind is therefore bad in law and deserves only to be set aside.

6.2 The Commissioner (Appeals) (LTU) has violated principles of natural justice in as much as the applicant had specifically requested for the further opportunity to put-forth certain clarifications. If these clarifications had been put-forth they were all chances of the applicant receiving positive outcome in these appeals. The impugned order being violative of the principles of Natural Justice deserves only to be set aside.

6.3 In the impugned order the Commissioner (Appeals,) LTU has observed that the lower authority has arrived at his decisions on the basis of detailed verification report obtained from Jurisdictional Range Officer vis-a-vis the CENVAT Credits availed by the applicant. He has observed that this report had not been challenged by the applicant and that during the period July, 2012 to December, 2012 the CENVAT Credit balance indicated that on deduction of relevant alleged wrong/ irregular / ineligible credit it resulted in negative insufficient balance in the CENVAT Credit account. It is purely based on this he has proceeded to hold that the Applicant had failed to fulfill the basic prerequisite to be eligible for rebate in view of the fact that when clearance of goods for exports have been effected by the Applicant the balance in CENVAT Credit was negative which had technically resulted in clearance of goods without payment of appropriate duty. The Commissioner (Appeals), like the lower authority in spite of specific contentions made by the applicant had totally ignored the fact that with respect to the alleged wrong credits of Rs.6,37,53,414/-, Rs.71,17,711/-, Rs.13,01,551/-, the department had initiated proceedings for denial of the said credit and as far as the case pertaining to Rs. Rs.6,37,53,414/-, Rs.71,17,711/- were concerned, they were before the Customs, Excise & Service Tax Appellate Tribunal, Chennai and as indicated hereinabove complete waiver had been granted in the case of Rs.6,37,53,414/- and partial waiver in the case of Rs.71,17,711/-. When specific proceedings had been initiated for recovery of these alleged wrong credits, the Assistant Commissioner could not have proceeded to deduct the alleged wrong credits from the fresh credits being availed by the applicant during the period July, 2012 to December, 2012 to arrive at a negative balance of credit. This in effect meant that the alleged wrong credits mentioned above were being denied twice to the applicant which is not permissible in law. Based on such an arbitrary action the Commissioner (Appeals) has

totally erred in upholding the Order-in-Original rejecting the rebate claims wholly/partially.

6.4 The Commissioner (Appeals), ought to have appreciated the fact that if this arbitrary deduction of alleged wrong credit from the fresh credit being availed on a monthly basis by the applicant had not been done by the Assistant Commissioner as indicated in the impugned orders in original the fresh credit availed by the applicant on a monthly basis was more than sufficient for clearance of the goods for export on payment of duty. Therefore the very basis that sufficient credit was not available to clear the export goods is not correct and the rejection of the refund claims mainly on this basis is totally incorrect and unsustainable.

6.5 The Commissioner (Appeals) LTU,ought to have appreciated that the Assistant Commissioner had totally exceeded his jurisdiction in rejecting the rebate claims on grounds which were not mentioned in the Show Cause Notice's at all. In the impugned Show Cause Notices the only ground for rejection of rebate claim was that the applicant had wrongly availed credit of Rs.7,21,72,676/- and utilized the same for clearance of export goods for which rebate had been claimed. In his impugned Order-In-Originals the Assistant Commissioner has gone a step further and proceeded to deduct this alleged wrong credit from the fresh credit being availed by the applicant on a monthly basis and then coming to a totally wrong conclusion that there was a negative balance of credit. That this was inspite of being fully aware that the separate proceedings had been initiated with respect to the said amounts details of which have been given hereinabove. The Commissioner (Appeals) LTU also has not appreciated these contentions put-forth by the applicant during the personal hearing and it was to further clarified this aspect that the applicant had prayed for a further hearing which was refused in a very arbitrary manner. Hence it is apparent that the impugned order of the Commissioner (Appeals), is bad in law and hence deserves only to be set aside.

6.6 Commissioner (Appeals), has totally failed to appreciate the fact that from July till December, the applicant had been availing huge amount of credit as indicated by the Assistant Commissioner in his chart. This fresh credit is more than sufficient to cover the duty payment on the exported goods and

therefore the contentions that there was no sufficient balance of credit for clearing the export goods is totally incorrect. The Commissioner (Appeals) LTU has not appreciated this mistake on the part of the Assistant Commissioner and hence this order deserves only to be set aside.

