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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. 198/21/15-RA / 5371
F.No. 198/20/15-RA

Date of Issue: 20.09.2021

316-317
ORDER NO. /2021-CX (WZ) /ASRA/MUMBAI DATED 14.09.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL
EXCISE ACT, 1944.

Applicants : Commissioner of Central Excise, Pune-I.

Respondents : M/s JCB India Ltd. Pune

Subject : Revision Applications filed, under Section 35EE of Central
Excise Act, 1944 against Orders-in-Appeal Nos. PUN-EXCUS-
001-APP-167-14-15 dated 23.01.2015 and PUN-EXCUS-001-
APP-165-14-15 dated 22.01.2015 and passed by the
Commissioner(Appeals), Central Excise, Pune-I.

ORDER

The two Revision Applications have been filed by Commissioner of Central Excise, Pune-I (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. PUN-EXCUS-001-APP-167-14-15 dated 23.01.2015 and PUN-EXCUS-001-APP-165-14-15 dated 22.01.2015 passed by the Commissioner(Appeals), Central Excise, Pune-I.

2. The case in brief is that the M/s JCB India Ltd., Talegaon Floriculture & Industrial Park, Village Ambi & Navlakh Umbare, Tal.-Malval, Talegaon, Dabhade, Dist. Pune -410 507 (hereinafter referred to as "the Respondent), are engaged in the manufacture and export of excisable goods falling under Chapter 84 of the Central Excise Tariff.

- (i) The Respondent had filed two rebate claims of Rs. 1,03,19,156/- and Rs. 1,77,55,786/- under Section 11B of the Central Excise Act,1944 and Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE(NT) dated 06.09.2004.
- (ii) The two rebate claims were sanctioned to Respondent by the Assistant Commissioner, Central Excise, Pune-I Division, Pune-I Commissionerate vide Order-in-Original dated 22.08.2012 and 05.10.2012 respectively.
- (iii) The two rebate orders were reviewed by the Commissioner, Central Excise, Pune-1 Commissionerate and the Department filed two appeal before the Commissioner(Appeals), Central Excise, Pune-I. At the same time , a protective demand Show Cause Notices dated 09.11.2012 and 14.01.2013 for the demand of the rebate sanctioned was also issued to Respondent.
- (iv) The appeals filed by the Department was decided by the Commissioner(Appeals) vide Order-in-Appeal Nos PI/GSM/ 20/2013 and PI/GSM/ 19/2013 both dated 19.03.2013 wherein the Order-in-Original dated 22.08.2012 and 05.10.2012 respectively was set aside and the Respondent were directed to

rectify the defects and omissions pointed out by the Department and the Department was directed to conduct necessary verification and allow the claims which were complete in all respects.

- (v) In pursuance of the directions of the Commissioner(Appeals) vide two Order-in-Appeal both dated 19.03.2013 and Show Cause Notices dated 09.11.2012 and 14.01.2013, the Assistant Commissioner, Central Excise, Pune-I Division, Pune-I Commissionerate vide Order-in-Original Nos. P1/Divn.1/CEX/28/2013 and P1/Divn.1/CEX/27/2013 both dated 30.08.13 wherein the demand of Rs. 1,03,19,156/- and Rs. 1,77,55,786/- was confirmed along with interest being erroneous rebate granted vide Order-in-Original dated 22.08.2012 and 05.10.2012. Aggrieved, the Respondent filed two appeals with the Commissioner(Appeals), Central Excise, Pune-I. The Commissioner(Appeals) vide Order-in-Appeal Nos. PUN-EXCUS-001-APP-167-14-15 dated 23.01.2015 and PUN-EXCUS-001-APP-165-14-15 dated 22.01.2015 set aside the two Order-in-Original both dated 30.08.2013 respectively and allowed the appeals filed by the Respondent

The details of the case is given below:

Sr. No.	Rebate claim (Rs.) & date	OIO No. and dt	OIA No. & dt	OIO No. and dt	OIA No. & dt	Revision Application
1	1,03,19,156 dt 29.05.12	PI/Divn.1/Reb/137/2012 dt 22.08.12 sanctioned	P-I/GSM/20/2013 dt 19.03.13 set aside the OIO	PI/Divn.1/CEX/28/2013 dt 30.08.13 confirmed the demand along with interest	PUN-EXCUS-001-APP-167-14-15 dated 23.01.2015 set aside the OIO and allowed the appeal	198/21/15-RA
2	1,77,55,786 dt 07.08.12	PI/Divn.1/Reb/168/2012 dt 05.10.12 sanctioned	P-I/GSM/19/2013 dt 19.03.13 set aside the OIO	P1/Divn.1/CEX/27/2013 dt 30.08.13 confirmed the demand along with interest	PUN-EXCUS-001-APP-165-14-15 dated 22.01.2015 set aside the OIO and allowed the appeal	198/20/15-RA

3. Aggrieved, the Applicant filed the current two Revision Applications on the following grounds:

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(i) The Respondent had filed rebate claims in respect of goods export during the month of Jan.2012 and Feb. 2012. However, out of 13 ARE-1s, in case of 07 ARE-1s, the goods had been cleared for export under the cover of ARE-1s and Commercial invoice only and no Central Excise invoice was issued at the time of clearance of goods. The Excise invoice number was not mentioned in the ARE-1s. The relevant Excise invoice (submitted by the Respondent along with the rebate claims) were issued at the later date/time, because of which there were no linkage between concerned ARE-1 and Excise Invoice and which is in contravention of the provisions of Rule 11 of Central Excise Rules, 2002 and that no Central Excise duty i.e. Rs. 60/49,627/- was paid by the Applicant for which the rebate had been claimed. The details of the ARE-1s are mentioned as under:

Sl. No.	ARE-1 No & dt	Commercial invoice No. & dt	Excise Invoice No. & dt enclosed while filing rebate	Dt & time of removal as per Excise Invoice	Dt & time of removal shown in ARE-1	Amt of rebate claimed (Rs.)
1	20120002 dt 20.1.12	20120002 dt 20.1.12	2110000146 dt 21.1.12	21.1.12 16:15:58 hrs	Dt no mentioned 11:59:50 hrs	17,79,302
2	20120004 dt 21.1.12	20120004 dt 21.1.12	2110000148 dt 21.1.12	21.1.12 16:49:49 hrs	21.1.12 12:20:56 hrs	7,11,721
3	20120005 dt 21.1.12	20120005 dt 21.1.12	2110000149 dt 21.1.12	21.1.12 16:58:13 hrs	Dt no mentioned 16:07:55 hrs	3,55,860
4	2012000018 dt 17.2.12	2012000018 dt 17.2.12	2110000434 dt 20.2.12	20.2.12 12:19:43 hrs	17.02.12 16:13:04 hrs	7,11,721
5	2012000021 dt 17.2.12	2012000021 dt 17.2.12	2110000435 dt 20.2.12	20.2.12 12:41:01 hrs	17.02.12 17:25:55 hrs	7,11,721
6	2012000020 dt 21.1.12	2012000020 dt 21.1.12	2110000436 dt 20.2.12	20.2.12 12:55:43 hrs	17.02.12 17:18:57 hrs	7,11,721
7	2012000023 dt 21.2.12	2012000023 dt 21.2.12	2110000468 dt 21.2.12	21.2.12 16:06:49 hrs	21.02.12 11:20:52 hrs	10,67,581
					Total	60,49,627

(ii) In Para 7.1 of the Order-in-Appeal dated 23.01.2013, the Commissioner (Appeals) has admitted the reasons given by the Respondent, that by mistake they had mentioned the Commercial Invoice number, instead of the Excise Invoices on the ARE-1s and that they had issued the Excise Invoices before the clearances. The Commissioner (Appeals) has observed that the substantive conditions

of payment of duty and export of goods have been satisfied therefore, the rebate claim cannot be denied on procedural infractions, and set aside the impugned Order-in-Original dated 30.08.2013.

- (iii) As per the table given in Para 13 of the Order-in Original, dated 30.08.2013, out of the seven invoices, the following Excise invoices have the date subsequent to the date of the ARE-1 and the Commercial Invoice and the dates from the Gate out Entry Registers are either the same as that of the Excise Invoice, or are of subsequent dates:-

Sl. No.	ARE-1 No & dt	Commercial invoice No. & dt	Excise Invoice No. & dt	Time of Central Excise invoice	Dt & time of ARE-1	Amt of rebate claimed as mentioned on ARE-1	Remarks- Gate Entry Dt & time
1	20120002 dt 20.1.12	20120002 dt 20.1.12	2110000146 dt 21.1.12	16:15:58	11:59:50	17,79,302	1011200017 23:01:12 22:00:59
2	2012000018 dt 17.2.12	2012000018 dt 17.2.12	2110000434 dt 20.2.12	12:19:43	16:13:04	7,11,721	1011200178 20:02:12 21:31:08
3	2012000021 dt 17.2.12	2012000021 dt 17.2.12	2110000435 dt 20.2.12	12:41:01	17:25:55	7,11,721	1011200179 20:02:12 21:33:13
4	2012000020 dt 21.1.12	2012000020 dt 21.1.12	2110000436 dt 20.2.12	12:55:43	17:18:57	7,11,721	1011200177 20:02:12 21:28:10
5					Total	39,14,465	

- (iv) The Excise invoice Nos. in respect of the seven ARE-1s (detail in Para 3(i) above) were not mentioned thereon, and these invoice are issued at a later date and time. In Para 7.1 of the Order-in-Appeal dated 23.01.2015, it is stated that the position regarding the dates of the Excise Invoice being of subsequent dates than the date of removal shown in the ARE-1s was brought to the notice of the Commissioner(Appeals). There is no discussion on the reasons, or the significance of this substantial point, but the Commissioner(Appeals) has directly gone on to rely on the entries made in the Gate Out Register.