6.7 That it had been specifically pointed out to the Commissioner (Appeals), that with respect to alleged wrong credit of Rs.6,37,53,414/- there was a complete waiver of pre-deposit granted by the Customs, Excise & Service Tax Appellate Tribunal, Chennai. Infact the said appeal has been now posted for out of turn hearing on 23rd June 2015 by order of Customs, Excise & Service Tax Appellate Tribunal, dated 16.04.15 even with respect to the alleged wrong credit of Rs.71,17,711/- there was partial waiver of pre-deposit which fact had been submitted before the Commissioner (Appeals). It was for this reason that the applicant had been specifically requested the Commissioner (Appeals), to keep the appeals in abeyance till the outcome in the case of Rs.6,37,53,414/- which request was totally ignored by the Commissioner (Appeals). The impugned order of Commissioner (Appeals), LTU passed in such haste without appreciating the contentions put-forth is therefore totally bad in law deserves only to be set aside.

6.8 The Commissioner (Appeals) LTU, like the Lower Authority has totally overlooked the fact that the excisable goods manufactured by the applicant had been exported after following all the prescribed procedures and after payment of duty, proof of export had been received and foreign exchanged had been earned. That in short all the necessary pre-requisites for being eligible to rebate claim under Rule 18 had been complied with by the applicant and therefore rejection of their rebate claims was totally unjust and on this ground also the said order deserves to be set aside.

On the grounds mentioned hereinabove, the Applicant prayed that the order of the Commissioner (Appeals), be set aside with consequential relief.

7. The Applicant also filed additional submissions on the date of personal hearing stating therein as follows:

7.1 The Issue at the centre of the entire controversy is the so called wrong availment of credit of Rs.13,01,551/- in May, 2012, Rs.

6,37,53,414/- in May, 2012 and Rs.71,27,677/- in June 2012 (Total Rs. 7,21,62,642/-). The department alleged that since this credit was availed wrongly, clearances of exported goods which were made on payment of duty by using such wrongly availed credit were against inadequate balance, and the same tantamounted to clearances made without payment of duty The department therefore, assumed that exported goods were not duty paid, hence rebate claims were liable for rejection.

Here, it would be pertinent to mention that Credit of Rs.6,37,53,414/ was taken in terms of Rule 10 A of Cenvet Credit Rules which provided for transfer of un- utilised credit of additional duty leviable under section 3(5) of the Customs Tariff Act The rule reads as under-

Rule [10 A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of Section 3 of the Customs Tariff Act. —

(1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax A, 1961 (43 of 1961), **may transfer unutilised CENVAT credit of additional duty leviable under subsection (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises** by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises may take CENVAT credit on the basis of the transfer challan:

The objection of the department was that credit should have been taken at the end of the quarter and not earlier as done by the applicant. Therefore, the show cause notice and confirmation thereof by the Commissioner. However, the CESTAT quashed the order of the Commissioner and allowed the credit.

7.2 Availment of Cenvat Credit and claim for rebate are linked and rebate cannot be denied prematurely.

A.1 When issue of wrongly availed credit was pending in appeal before CESTAT, no adjustment was warranted, and the rebate claims should not have been rejected by AC in August/Sept 2014. This action was all the more injudicious and arbitrary as he failed to take notice of the fact that on 07-07- 2014 CESTAT had already waived pre-deposit in the main case involving credit of Rs. 6,37,53,414/ -on the ground that applicant had a good prima facie case on merits. Stay granted vide Miscellaneous Order No 41120, 41121/2014 dated 07 07.2014 (ANNEXURE-1).

B.1 Adjudicating Authority has acted beyond the scope of provisions of Rule 18 and Notification No. 19/2004-CE.