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- (v) The Respondent had filed rebate claim in respect of goods export during the month of Mar. 2012 respectively. However, out of 16 ARE-1s, in case of 09 ARE-1s the goods had been cleared for export under the cover of ARE-1s and Commercial invoice only and no Central Excise invoice was issued at the time of clearance of goods. The Excise invoice number was not mentioned in the ARE-1s. The relevant Excise invoice (submitted by the Respondent along with the rebate claims) were issued at the later date/time, because of which there were no linkage between concerned ARE-1 and Excise Invoice and which is in contravention of the provisions of Rule 11 of Central Excise Rules, 2002 and that no Central Excise duty was paid by the Applicant for which the rebate had been claimed. The details of the ARE-1s are mentioned as under:

Sl. No.	ARE-1 No & dt	Commercial invoice No. & dt	Excise Invoice No. & dt enclosed while filing rebate	Dt & time of removal as per Excise Invoice	Dt & time of removal shown in ARE-1	Amt of rebate claimed (Rs.)
1	2012000046 dt 19.3.12	2012000046 dt 19.3.12	2110000780 dt 19.3.12	19.3.12 13.35 hrs	19.3.12 13.13 hrs	16,52,571
2	2012000048 dt 19.3.12	2012000048 dt 19.3.12	2110000782 dt 19.3.12	19.3.12 14.40 hrs	19.3.12 13.23 hrs	8,26,286
3	2012000050 dt 20.3.12	2012000050 dt 20.3.12	2110000810 dt 20.3.12	20.3.12 16.05 hrs	20.3.12 13.28 hrs	12,81,097
4	2012000052 dt 20.3.12	2012000052 dt 20.3.12	2110000819 dt 20.3.12	20.3.12 18.15 hrs	20.3.12 14.19 hrs	3,30,794
5	2012000058 dt 21.3.12	2012000058 dt 21.3.12	2110000828 dt 21.3.12	21.3.12 15.36 hrs	21.3.12 14.36 hrs	4,27,032
6	2012000043 dt 19.3.12	2012000043 dt 19.3.12	2110000844 dt 22.3.12	22.3.12 10.10 hrs	19.3.12 12.59 hrs	8,54,056
7	2012000047 dt 19.3.12	2012000047 dt 19.3.12	2110000846 dt 22.3.12	22.3.12 13.20 hrs	19.3.12 13.22 hrs	17,06,130
8	2012000042 dt 19.3.12	2012000042 dt 19.3.12	2110000847 dt 22.3.12	25.3.12 08.40 hrs	19.3.12 12.22 hrs	4,27,032
9	2012000059 dt 19.3.12	2012000059 dt 19.3.12	2110000868 dt 22.3.12	25.3.12 08.48 hrs	19.3.12 14.37 hrs	8,54,065
					Total	83,61,072

- (vi) Further, in respect of ARE-1 No 2012000067 dated 30.03.2012, the relevant Excise invoice No. 2110000869 dated 25.03.2012 was issued much before ARE-1 and the Excise invoice was not mentioned in the ARE-1. Thus, it appeared that, since no Excise invoice was issued at

the time of clearance of goods, no Central Excise duty was paid by the Respondent.

- (vii) In respect of the all the 16 ARE-1s, the triplicate copy of the relevant ARE-1s were not tallying with the Original and Duplicate copy of ARE-1s. in as much as the rate of duty, amount of duty and time of removal were different.

Sl. No.	ARE-1 No & dt	Details mentioned Original & Duplicate copies of ARE-1			Details mentioned Original & Duplicate copies of ARE-1		
		Rate of duty	Amt of duty (Rs)	Dt. & time of removal	Rate of duty	Amt of duty (Rs)	Dt. & time of removal
1	2012000041 dt 19.3.12	12%+2%+1%	17,08,130	19.3.12 12.21 hrs	10%+2%+1%	14,23,441	19.3.12 12.16 hrs
2	2012000045 dt 19.3.12		8,54,065	19.3.12 13.12 hrs		7,11,721	19.3.12 12.26 hrs
3	2012000046 dt 19.3.12		16,52,571	19.3.12 13.13 hrs		13,77,143	19.3.12 12.27 hrs
4	2012000048 dt 19.3.12		8,26,286	19.3.12 13.23 hrs		6,88,571	19.3.12 12.41 hrs
5	2012000050 dt 20.3.12		12,81,097	20.3.12 13.28 hrs		10,67,581	20.3.12 12.44 hrs
6	2012000052 dt 20.3.12		3,30,794	20.3.12 14.19 hrs		1,75,661	20.3.12 13.07 hrs
7	2012000054 dt 21.3.12		12,81,097	21.3.12 14.28 hrs		10,67,581	21.3.12 15.01 hrs
8	2012000055 dt 21.3.12		12,81,097	21.3.12 14.28 hrs		12,81,097	21.3.12 10.49 hrs
9	2012000056 dt 21.3.12		17,08,130	21.3.12 14.29 hrs		14,23,441	21.3.12 15.18 hrs
10	2012000058 dt 21.3.12		4,27,032	21.3.12 14.36 hrs		3,55,860	21.3.12 15.23 hrs
11	2012000043 dt 19.3.12		8,54,056	19.3.12 12.59 hrs		7,11,721	19.3.12 10.17 hrs
12	2012000047 dt 19.3.12		17,06,130	19.3.12 13.22 hrs		14,23,441	19.3.12 14.48 hrs
13	2012000060 dt 22.3.12		12,81,097	22.3.12 14.38 hrs		10,67,581	22.3.12 15.58 hrs
14	2012000042 dt 19.3.12		4,27,032	19.3.12 12.22 hrs		3,55,860	19.3.12 12.18 hrs
15	2012000059 dt 19.3.12		8,54,065	19.3.12 14.37 hrs		7,11,721	19.3.12 15.45 hrs
16	2012000067 dt 30.3.12		12,81,097	30.3.12 14.47 hrs		10,67,581	30.3.12 16.56 hrs
		Total			Total		

- (viii) In Para 7.2 of the Order-in-Appeal dated 22.02.2015, the Commissioner(Appeals) has observed that with reference to the details given in the table in Para 4 of the Order-in-Original dated 30.08.2013, out of the clearances under the 16 ARE-1s, except for the 5 Excise Invoices, mentioned at Sl. No. 11,12,14,15 and 16, the dates of the remaining Excise Invoices are the same as the dates of the Triplicate

copies of the ARE-1s. It is further observed in the Order-in-Appeal, that the dates of the Excise Invoices mentioned at Sl. No. 11,12, 14 and 15 of the table in Para 14 of the Order-in-Original dated 30.08.2013, i.e Invoice No. 2110000844, 2110000846, 2110000848, and 2110000868, the first three Invoices are having the dates as 22.03.2012, and the last Invoice is dated 25.03.2012; whereas, the dates of removal shown on the corresponding Original, as well as Triplicate ARE-1s are showing the single date, i.e. 19.03.2012 for first three Invoices and 22.03.2012 for the last Invoice. Even the dates of the corresponding Commercial invoices are the same as the ARE-1s, i.e., before the dates of the Excise invoices. This means, that as per the ARE-1s, the goods are removed before the date of preparation of the Excise Invoices. The total duty involved under the four invoices is Rs.38.43,292/-. However, without giving the due consideration to the above glaring discrepancy, the Commissioner(Appeals) has surmised that from the Gate Out Register details given in the last Column of the said table in Para 14 of the Order-in-Original, showing the actual dates of removal, the goods related to these Invoices have been removed after the dates shown on these Excise Invoices. The Commissioner (Appeals) has admitted the Respondent's say that the Excise Invoices are prepared before the clearances, and by mistake mentioned the Commercial Invoice Number, which is proved as incorrect, by the above facts. As regards to the different duty rates and amounts shown on the Triplicate copies of the ARE-1s, the Commissioner (Appeals) has accepted the Respondent's contention, that this is due to the manual generation of the ARE-1s, and the error is due to the change of duty rate, but payment of duty has been made correctly. This is pertinent to mention that all the Original/Duplicate and Triplicate copies of ARE-1 must be made simultaneously. This would reflect similar entries in all clauses of the three copies of the ARE-1. However, in the instant case, the Triplicate copy is showing a different rate of duty and differently amount. This creates doubt regarding documentation and payment of duty. The discrepancies

pointed out by the department raises doubts about the genuineness of the goods exported and the rebate claimed thereon. The Commissioner (Appeals) should have taken these discrepancies into consideration, and should have turned down the Respondent's contention, and should have upheld the decision of confirming the demand under the impugned Order-in-Original.

- (ix) As mentioned in table in above that the Excise invoices Nos. in respect of the nine ARE-1s were not mentioned thereon, and that these Invoices are issued at a later date and time. The Commissioner (Appeals) has admitted in Para 7.2 of his Order-in-Appeal dated 22.01.2015 that the dates of the Excise Invoices are of subsequent date than the dates of removal shown in the ARE-1s. There is no discussion on the reasons, or the significance of this substantial point, but the Commissioner (Appeals) has directly gone on to rely on the entries made in the Gate Out Register.