Manner of examining and sanctioning rebate claim is governed by Rule 18 of Central Excise Rules, 2002 and the notification issued thereunder. Rule 18 provides that-

RULE 18. Rebate of duty. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification. As per the rule, rebate is subject to conditions or limitations and procedure as specified in the notification. The notification in this regard is Notification no. 19/2004-CE dated 05.09.2004 as amended (ANNEXUFtE-2) which lays down conditions, limitations and procedure for grant of rebate claim. It reads as-

In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (KT.), dated the 26th June 2001, (G.S.R. 469(E), dated the 26th June, 2001/ insofar as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified ***hereinafter.***

-(2) Conditions and limitations: -

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

(b) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;

(3) Procedures :-

(a) sealing of Goods and examination at the place of dispatch and export,

B.2 The basic conditions and limitations in the notification are that the goods should be exported after payment of duty within 6 months from date of clearance. The procedural part is basically confined to manner of examination, scaling, export and disposal of copies of application/ARE-1. Thereafter, dahn for rebate to Central Excise authorities is presented, which is sanctioned on comparing duplicate copy of application received from Customs and original copy received from the exporter and on satisfying that the claim is in order.

B.3 It thus is obvious that ascertaining correctness of CENVAT credit availed is neither a requirement nor a condition for sanction of refund claim under the notification. Still, to resort to it to deny rebate claim is beyond the provisions of law. Here, reliance is placed on the judgment *in Ivy Comptech Pvt Ltd V/ s* CCECST Hyderabad-2016 (42) S.T.R. 66 (Tri. - Bang.) (ANNEXURE-3) wherein it was held that-

> 3. Further it was also submitted that exercise of correctness of Cenvat credit availed was not at all required as regards the provisions of Notification No. 11/2005-S.T. What is required to be verified while sanctioning rebate claim under Notification No. 11/2005 is whether service has been exported or not and whether consideration has been received for the exported service and whether the tax has been paid on the service exported or not. Other than this, no other verification is required. Therefore, on this ground also, the impugned order cannot be sustained. In view of the above

discussion, appeals filed by the appellants are allowed with consequential relief, if any, to the appellants..."

B.4 The prime requirement is that the goods should be exported after payment of duty. In the present case the goods were very much duty paid and the same was partly paid through Cenvat Credit. It is not as if goods were not duty paid. Only department was of the view that the Cenvat credit was wrongly availed. But the basis of this view was a technical/procedural point and not a legal point as explained in paras below. And, in any case, even the department's view had by no means reached finality. Therefore, clearly it was premature to deny the rebates.

B.5 It is apt to stress here that the so called wrongly availed credit was earned in a rightful manner and the applicant had procured duty paid inputs on which SAD was paid under Section 3(5) of the Customs Tariff Act. There is no dispute on the duty paid character of the imported inputs. It was just that the department did not agree with the manner of availment of credit and termed it as wrongly availed due to procedural lapses. It is a settled law that substantial benefit cannot be denied for procedural irregularities. Therefore, denial of credit and consequential rejection of refund claims were not justified, Moreover, the rules relating to rebate do not make any distinction based On source or manner of payment of duty. Here, reliance is placed on the judgmen, in the case of Bharat Chemicals V/s CCE, Thane- 2004 (170) ELT. 568(Tri.-Mumbai) (ANNEXURE-4) wherein it was held that-

4. We are inclined to accept the appellant's claim. Rule 12 of Central Excise Rules speaks of rebate of duty paid on the excisable goods" and "duty paid on materials used in the manufacture of goods" and not of duty payable. Duty payment may be erroneous, at a higher or lower rate. The Scheme of the Statute seems to be, to return as rebate, actual amount of "duty paid' and not the amount of duty "payable". In the present case, the rebate paid is equal to the duty actually paid. That payment seems to be in accordance with the Rules. Revenue is not justified in distinguishing payment of duty from PLA and Modvat account, since these are merely two accounts from which payments can be made. The Rule relating to rebate makes

no distinction based on the source or manner of payment of duty.

6. In the view we have taken above. we set aside the impugned order and allow the appeal.

This case was affirmed in 2015 (320) ELT 337 (Bombay High Court).

Here, reliance is placed on the judgment in the case of Bharat Chemicals Vis CCE, Thane- 2004 (170) E.L.T. 568 (Tri. - Mumbai), (ANNEXURE-4) wherein it was held that-

4. We are inclined to accept the appellant's claim. Rule 12 of of Central Excise Rules speaks of "rebate of duty paid on the excisable goods" and "duty paid on materials used in the manufacture of goods" and not of duty payable. Duty payment may be erroneous, at a higher or lower rate. The Scheme of the Statute seems to be, to return as rebate, actual amount of "duty paid" and not the amount of duty 'payable". In the present case, the rebate paid is equal to the duty actually paid. That payment seems to be in accordance with the Rules. Revenue is not justified in distinguishing payment of duty from PLA and Modvat account, since these are merely two accounts from which payments can be made. The Rule relating to. rebate makes no distinction based on the source or manner , payment of duty.

6. In the view we have taken above, tee set aside the impugned order and allow the appeal.

This case was affirmed in 2015 (320) ELT 337 (Bombay High Court).

NEITHER WRONG/IRREGULAR CENVAT CREDIT AVAILED NOR DUTY SHORT PAID BY THE APPLICANT.

C.1 Assuming, not admitting that the applicant short paid duty by availing credit more than that was admissible to them, rebate cannot be denied as short payment was not due to collusion, wilful mis-statement Or suppression of facts. Here, reliance is placed on the Apex Court judgment in the case of -Omkar Overseas Ltd V/s U.O.I. - 2003 (156) E.L.T. 167 (S.C.), (ANNEXURE-5) wherein it was laid down that-

3. The appellants bought 100% cotton fabrics from one M/s. Gopi Synthetics and then exported the said fabrics. The appellants claimed rebate under Notification No. 29/96-C.E. (N.T.), dated 3rd September, 1996 on the footing that duty had been paid by the manufacturer i.e. M/s. Gopi Synthetics. This rebate was denied on the ground that duty had been short paid by M/s. Gopi Synthetics inasmuch as they had availed of 60% deemed Moduat credit whereas they were only entitled to avail credit @ 50%. For this short payment of duty, a show cause notice was issued to M/s. Gopi Synthetics. After receipt of the show cause notice M/s. Gopi Synthetics paid up the 10% duty which had been short paid. They then appealed against penalty which had been levied on them. The Commissioner (Appeals) waived penalty on the ground that short payment was not by mason of any fraud, collusion or any wilful mis-statement or suppression of facts. The appeal filed by the Department against that order was dismissed on the ground of non-compliance with statutory provisions. Thus, the order of Commissioner (Appeals) in the case of M/s. Gopi Synthetics has attained finality. In their case it has been held that short payment was not due to any fraud, collusion or any wilful mis-statement or suppression of facts.

4. The only ground on which the appellants have been denied rebate is that M/s. Gopi Synthetics (the manufacturer) had short paid duty. Even though M/ s. Gopi Synthetics has since paid the duty and it has been finally held that there was no fraud, collusion or any wilful mis-statement or suppression of facts, rebate is being denied to the appellants. This is being done on the specious plea that it was the duty of the appellants, before he exported the goods, to see that the correct amount of duty had been paid. We are unable to accept this submission. Benefit of rebate is not to be denied because there is short payment. Benefit can be denied only if there is short payment by reason of fraud, collusion or any wilful mis-statement or suppression of facts. Once it has been held that there was no fraud, collusion or any wilful mis-statement or suppression of facts on the part of the party who was to pay the duty then the exporter cannot be denied rebate.

THERE NEVER WAS INADEQUATE OR INSUFFICIENT BALANCE. DUTY CORRECTLY PAID ON GOODS EXPORTED.

D.1 As the position stands, the applicant had not availed any wrong ineligible Cenvat credit. They took and availed only rightful credit admissible to them. Credits which have been termed as wrongly availed are Credit of Rs. 13,01,551/, Credit of Rs. 6,37,53,414/ and Credit of Rs. 71,27,677/-(Total Rs. 7,21,82,642/-). Factual position with regard to this credits is as below:

(i) **In respect of credit of Rs. 13,01,551/ - (Credit taken in May, 2012)** permission had been granted by the AC Central Excise, Division. Bangalore. So availment thereof was in order. Jurisdictional authorities at punduchery where credit was transferred however acted beyond jurisdiction and issued show cause notice, which was confirmed. But the Commissioner (Appeals) Bangalore, vide Order in Appeal No.114/2016/LTU dated 02.11.2016(Annexure-6) set aside the Order of the adjudicating authority and allowed the credit.

(ii) As regards credit of Rs. 6,37,53,414/. (Credit taken in May, 2012). the same was taken in terms of then newly inserted Rule 10A of Cenvat Credit Rules, 2004 which allowed transfer of unutilized Cenvat credit of lying in balance in one unit to another unit of same manufacturer. Though, the denial of credit was confirmed by Commissioner, the CESTAT vide Final Order No.41049-41050/2015 reported as 2016(344) ELT 385 (Tri Chennai) (Annexure-7) allowed the appeal and ruled that the applicants were eligible for credit.