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- (x) The Respondent is an organized Multinational Company, utilizing the advanced computer software. The SAP, ERP, TALLY, or the customized Softwares do not prescribe the manual preparation of documents. In the present case, the Respondent has attributed the error to the manual /clerical error. Such errors occurring in a large number of documents are not condonable. There should be no scope for such errors in a highly organized Company. Therefore, the excuse of manual/clerical error is not acceptable. Even in the earlier Order-in-Appeal Nos. PI/GSM/20/2013. 19.03.2013 and PI/GSM/19/2013 both dated 19.03.2013, the Commissioner(Appeals) had appreciated the seriousness of the discrepancies pointed out by the Department, and stressed the importance of the proper documentation under the SRP. The clear allegation made in the Department's appeal before the Commissioner (Appeals) was, that in respect of nine ARE-1s, the goods have been cleared for export under ARE-1 and Commercial Invoices only; and no Central Excise Invoice has been issued at the

time of clearance of goods. This allegation is proved by the position of the four Excise Invoices having been issued after the dates of ARE-1s and Commercial Invoices, as stated above. The provisions of Excise Law stipulate that the duty paying Invoices should be issued simultaneously, or before the clearance of the goods. However, in this case, the Excise Invoices are issued after issuing the ARE-1s and the Commercial Invoices. The claimant's explanation regarding the manual generation of documents casts a doubt about the entries made in the Gate Out Register. It appears that the Excise Invoices, and the Gate Out Entries made in case of all 07 and 09 ARE-1s respectively were made subsequently, after the clearances of the goods to regularize the matter, and to show the duty payment.

- (xi) The Commissioner(Appeals) has cited the case laws of the Ford (India) P. Ltd, Modern Process Printers and Suksha international, which are regarding allowing the rebate claims despite the procedural lapses. It is pertinent to point out that the Commissioner(Appeals) has erred in appreciating the fact, that the discrepancies pointed out by the department are not technical in nature and the documentation is manipulated by the Respondent, also the payment of the duty was not made at the time and date shown on the ARE-1s, but the Excise Invoices were prepared later on. The facts and the circumstances of this case are different from the case laws cited by the Commissioner(Appeals), and therefore these are not applicable to the instant case.

4. The Applicant delayed filing the two Revision Applications, details of which are given below:

Sl. No.	Revision Application	OIA dt	Date OIA recd	Date of CESTAT filed	CESTAT date	Date RA/COD filed	No. of days delay
1	198/21/15-RA	23.01.15	30.01.15	20.04.15	18.05.15	01.06.15	90+04
2.	198/20/15-RA	22.01.15					

The Applicant filed the Revision Applications along with the Miscellaneous Applications for Condonation of Delay (herein after as 'COD').

4. Personal hearing was fixed on 03.03.2021 and 10.03.2021. No one appeared on behalf of the Applicant. The Respondent vide their email dated 18.03.2021 submitted that they had received the personal hearing letter dated 25.02.2021 after the actual date of personal and requested for an opportunity of attending the personal hearing. Hence a personal hearing was fixed for 06.07.2021 and 20.07.2021. On 20.07.2021, on behalf of the Applicant Shri Mahesh Patil, Joint Commissioner, appeared online and reiterated the earlier submissions. He submitted that invoices mentioned in Shipping Bills are not proper invoices. He requested to allow the application. On behalf of the Respondent, Shri Avinash Foujdar, Representative and Shri Milind Kulkarni, Assistant Manager(Finance & Tax) appeared online. They submitted that they are representing the two cases where the department filed revision applications. They requested to maintain Commissioner(Appeals) Orders. They submitted that invoices mentioned on Shipping Bills were commercial invoices as they were implementing ERP Systems.

5. The Respondent submitted their cross-objection to the revision application on the following grounds:

- (i) In the case of 07 ARE-1s and 09 ARE-1s, the Central Excise Invoices for all the subject ARE1s had been made and issued at the time of clearance of export goods. The Respondent, instead of mentioning the Excise Invoice number and dates on ARE1s, had wrongly mentioned the Commercial Invoice number and date, which is essentially a Clerical mistake (procedural lapse) on their part.
- (ii) The Central Excise Invoices are generated through the ERP system and the Commercial Invoice and ARE1s are generated through Excel formats. The Central Excise Invoice though is made early along with the commercial invoice, is released from the system once the goods

are moved from the finished goods stocks of ERP system and then are ready for clearance / removal. As such, it is very clear that, Central Excise Invoices under which goods have been cleared for export are issued at date / time prior to the actual clearance / removal of goods, and further there are clear linkage between ARE1s and Central Excise invoices. Also, in respect of subject 07 ARE1s and 09 ARE1s respectively, the goods have been cleared for exports after issuing Central Excise Invoices at the time of clearance, which is not at all in contravention of Rule 11 of Central Excise Rules 2002. A table showing all the details of the Commercial Invoices, Central Excise Invoices, ARE1s, Particulars of Goods, Gate Entry clearance details, Transporters details, Shipping documents details like Shipping Bill / Bill of Lading / Mate Receipt, Details of Central Excise certificate on ARE1s, details of Customs certificate on ARE1s etc. clearly establish this fact that, the Central Excise Invoices have been issued at the time of clearance of export goods and there is no contravention of Rule 11 of Central Excise Rules 2002. The only issue of clerical mistake of not mentioning of the Central Excise Invoice details on ARE-1s is the lapse from the Respondent.