(iii) Credit of Rs. 71,27,667/- (Credit taken in June, 2012) was denied by the Assistant Commissioner. This case is pending with the CESTAT Chennai and the applicant have got Stay and partial waiver from pre-deposit in this case vide Misc. Order No. 41608/2014 dated 18.09.2014 (ANNEXURE-8)

D.2 It thus is obvious that there was no irregularity in availing the credit and the same had been taken correctly as per provisions of law. The goods were exported after following the prescribed procedure and on payment of duty. Even proof of export had been received and foreign exchange

had been received. Therefore, as per law there is no reason to deny the rebate claims.

D.3 The very basis of issuing show cause notices, rejection of rebate claims by the adjudicating authority and the Commissioner (Appeals) was the alleged wrong availment of credit, resulting in inadequate balance which they held amounted to clearance without payment of duty But, as explained below, this basis does not exist.

Chart marked as (Annexure-9), according to the department, reflects negative balance in Cenvat Account of the applicant month-wise. It is clear that for the first-time inadequate balance occurred in July, 2012 and the same was to the extent of Rs.2,15,00,263/- and the maximum inadequate balance was Rs.5,71,24,696/- was in September, 2012. If credit of Rs.6,37,53,414/- which was availed in May, 2012 and has since been allowed by the CESTAT, is added to Cenvat account of the applicant, there never was any inadequate balance against the goods exported on payment of duty. Credit details for which rebate claims were allowed and rejected is given in (Annexure-10). It thus is evident that so called inadequate balance was just a presumption and the same stands belied and contradicted. Since, duty paid character of the goods stands established, Rebate claims were perfectly in order, permissible and there exists no valid ground to deny the same.

D.4 Non-fulfilment of condition of 'duty paid nature and character of the goods' for claiming rebate claim was the only ground for issuing show cause notice and confirming the demand. As this condition stands fulfilled, the revision application ought to be accepted. Orders passed by the appellate authority are perverse, bad in law and merit to be quashed.

8. A Personal hearing in the matter was held on 06.04.2018. Shri P.S.Pruthi, Consultant, Certus consulting appeared for the personal hearing on behalf of the applicant. No one was present from the respondent's side (Revenue). The consultant reiterated the submissions filed in the revision application and written submissions filed on the date of hearing. It was pleaded that Commissioner Central Excise (Appeals) and CESTAT have

already decided the case in their favour on the correctness of CENVAT credit availed, therefore, the Order in Appeal be set aside and RA be allowed.

9. 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.

10. Government in this case observes that the Applicant had filed 17 rebate claims for the period April, 2012 to December, 2012 under Rule 18 of the Central Excise Rules, 2004. The Assistant Commissioner, however issued show cause notices in all these cases proposing to reject the claims on the ground that duty payment on exported goods was made from wrongly availed Cenvat credit. In adjudication, the rebate claim were denied wholly or partialy as shown at Table under para 3 above. . The Commissioner (Appeals) upheld the orders of the Assistant Commissioner.

11. Government observes that the Applicant had availed Credits of Rs. 13,01,551/- and Rs.6,37,53,414/- in May, 2012 and of Rs. 71,27,677/- in June, 2012 and utilised the same partly to pay duty on goods exported. It was the allegation of the department that Credit of 13,01,5511-, Rs.6,37,53,414/- and Rs. 71,27,677/- (total Rs.7,21,76,632/-) was inadmissible and availed in contravention of provisions of Cenvat Credit Rules, 2004. Since, the duty on exported goods for which Rebate claims had been filed was paid by utilizing inadmissible credit, the exporter is not eligible for rebate of such duty and consequently the rebate claims are liable for rejection. The SCN's further alleged that the applicant, but for the wrong availment, had in fact no eligible balance of credit in Cenvat account at the time of clearance of the goods for export. Government further observes that while deciding the show cause notices the adjudicating authority observed that as per Rule 18 of Central Excise Rules,2004 read with the relevant' notification No. 19/2004-CE, excisable goods are to be exported after payment of duty. Therefore, main point for determination is whether appropriate duty was paid on the goods cleared for export. The Range Officer in his verification report reported that the assessee availed Cenvat credit wrongly; that after exclusion of wrongly availed Cenvat credit, in some cases

there was inadequate balance in Cenvat account to pay duty on exported goods at the time of clearance. He therefore, concluded that duty payment on exported goods was made from wrongly availed credit and that since fundamental condition of exporting goods on which duty is paid is not satisfied, rebate claim is inadmissible.