- (iii) In respect of four ARE-1s (details in Para 3(iii) above), the Respondent submitted that the clerical mistake of not mentioning correctly the Excise Invoice Nos., its dates and time on the subject ARE1s should not and cannot be the grounds for the rejection of the rebate claim. They placed reliance on the following case laws:
- (a) Ford India Pvt Ltd Vs Asst Comm of C Ex, Chennai [2011 (272) E.L.T. 353 (Mad)];
 - (b) Modern Process Printers [2006 (204) E.L.T. 632];
 - (c) Suksha International Vs UOI [1989 (39) E.L.T. 503].
- (iv) In respect of ARE 1 No. 2012000067 dated 30.03.2012, it is seen that the relevant Central Excise No. 2110000869 dated 25.03.2012 is much of earlier date and Central Excise Invoice was not mentioned on

the ARE-1 hence clearance of export goods appears to be without Central Excise Invoice is not at all correct. The Central Excise invoice for the subject ARE1 had been made and had been issued before the clearance of the subject export goods. Hence the excise duty had been paid on exported goods at the time of clearance. Due to operational reasons and ERP system which requires approvals of various departments, the subject Excise Invoice had been generated earlier date than the ARE-1, which is as per the requirements of Central Excise Rules and is acceptable in law. Regarding Excise Invoice not mentioned on the ARE-1, the Respondent had wrongly mentioned the Commercial Invoice No. & Date which is clerical mistake / error and was unintentional.

- (v) In respect of the all the 16 ARE-1s (details in Para 3(vii) above), the triplicate copy of the relevant ARE-1s were not tallying with the Original and Duplicate copy of ARE-1s. in as much as the rate of duty, amount of duty and time of removal were different was on account of clerical mistake/error. Respondent had un-intentionally mentioned incorrect details on the triplicate copy of the ARE-1s. This has occurred due to reason that the ARE-1s are manually generate at the time of export and Original, Duplicate and Triplicate are generated at in excel formats. Due to the changes in the Central Excise Duty rates in the earlier month in Government's Budget i.e. February 2012, the same have been incorporated in the ARE-1 generated for the March 2012 as applicable to the subject rebate claim. However, by mistake unintentionally the rates on the Triplicate copy of the ARE-1s had not been correctly changes resulting into mention of the old rate of duty and value of duty. However, the actual payment of duty on clearance had been made as per the correct duty rate and duty value which had been correctly mentioned on the Original and Duplicate Copy of the ARE-1s.
- (v) In this connection, it is essential to understand the Process Flow of Documents for any export shipment made by the Respondent in

normal circumstances by use of the ERP system and manual system as under:

- (a) Production plan issued to production Department by Production Planner.
- (b) On the Basis of Production plan Machine Lay on Production bed.
- (c) Finish Product declare in document as Production confirmation in SAP. This process is for uploading finish stock in system but not helpful for Excise Invoice. (No print).
- (d) After that Machine to be confirmed by Quality Department in system through SAP document QA32 (No print out) - there may be day gap between production confirmation and actual Quality OK.
- (e) After confirmation through document QA32, Invoicing person can use information as Machine Chasis no and Engine no in Excise Invoice.
- (f) On the basis of above information, Excise Invoice is Generated in the System and printout available for export purpose.
- (g) On the basis of Excise Invoice (M/C No. and Engine No.) manual Excel Invoice generated for the same Date of Excise Invoice.
- (h) As per Excel format linking ARE-1 picks the same Date of Commercial invoice (which is wrong and now changed).
- (i) On the basis of Commercial invoice and ARE-1 and physical machine availability for loading then transporter load the machine on trailer. After loading he generate LR copy. Always generate on the date of Loading.
- (j) After Loading machines reached to Security Gate for outward entry, security then make system entry in SAP for Gate out. (for example : if excise invoice generate on 13th Jan and actual loading done on 14th Jan then Gate entry will show 14th Jan as actual removal). Note : If Excise Invoice and Commercial Invoice is on the same date then there is no difference in Date for ARE-1 also.

This process is followed for every export. However, for advance booking on vessel, Respondent has generated commercial Invoice prior

to export (prior to the generation of Export Invoice / ARE1). The above process is followed by the company and due to weakness in use of mixture of Manual as well as ERP system, the subject lapse has occurred in certain shipments unintentionally.

- (vi) The Assistant Commissioner of Central Excise Pune — I Division has failed to implement the directions as given by the Commissioner (Appeal) Pune-I vide No. P-I/GSM/20/2013 and P-I/GSM/19/2013 both dated 19.03.2013 Para 9.1 and 10.
- (vii) The Respondent prayed that the two revision application be dismissed and the Order-in-Appeal Nos. PUN-EXCUS-001-APP-167-14-15 dated 23.01.2015 and PUN-EXCUS-001-APP-165-14-15 dated 22.01.2015 be upheld.

6. 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.

7. Government first proceeds to discuss the issue of delay in filing these three revision applications. It is clear that Applicant have filed the revision applications after 3 months + 04 days when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. In view of judicial precedence that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision applications for decision on merit.

8. On perusal of the records, Government observes that the Respondent, manufacturer had filed two rebate claims of Rs. 1,03,19,156/- and Rs.

1,77,55,786/- under Section 11B of the Central Excise Act, 1944 and Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE(NT) dated 06.09.2004. The two rebate claims were sanctioned to Respondent by the Assistant Commissioner, Central Excise, Pune-I Division, Pune-I Commissionerate vide Order-in-Original dated 22.08.2012 and 05.10.2012 respectively. The two rebate orders were reviewed and the Department filed appeals before the Commissioner(Appeals), Central Excise, Pune-I and also issued protective demand Show Cause Notices dated 09.11.2012 and 14.01.2013. The Commissioner(Appeals) vide Order-in-Appeal Nos PI/GSM/ 20/2013 and PI/GSM/ 19/2013 both dated 19.03.2013 set aside the two Order-in-Original dated 22.08.2012 and 05.10.2012 and the Respondent were directed to rectify the defects and omissions pointed out by the Department and the Department was directed to conduct necessary verification and allow the claims which were complete in all respects. In pursuance of the directions of the Commissioner(Appeals) dated 19.03.2013 and Show Cause Notices dated 09.11.2012 and 14.01.2013, the Assistant Commissioner, Central Excise, Pune-I Division, Pune-I Commissionerate vide Order-in-Original Nos. P1/Divn.1/CEX/28/2013 and P1/Divn.1/CEX/27/2013 both dated 30.08.13 confirmed the demand of Rs. 1,03,19,156/- and Rs. 1,77,55,786/- along with interest being erroneous rebate granted vide Order-in-Original dated 22.08.2012 and 05.10.2012. Aggrieved, the Respondent filed two appeals with the Commissioner(Appeals), Central Excise, Pune-I. The Commissioner(Appeals) vide Order-in-Appeal Nos. PUN-EXCUS-001-APP-167-14-15 dated 23.01.2015 and PUN-EXCUS-001-APP-165-14-15 dated 22.01.2015 set aside the two Order-in-Original both dated 30.08.2013 respectively and allowed the appeals filed by the Respondent. The Applicant filed the current two revision applications.

10. Government observes that the current two revision application are filed on the grounds that

- (i) (F.Nos. 198/20/15-RA and 198/20/15-RA) - in the respective ARE-1s, the Commercial invoice was mentioned and the Central

Excise invoice was not mentioned and that the Central Excise invoice were issued by the Respondent at the later date/time because of which there was no linkage between ARE-1s and Central Excise invoice, hence the conclusion that goods were cleared without issuing Central Excise Invoice which is a contravention of Rule 11 of Central Excise Rules, 2002.

- (ii) (F.No. 198/20/15-RA) - the difference rate of duty and amount shown on the Original/Duplicate and Triplicate copy of ARE-1s raises doubt about the genuineness of the goods exported and the rebate claimed thereon.

F.No. 198/21/15-RA & F.No. 198/20/15-RA

11. On the issue that in the respective ARE-1s, the Commercial invoice was mentioned and the Central Excise invoice was not mentioned and that the Central Excise invoice were issued by the Respondent at the later date/time because of which there was no linkage between ARE-1s and Central Excise invoice, Government observes that the Respondent has submitted that due to operational reasons and ERP system which requires approval of various departments, the Central Excise invoice had been generated earlier date than the ARE-1 as the process flow of documents for any export shipment made by the Respondent in normal circumstances is by use of the ERP system and manual system. This process is followed for every export. However, for advance booking on vessel, Respondent has generated commercial Invoice prior to export (prior to the generation of Export Invoice / ARE1). The said process is followed by the company and due to weakness in use of mixture of Manual as well as ERP system, the subject lapse has occurred in certain shipments unintentionally.