12. The Commissioner (Appeals) in his findings in Order-in-Appeal no. 09-25/2015 dated 30.01.2015 observed that, the only issue to be decided is whether the duty paid by the Applicant through alleged irregular/ineligible/wrong Cenvat account for the goods exported is in order or otherwise, for claim of rebate. He pointed out that their Cenvat credit balance indicates that on deduction of alleged wrong/ineligible Cenvat credits availed of, it resulted in negative /insufficient balance in Cenvat account. He observed when exported goods were cleared, balance in Cenvat credit account was insufficient and therefore held that the appellant failed to fulfil the fundamental condition for eligibility to rebate-the duty paid character of relevant goods and upheld the decision of the lower authority.

13. Government observes that the issue to be decided here whether the duty paid by the Applicant through their Cenvat account which is alleged to be alleged irregular/ineligible/wrong, for the goods exported is in order or otherwise, for claim of rebate under Rule 18 of Central Excise Rules, 2002.

14. From the impugned Orders in Original Government observes that total wrong credit taken by the Applicant during the period May and June 2012 was Rs. 7,21,76,632/- any wrong ineligible Cenvat credit which is detailed as under:-

Sl. No.	Sl. No. under which credit taken	Source document	Credit taken (Rs.)
1	72 of Annexure-10 for May 2012	Asstt Commr Kanakapura Dn Bangalore order dated 31.05.2011 denying the credit for Bangalore unit	13,01,551/-
2	73 of Annexure-10 for May 2012	Delivery challan no. PDC/12-13/001 dated 31.05.2012	6,37,53,414/-
3	105 of Annexure –	Assistant Commissioner	71,21,667/-

	10 for June 2012	letter dated 12.08.2012	
	TOTAL		7,21,76,632/-

15. As regards ineligible credit of Rs. 13,01,551/ - (Credit taken in May, 2012) the Applicant in their submissions dated 06.04.2018 had contended that the permission for transfer of unutilised CENVAT Credit at their new /transferred site had been granted by the AC Central Excise, Division. Bangalore. So availment thereof was in order. Jurisdictional authorities at Punduchery where credit was transferred however acted beyond jurisdiction and issued show cause notice, which was confirmed. But the Commissioner (Appeals) Bangalore, vide Order in Appeal No.114/2016/LTU dated 02.11.2016 set aside the Order of the adjudicating authority and allowed the credit. While setting aside the Order in Original, Commissioner (Appeals) in Order in Appeal No.114/2016/LTU dated 02.11.2016 (Annexure 6) observed that

> *17. Hence, the impugned credit transfer permitted by the proper officer/designated authority which has not been challenged by the Department, cannot be denied to the Appellant. The denial of credit here even though duly permitted, is found to be grossly unfair and unjust. Threefore, in view of above discussion as the allegations in the SCN are wholly unfounded, the impugned Order is not sustainable and the Appellant is entitled to the credit transfer of Rs.13,01,551/-*

16. As regards ineligible credit of Rs. 6,37,53,414/-(Credit taken in May, 2012) the Applicant has submitted that the same was taken in terms of then newly inserted Rule 10A of Cenvat Credit Rules, 2004 which allowed transfer of unutilized Cenvat credit of lying in balance in one unit to another unit of same manufacturer and though, the denial of credit was confirmed by Commissioner, the CESTAT vide Final Order No.41049-41050/2015 reported as 2016(344) ELT 385 (Tri Chennai) allowed the appeal and ruled that the applicants were eligible for credit.

17. As regards ineligible Credit of Rs. 71,27,667/- (Credit taken in June, 2012) was denied by the Assistant Commissioner, the Applicant has

submitted that this case is pending with the CESTAT Chennai and the applicant have got Stay and partial waiver from pre-deposit in this case vide Misc. Order No. 41608/2014 dated 18.09.2014.

18. Government observes that if both the amounts of alleged ineligible credits of Rs. 13,01,551/ - (allowed to the Applicant vide Order in Appeal No.114/2016/LTU dated 02.11.2016) and Rs. Rs. 6,37,53,414/- (allowed vide CESTAT Final Order No.41049-41050/2015 dated 26.08.2015) together amounting to Rs.6,50,54,965/- are added to the Credit taken for the month of May 2012, there remains no inadequate balance available against the goods exported on payment of duty which is made clear from the following chart:

Month	Opening balance of credit (Rs.)	Credit taken (Rs.)	Wrong credit taken (Rs.)	Eligible credit available (Rs.)	Credit utilised for home consumption	Credit utilised for export (Rs.)	Total credit utilised (Rs.)	Balance eligible credit available (Rs.)
1	2	3	4	5	6	7	8	9
				2+3-4			6+7	5 - 8
May, 12	21609410	76802738	0	98412148	14069267	3626667	17695934	80716214
June,12	80716214	14878965	7117711	88477468	11864779	7524278	19389057	69088411
July,12	69088411	11229298	0	80317709	33443671	3319336	36763007	43554702
August,12	43554702	10673431	0	54228133	16655785	1793832	18449617	35778516
Sept, 12	35778516	12196158	0	47974674	26076405	13968600	40045005	7929669
Oct, 12	7929669	25157814	0	33087483	17812810	4480434	22293244	10794239
Nov, 12	10794239	28257645	0	39051884	17805959	6449984	24255943	14795941
Dec, 12	14795941	24471003	0	39266944	29785013	0	29785013	9481931

19. Government also observes that both the above stated Orders, viz. CESTAT Final Order No.41049-41050/2015 dated 26.08.2015 passed by CESTAT South Zonal Bench, Chennai and Order in Appeal No.114/2016/LTU dated 02.11.2016 passed by Commissioner (Appeals) LTU, Bangalore have not been reviewed and have thus attained finality.

20. In view of the foregoing Government holds that there was adequate balance available in the Cenvat Credit Account of the Applicant from May 2012 to December 2012 when the impugned goods were exported on payment of duty and thus the clearance of goods has been effected during the relevant time by payment of appropriate duty and therefore duty paid nature of exported goods has been proved and thus Applicant has fulfilled the provisions of Rule 18 of the Central Excise Rules, 2002.

21. In view of above circumstances, Government sets aside the impugned orders Orders-in-Appeal No.09-25/2015 dated 30.01.2015 passed by the Commissioner (Appeals), Large Tax payer Unit, Bangalore and remands the case back to original authority to decide the case afresh taking into account the above observations. The original authority is directed to pass a speaking order in accordance with law after following the principles of natural justice, within 8 weeks from the receipt of this order.

22. The 17 Revision Applications thus succeed in above terms.

23. So, ordered.

27.9.18

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

ORDER No. 313-329 /2018-CX (SZ) /ASRA/Mumbai Dated 27.09.2018.

To,
M/s. Tejas Networks Ltd,
Plot No. 25,
J.P. Software Park,
Electronics City, Phase-1,
Hosur Road, Bangalore- 560100

ATTESTED
3/10/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of GST & CX, Goubert Avenue, Beach Road, Puducherry.

वित्त मंत्रालय (वित्तीय सेवाएं विभाग) एवं पदेन अपर सचिव, भारत सरकार
Pr. Comm. (CA) & ex-Officio Additional Secretary to the Govt. of India
Mumbai मुंबई

2. The Commissioner of Central Tax, Bengaluru South Commissionerate, C.R. Building, 5th Floor, Queens Road, Bengaluru – 560 001.
3. The Commissioner of GST & CX, (Appeals-I), Central Revenue Building, Bibikulam, Madurai-625 002
4. The Commissioner of GST & CX, (Appeals-I), HAL Airport Road, TTMC, BMTC Bus Stand Complex, Stage 2, Domlur, Bengaluru, Karnataka 560071
5. The Assistant Commissioner, Bengaluru South Commissionerate, C.R. Building, 5th Floor, Queens Road, Bengaluru – 560 001.
6. The Assistant Commissioner of GST & CX, Goubert Avenue, Beach Road, Puducherry.
7. Shri P.S. Pruthi, IRS, (Retd.), C/o Certus Consulting, House No. 17, Sector -2 Chandigarh-160 011.
8. Sr. P.S. to AS (RA), Mumbai
9. Guard file
10. Spare Copy.

ATTESTED

S.15. HIRULKAR
Assistant Commissioner (R.A.)