12. Government observes that the Superintendent, Central Excise, Talegaon Range in his verification report dated 24.07.2012 and 10.09.2012 submitted that the duty amount of Rs. 1,03,19,956/- and Rs. 1,77,55,786/- was paid in through the Respondent's Cenvat account and had recommended the claims for sanction. Further the Respondent had submitted the Original and Duplicate ARE1, Copy of Excise Invoice, Copy of

Shipping Bill, Copy of Bill of Lading, Copy of Mate receipt, Custom Attested copies of Export Invoice & Packing List and the Copy of Input Cenvat Register. ARE-1s duly certified by the Custom, Export Invoices, Shipping Bills and Bill of Lading are correlatable with each other. Government finds that the Respondent had filed the respective Central Excise invoice at the time of clearance of exported goods, however they failed to mention the details of the Central Excise invoice on the respective ARE-1s. The documents furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported and hence the rebate claim should not have been denied only on grounds of non-production of Central Excise Invoice. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting to rejection on technical grounds/procedural lapses would not serve the purpose of justice.

13. Government in this regard rely on GOI order No. 158-159/2018-CX dated 02.04.2018 IN RE: Inani Marbles & Industries Ltd. [2018 (364) ELT 1151 (GOI)] which also involve an identical issue. While deciding the issue of non-issuing of the Central Excise invoice in respect of exported goods in the Revision Applicant filed by the Revenue, it is held that

"5. However, on merit the Government does not find the Revision Application maintainable merely because the respondent did not issue the Central Excise invoice in respect of exported goods. Non-issuing of invoice is primarily a breach of Rule 11 of the Central Excise Rules, 2002 and is not a sole evidence of payment of duty. But no penal action is apparently taken against the respondent for non-issuing of the invoice in contravention of Rule 11 and rather this lapse is being used by the Applicant for denial of rebate of duty. The Commissioner(Appeals) has rightly observed in his order that the first and foremost condition for getting rebate of duty under Rule 18, read with Notification No. 19/2004-CE (NT) dated 6-9-2004, is that the goods cleared for export under ARE-1 are actually exported on payment of duty and this condition has been undisputedly satisfied in this case as per payment of duty and export certificate of the Customs Authorities on the original & duplicate copies of the ARE-1. The export of the goods on payment of duty is not doubted by the applicant also anywhere in the Revision Application. Further no allegation is also made that other conditions stipulated in Notification No. 19/2004 have not been complied with this case. Submission of copy of the invoice along with rebate claim is not a condition in the above Notification and

its requirement in the C.B.E. & C/s Manual of Supplementary Instructions is just for guiding the departmental officers for ensuring sanctioning rebate of duty against duty paid exported goods only. But it cannot be given precedence over Rule 18 and Notification No. 19/2004 for denial of rebate of duty to the respondent which is granted as a incentive by the Government of India to encourage maximum export from this country.

6. *In view the above discussions, the Government does not find any error in the Order-in-Appeal and the Revision Application filed by the Revenue is rejected."*

F.No. 198/20/15-RA

14. In respect of the difference in rate of duty and amount shown on the Original/Duplicate and Triplicate copy of ARE-1s, the Respondent submitted that the ARE-1s were manually generated at the time of export. Due to the changes in the Central Excise Duty rates in the earlier month in Government's Budget i.e. February 2012, the same had been incorporated in the ARE-1 generated for the March 2012 as applicable to the subject rebate claim. However, by mistake unintentionally the rates on the Triplicate copy of the ARE-1s had not been correctly reflected resulting in mention of the old rate of duty and value of duty. However, the actual payment of duty on clearance had been made as per the correct duty rate and duty value which had been correctly mentioned on the Original and Duplicate Copy of the ARE-1s.

15. Government finds that the Superintendent, Central Excise, Talegaon Range in his verification report dated 10.09.2012 submitted that the duty amount of Rs. 1,77,55,786/- was paid in through the Respondent's Cenvat account and recommended the claim for sanction and further, the respective ARE-1s have been duly certified by the Customs Authority. Hence the substantive conditions of payment of duty and export of goods are satisfied. Government is in agreement with the findings of the Commissioner(Appeals) that rebate cannot be denied on procedural infractions. Hence the Applicant is entitled to the rebate claim.

16. In view of above, Government upholds the impugned Orders-in-Appeal Nos. PUN-EXCUS-001-APP-167-14-15 dated 23.01.2015 and PUN-

EXCUS-001-APP-165-14-15 dated 22.01.2015 passed by the Commissioner(Appeals), Central Excise, Pune-I.

17. The two revision applications filed by the Applicant/Department are rejected.

Shrawan
14/9/21
(SHRAWAN KUMAR)

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

316-317
ORDER No /2021-CX (WZ) /ASRA/Mumbai Dated 14.09.2021

To,
The Commissioner of Central Excise & CGST,
Pune-I,
GST Bhavan, I.C.E. House,
Opp. Wadia College,
Pune - 411 001.

Copy to:

1. M/s JCB India Ltd., Talegaon Floriculture & Industrial Park, Village Ambi & Navlakh Umbare, Tal.-Malval, Talegaon, Dabhade, Dist. Pune - 410 507.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy