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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
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Mumbai- 400 005

F. NO. 195/663/2006-RA /2246 Date of Issue: 03.12.2018

ORDER NO. 383 /2018-CX (SZ)/ASRA/Mumbai DATED 22.11.2018 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 : M/s. Sarkar Plywood Pvt. Ltd., Cochin.

Respondent : Commissioner of Central Excise, Cochin.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 349/2006 dated 07.06.2006 passed by the Commissioner of Customs & Central Excise (Appeals) Cochin.

ORDER

This Revision Application has been filed by M/s. Sarkar Plywood Pvt. Ltd. Cochin (hereinafter referred to as the 'applicant') against the Order in Appeal No. No. 349/2006 dated 07.06.2006 passed by the Commissioner of Customs & Central Excise (Appeals) Cochin.

2. The issue in brief is that the applicant who was a merchant exporter had procured film faced plywood from a unit viz., M/s. Indo Regal Plywood, Keezhillam for export. They had filed 4 Nos. of Rebate Claims amounting to Rs.9,25,833/-(Rupees Nine Lakh Twenty Five Thousand Eight Hundred and Thirty Three only) claiming rebate of additional duty of customs (CVD) paid on Impex surface film used in the manufacture of film faced plywood, exported under Notification No. 21/2004 Central Excise (NT), dated 8-9-2004, as amended. Details of the claims were as follows:

Sl. No.	Claim No.	ARE 2 Nos	Amount of Rebate claimed (Rs.)
1	1	3,4,5,7-13, 12 and 15	2,20,443/-
2	2	10, 14, 16, 17, 19, 21-23, 25 27,28	2,36,055/-
3	3	26,29,30, 32-37, 39	2,41,320/-
4	4	38,41-48	2,28,015/-
	TOTAL		9,25,833/-

3. The Adjudicating Authority while examining the claim filed by the applicant found that as per Para 6 of the said Notification, "Duty" means for the purpose of the said Notification the duties collected under the Central Excise Act, 1944 and other duties collected under other enactments. Since the claim of the Applicant was for the rebate of the CVD paid at the time of import of Imprex Surface Film, which went into the manufacture of export goods, the Adjudicating Authority was of the view that the same is not covered under the definition of "Duty" as provided in Notification No. 21/2004-CE, for the reason that Additional duty of Customs collected under Section 3 of the Customs Tariff Act is not specifically mentioned under the

definition of duty in the said Notification. Accordingly, the claim of the Applicant was rejected by the Adjudicating Authority vide Order-in-Original No. 15/2006-R dated 30.02.2006.

4. Being aggrieved by Order-in-Original No. 15/2006-R dated 30.02.2006 the applicant filed an appeal before the Commissioner of Central Excise (Appeals), who vide Order-in-Appeal No. 349/2006-CE dated 07.06.2006 upheld the Order-in-Original No. 15/2006-R dated 30.02.2006.

5. Being aggrieved by the above rejection of appeal, the applicant filed Revision Application before the Government of India bearing No. 195/663/06/RA, which was decided vide GOI Order No. 54/2007 dated 15.03.2007. The Revisional Authority in its aforesaid Order observed that

> *the basic purpose of all export promotion incentive schemes like rebates, drawback DEEC, is to neutralize the burden of domestic taxes on goods exported in order to make Indian goods globally competitive. Normally, therefore, objections based on technical interpretations should not come in the way of grant of such benefits provided the duties have been paid and no double benefit is involved. The Authority was also of the view that the Additional duty in terms of Section 3 of the Customs Tariff Act on an article imported into India is equal to the excise duty for time being leviable on a like article if produced or manufactured in India. Accordingly, rebate of duty incurred on excisable material used in the manufacture of goods which were exported were being allowed as per Rule 12 of Central Excise Rule, 1975 and Notification No. 42/94-CE (NT) dated 21.09.1994. However, no rebate is admissible if drawback was availed or modvat was availed in respect of such duty. The drawback claim envisaged availment of Customs portion of duty suffered which definitely included Additional duty to Customs levied under Section 3 of the Customs Tariff Act. Thus there was an option to claim drawback or rebate or modvat on imported raw materials till if the Central Excise Rules 1944 were replaced by Central Excise Rules 2002 w.e.f. 01.03.2002. As per Order-in-Appeal these options are not available in respect of Additional Duty of Customs (ADC) as per Rule 18 of Central Excise Rules 2002 despite Board Circular No. 359/66/2001-TRU dt. 21.06.2001 explaining the provisions of new rules and stating in para 3 thereof that there is no basic change in the rules now notified. However, it is noticed that drawback of customs duty suffered (in this case CVD) on imported raw materials can be claimed subject to the terms and*

conditions prescribed. Alternatively, CENVAT Rules as also clarified vide Board Circular No. 83/2000-Cus. dated 16.10.200-50 clearly envisage taking credit of i.e. duty and cash refund of the same if it is not utilized towards payment of duty on exported goods or clearance for home consumption. Thus exporters now have option to
(i) claim drawback of the ADC
(ii) claim CENVAT of the ADC and claim refund under the CENVAT Credit Rules,2004 when finished goods are exported under bond as per Rule 19 of Central Excise Rules; or
(iii) claim the CENVAT, export the finished goods on payment of duty and to claim refund/rebate of the same.

6. The Revisional Authority on the basis of the observations made above had found that the purpose of all export promotion schemes is that incidence of customs or excise duty suffered on raw material or finished goods is neutralized on export of goods and therefore viewed that in case no double benefit is involved a very technical interpretation for denying the rebate of CVD would not be in consonance with the very purpose of neutralizing taxes on export of goods; that the benefit of rebate or drawback or Cenvat Credit or cash refund of CVD suffered could have been availed in case the right procedure had been followed and that the procedural irregularities should not come in the way of neutralizing the duty suffered when the payment of duty and export of goods is not disputed. Accordingly, the Revisional Authority allowed the Revision Application subject to verification that double benefit by way of neutralization of CVD paid has been availed under any other Rule /Export Promotion Schemes.

7. Being aggrieved by the order of the Revisional Authority the Commissioner of Central Excise, Customs and Service Tax, Cochin Commissionerate (hereinafter referred to as the 'department' or 'respondent') filed a Writ Petition before the Hon'ble High Court of Kerala, numbered as W.P.C. 6670 of 2008. The sole contention of the department before the Hon'ble High Court was that since the Notification No.21/2004-CE (NT) is not covering the Additional Duty leviable under Section 3 of the Customs Tariff Act, the order of the Revisional Authority cannot hold good.

8. Hon'ble High Court of Kerala vide its Order dated 12.07.2018 in Writ Petition No. 6670/2008 observed as under:-

4. ..... the Revisional Authority has allowed the Revision Application filed by the first respondent (applicant in the instant case) finding that the benefit of rebate or drawback or CENVAT Credit or cash refund of CVD suffered by it, could have been availed in case 'the right procedure had'

been followed' and in such circumstances the Government feels that the procedural irregularity should not have come in to the way of neutralizing the duties suffered, when payment of duty and export of good is not disputed (sic).

5. *.....However, on an examination of Exhibit P3 (Revisionary Authority's Order No.54/07 dated 15.03.2017), it is indubitable that the second respondent (Revisionary Authority) has not detailed the procedural irregularities that he has noticed but has gone on to take it as conceded fact that there had been procedural infraction disabling the first respondent (the applicant in the instant case) from getting the benefit of a rebate / drawback or CENVAT Credit or cash refund of CVD. Since the Order does not say what the procedural irregularities were and since the second respondent has not concluded as to how such irregularities have impacted the parties concerned, I am certain that the conclusions therein cannot obtain favour of law.*

6. *In such perspective, I am certain that Exhibit P3 cannot be allowed to continue in force in the manner it has now been drafted and that it will be up to the second respondent to pass a fresh order on the Revision Application filed by the first respondent, taking note of the various relevant factors involved and to conclude as to what are the procedural irregularities and how it has impeded the first respondent from availing the benefits of rebate / drawback or CENVAT Credit or cash refund of CVD and thereafter pass consequential orders.*

9. A personal hearing in the matter was fixed on 22.10.2018 which was attended by Shri Balagopal M, Advocate and Shri Iqbal Sarkar, Chairman of the applicant, on behalf of the applicant. Nobody was present on behalf of the department. The department vide its email dated 22.10.2018 submitted its comments which are reproduced as under :-

9.1 The revision authority has allowed the original revision application on the ground that the M/s. Sarkar Plywood Pvt. Ltd (herein after referred as 'petitioner') has not claimed drawback. The revision authority has apparently proceeded on a presumption that Rule 12 of the erstwhile Central Excise Rules, 1944 (wherein it is a condition precedent that the rebate claimant should not have availed drawback) is similar to Rule 18 of the Central Excise Rules, 2002.

9.2 The explanation to Notification no. 21/2004 CE (N.T.) dated 06.09.2004 lists out the duties that are eligible for rebate. This

clearly shows that CVD is outside the purview of the Notification. Even though the Notification No.21/2004 CE (NT) dated 06.09.2004 was amended by Notification No. 12/2007 CE (NT) dated 1-3-2007 so as to include CVD within the definition of duty that can be claimed as rebate, it has got only prospective effect.

9.3 It is respectfully submitted that since Government had amended Notification NO. 21/2004 CE (NT) by Notification No. 12/07 CE (NT) dated 1-3-2007, for allowing rebate on CVD, it would not be correct to grant facility of allowing CVD, early to the notification dated 12/2007. The Hon'ble Bombay High Court in CCE Nagpur Vs. Indorama Textiles [2006 (200) ELT 3] had held that the entitlement for the assessee for grant of rebate on duty after CE Rules came into force can be considered only under Rule 18 as well as Notification No.21/2004 CE (NT) and the new rules cannot be read in the context of the old Rules. Rule 12 and 13 of the erstwhile C Ex Rules 1944 were not relevant for considering the eligibility for grant of rebate under C. Ex. Rule 2002. The Revisionary authority therefore erred in relying on Rule 12 of the old Rule which has been superseded by Rules 2001 and 2002.

10. The applicant in their further submissions filed on the date of personal hearing submitted as under :-

10.1 On merits of the case, the only issue to be decided is as to whether the Additional duty of Customs levied under Section 3 of the Customs Tariff Act can be claimed as rebate under Notification 21/2004-CE dated 08.09.2004. It is submitted that the Government of India have always considered CVD and CE duty as one and the same as far as export/import and drawback/refund of CENVAT credit on inputs are concerned. Such a harmonious interpretation by government over a long period of time cannot be repudiated by the Revenue only for grant of rebate of Additional duty on imported inputs under Notification No. 21/2004-CE.

10.2 That in the case in hand the import of input surface film, the payment of Customs duty on the same at the time of import, its utilization in the manufacture of film faced plywood and the export of such film faced plywood is an undisputed fact.

10.3 Under the earlier rebate Notification No. 42/94, duty was defined in identical terms as in Notification 21/2004. The Additional duty paid on imported inputs was granted as rebate by the Government of India. Hence, a different interpretation of the definition of duty cannot be canvassed now by the petitioner for the subsequent Notification. It is further submitted that the CVD on imports and Central Excise duty on like article produced in India are one and

the same and CVD is levied only for counter balancing the incidents of Excise duty on like articles produced in India vis-à-vis the imported article. It is also submitted that CVD is levied as per the prevailing Central Excise duty on the basis of the Central Excise Tariff. It may also be considered that all the Central Excise Duty Exemption Notifications are made applicable to CVD on the goods when imported into India. In short, even though collected under two different tariffs, CVD is nothing but excise duty only.

10.4 That because of the issue on the eligibility of CVD rebate under Notification 21/2004, the Central Government vide Notification No. 12/2007-CE dated 01.03.2007 has clarified by way of incorporating CVD to the definition of duty in Notification No. 21/2004-CE. This also evidences the legislative intention of the Government to grant rebate of CVD on imported inputs considering the same as Central Excise duty.

10.5 It is brought to the kind attention of the Revisional Authority that the issue in hand is now squarely covered by the decision of the Revisional Authority in the matter of M/s. OM Sons Cookware Pvt. Ltd. and Others reported in 2011 (268) E.L.T 111.

10.6 The above order of the Revisional Authority was affirmed by the Hon'ble High Court of Delhi reported in 2013 (287)E.L.T 177. While dismissing the Writ Petition filed by Revenue the Hon'ble High Court upheld the view of the RA that Rule 18 of the CE Rules, Section 3 of Customs Tariff Act and Notification No. 21/2004-CE issued under Rule 18 of CE Rules harmoniously and cumulatively read together shows that CVD is included in the term "Duty" in Notification No. 21/2004 and the amendment Notification No. 12/2007-CE clears and was issued with intention to bring all debates and disputes to and end. It ensures that the same fully applies to all cases and there is no discrimination. Even without Notification No. 12/2007-CE there is valid plausible and a good case to include and treat CVD as a duty covered by Notification No. 21/2004. The Hon'ble Court also found that the Exemption Notification should be construed strictly and literally. However, once the assessee satisfies the eligibility clause /criteria, the exemption therein to be construed liberally if the contextual construction does not deserve destruct meaning.

10.7 The Hon'ble High Court of Punjab & Haryana, while dismissing Revenue's appeal in the case of M/s. Simplex Pharma Pvt. Ltd. reported in 2008 (229) E.L.T 504 had found as follows;

"10. *From the perusal of Section 11B, it is clear that any person claiming refund of any duty of excise may apply for refund of such*

duty in such form and manner as may be prescribed along with such documentary or other evidence to establish that the amount of duty of the excise in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty had not been passed on by him to any other person. Proviso (A) to sub-section (2) of Section 11B further provides that if the competent authority is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable he may make an order accordingly and the amount so determined instead of being credited to 'The FUND' be paid to him if such amount is relatable to rebate on duty of excise on excisable goods exported out of India or on excisable material used in the manufacture of goods which are exported out of India. Explanation (A) of Section 11B of the Central Excise Act, 1944 has further clarified the issue "refund" includes rebate of duty of excise on excisable goods out of the India or on excisable material used in the manufacture of goods which are exported out of India. Section 3(1) of the Central Excise Act, 1944 provides for levying and collection of duty of excise/special duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods which are produced or manufactured in India and at the rates set forth in the First and Second Schedules to the Central Excise Tariff Act, 1985. The proviso to this Section has further added that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a 100% export oriented undertaking shall be an amount equal to the aggregate of the duties of the customs which would be leviable under the Customs Act, 1962 on like goods produced or manufactured outside India if imported into India and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods notwithstanding anything contained in any other provision of this Act be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975. Thus, from the conjoint reading of the above referred provisions of the Act, it is crystal clear that the rebate of duty of excise on goods exported or on excisable material used in the manufacture of goods which are exported are eligible for refund and such refund includes rebate of duty as well as the duty of excise on excisable material and the refund of such rebate of duty is payable in cash to the applicant if such amount is relatable to rebate of duty of excise on excisable goods exported out of India on excisable material used in the manufacture of goods which is exported out of India.

11. *From the facts on the record, it is not disputed that the countervailing duty amounting to Rs. 9,69,250/- paid by the appellant at the time of import of raw material was in fact a duty of*

excise equivalent to the excise duty payable on such raw material if manufactured in India and admittedly, the said raw material was consumed in the manufacturing of excisable goods exported out of India by the appellant on which excise duty equivalent to the amount paid by the appellant at the time of import of raw material was leviable. Further, the appellant is admittedly eligible for the benefit of the MODVAT/CENVAT credit on the CVD/additional duty paid by him at the time of import of raw material and it he had availed the MODVAT/CENVAT credit then he would have got the refund of the same under the provisions of Section 11B(2) of the Act. Once the eligibility of the appellant for the benefit of the MODVAT/CENVAT credit on the CVD paid by him is not disputed by the Revenue then in that case the appellant is entitled to payment/refund of the said amount under Section 11B(2) of the Act."

10.8 It is also most respectfully submitted that the Hon'ble Supreme Court in the case of Belapur Sugars & Allied Industries Ltd. had held that while interpreting a taxing statute/exemption notification, unless there is anything to the contrary in the Act rules of notification, if there be two possible interpretations, it is that interpretation which subserve the object and purpose should be accepted. The Hon'ble Court has given the above finding in an identical situation as the one in hand. In the said case the Hon'ble Apex Court was analyzing the retrospective nature of Notification No. 193/1982-CE dated 11.06.1982 which was issued amending the mother notification No. 32/82-CE dated 21.04.1982. The relevant portion of the Apex Court's judgment is reproduced for your kind reference;

"10. *Next submission for the revenue is that at least those assessees who have cleared and paid the excise duty, as the appellant has done, it cannot claim benefit under the amended Notification. We do not find any merit even in this submissions. When Notification granted exemption to such factories which produced in excess of average production and such assessee if otherwise is entitled for such exemption, it cannot be defeated merely on the ground that such factory has already paid the duty for the period in question. Even if duty is paid under ignorance of law or otherwise, if by subsequent legislation or valid Notifications the obligation to pay the duty is withdrawn, it cannot be refused since he has already paid the duty. If duty paid is shown to be not leviable or entitled for rebate the revenue has to refund, adjust, credit such amount to the assessee, as the case may be.*

11. *Hence for the reasons recorded above, we conclude that the present appeal has merit which is accordingly allowed. The impugned orders of the Tribunal dated 29th October, 1985 is hereby quashed and we hold that the appellant is entitled for the rebate under the substituted Notification No. 193/82, dated 11th June, 1982 even for a*

period of 1st May till 11th June, 1982. Consequently, if the amount has already been credited to the appellant it shall not be withdrawn, if not, shall be credited to it."

10.9 *In the light of the above submissions, it is submitted that the facts and circumstances of the case in hand is squarely covered by the judgments as cited above and accordingly, the revision application of the applicant may be allowed and the rebate of the CVD paid on imported inputs utilized in export products may be granted to them.*

11. 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, Order passed by the Government in Revision Application filed by the applicant and Hon'ble Kerala High Court's Order in Writ Petition No. 6670 of 2008.

12. From the records, Government observes that the claim of the appellant for rebate on the CVD paid has been rejected on the grounds that the CVD paid under Section 3 of the Customs Tariff Act, 1975 is not eligible for rebate in terms of Notification No. 21/2004 Cus (NT). Vide impugned Order-in-Appeal, the Commissioner (Appeals) also upheld the view that the Additional duty of Customs charged under Section 3 of the Customs Tariff Act is something different from the duty paid or collected under Central Excise Act. In view of the above observations, the Commissioner (Appeals) held that the Additional duty of Customs paid under Customs Tariff Act cannot be claimed as rebate under Rule 18 of Central Excise Rules read with Notification No. 21/2004-CE (NT) and consequently rejected the appeal of the applicant. Government also observes that while allowing the Revision Application filed by the applicant the Revisional Authority observed that the purpose of all export promotion schemes is that incidence of customs or excise duty suffered on raw material or finished goods is neutralized on export of goods and therefore viewed that in case no double benefit is involved a very technical interpretation for denying the rebate of CVD would not be in consonance with the very purpose of neutralizing taxes on export of goods; that the benefit of rebate or drawback or Cenvat Credit or cash refund of CVD suffered could have been availed in case the right procedure had been followed and that the procedural irregularities should not come in

the way of neutralizing the duty suffered when the payment of duty and export of goods is not disputed. Accordingly, the Revisional Authority allowed the Revision Application subject to verification that double benefit by way of neutralization of CVD paid has not been availed under any other Rule /Export Promotion Schemes.

13. While disposing the Writ Petition No. 6670 of 2008 filed by the department, Hon'ble High Court of Kerala was of the view that the Revisional Authority ought to have detailed such procedural irregularities noticed by him and directed the Revisionary Authority to re consider the Revision Application of the applicant. The Hon'ble Court also clarified that it has not considered the merits of the case and it is left open to raise it before the Revisional Authority.

14. Government observes that in this Revision Application the issues to be decided are (i) what were the procedural irregularities committed by the applicant and whether they are condonable, (ii) whether any double benefit by way of neutralization of CVD paid has been availed under any other rule / export promotion scheme by the applicant (iii) and whether the Additional duty of Customs levied under Section 3 of the Customs Tariff Act can be claimed as rebate under Notification 21/2004-CE dated 08.09.2004.

15. As regards procedural irregularities, Government from the Order in Original No. 15/2006-R dated 13.02.2006 observes that on scrutiny of the Rebate claims filed by the applicant the following points were observed by the original adjudicating authority:

a) The original, duplicate and triplicate copies of the relevant ARE-2 were not seen enclosed as was required for filing the proper rebate claim and instead, only the quintuplicate copies of the ARE-2s were enclosed along with the claim.

b) In table 2 of the ARE-2 enclosed, it was observed that the impex film was not seen mentioned in ARE-2 No. 3,4,5,7, 10, 12, 13, 14, 15, 16, 17, 19, 21, 23, 25, 26, 27, 28 and 29 as an input used in the

manufacture of the final product exported and the relevant details regarding the quantity used etc., were also not available for determining the eligibility for rebate.

16. Government observes that non enclosing of the original, duplicate and triplicate copies of the relevant ARE-2, which was required for filing the proper rebate claim and instead, only the quintuplicate copies of the ARE-2s were enclosed along with the claim, is a procedural irregularity which is curable and the same can be got rectified by the applicant and hence cannot be made the basis for denying the rebate claim. As regards non mentioning of impex film in table 2 of the ARE-2 by the applicant in the instant case, Government relies on GOI Order No.500/2011-CX dated 20.05.2011 [2011(272) ELT 433(GOI)] wherein the respondent had filed rebate claims against duty paid on sliding Blister tray used for packing of the Glass Beads exported by them. The Assistant Commissioner of Central Excise, Varanasi, rejected the rebate claim on the grounds that the goods were exported under ARE-1 whereas it should have been exported under ARE-2 application which was in contravention of the conditions prescribed in the notification and rejected the rebate claim of the appellant. On appeal filed by the party, the Commissioner (Appeals) allowed the appeal. Aggrieved by the Order of Commissioner (Appeals), the department filed Revision Application. While rejecting the said Revision Application, GOI in its aforesaid Order observed that

"The Government observes that the original authority had rejected the rebate claim only on the ground that the Respondent exported their goods under form ARE-1 instead of ARE-2. Government further observes, that export of goods and their duty paid nature has not been disputed. Further the Respondents had submitted prior declaration and ratio of consumption of input in the final product. They intimated the Assistant Commissioner, Central Excise, Varanasi regarding purchase and receipt of input Blisted tray vide letter dated 13-12-2006 and 16-5-2007. There is no allegation that procedure proscribed under Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 was not followed by the

Respondent. Government observes that under such circumstances only lapse of exporting goods under ARE-1 in place of ARE-2 forms remaining a procedural & technical lapse which is condonable. There are catena of courts judgment that notification benefit cannot be denied only on procedural lapses once the substantial condition of that notification has been fulfilled. In this case there is substantial compliance of procedure laid down in Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 and therefore the rebate claim is admissible".

Similarly, in the instant case there was no allegation in the show cause Notice issued to the applicant that they had not intimated regarding purchase / receipt of input and that the procedure proscribed under Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 was not followed by them. Accordingly, Government holds that non mentioning of impex film in table 2 of the ARE-2 by the applicant is a procedural lapse and is condonable.

17. Government further observes that Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 makes it clear that there are two types of rebates allowed by the Government, both being separate and distinct, one being input stage and other being finished goods stage. Further, the definition of drawback given in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 makes it clear that the drawback is allowed only in respect of duty paid on any imported materials or excisable materials used in manufacture of export goods. On comparison of the provisions of rebate claim and drawback, it is amply clear that the drawback is allowed only on the input stage duties whereas rebate is allowed both on the input stage duties as well as finished goods stage duties.

18. Government notes that Drawback is allowed under Rule 12(a)(ii) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. This Rule is produced as follows :-

"(ii) in respect of duties of Customs and Central Excise paid on the containers, packing materials and materials used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 has been or will be made to the Central Excise authorities."

The analysis of this Rule makes it clear that the declaration to be given is regarding "the duty paid on containers, packing material and other material used in manufacture of export goods". In other words, the declaration to be given while claiming drawback, is regarding the input stage rebate and as such, the drawback is not allowed to be claimed along with rebate of inputs used in manufacture of export goods.

19. C.B.E. & C. has also clarified in its Circular No. 83/2000-Cus., dated 16-10-2000 (F. No. 609/116/2000-DBK) that there is no double benefit available to manufacturer when only Customs portion of All Industry Rate of drawback is claimed. The harmonious and combined reading of statutory provisions of drawback and rebate scheme reveal that double benefit is not permissible as a general rule.

20. Government observes that in the context of the explanation in foregoing paras that the Revisionary Authority in his Order No. 54/2007 dated 15.03.2007 rightly allowed the Revision Application filed by the applicant subject to verification that double benefit by way of neutralization of CVD paid has been availed under any other Rule /Export Promotion Schemes.

21. As regards the third issue involved i.e. whether the Additional duty of Customs levied under Section 3 of the Customs Tariff Act can be claimed as rebate under Notification 21/2004-CE dated 08.09.2004, Government observes that the applicant has relied on Revision Order No. 01-05/2011-C.E., dated 17-1-2011 in the case of Om Sons Cookware Pvt. Ltd. [2011 (268) E.L.T. 111 (GOI)] wherein GOI has held that rebate of CVD paid on imported raw materials which are used in manufacture of final export product is admissible under Notification No. 21/2004-C.E. (N.T.) r/w Rule

18 of Central Excise Rules, 2002. This order of GOI was upheld by the Hon'ble Delhi High Court vide its order dated 2-5-2012 in the case of CCE, Delhi-I v. JS (RA) reported as 2013 (287) E.L.T. 177 (Del.). As such, the payment of CVD at the time of import of goods is eligible for rebate. Vide Notification No. 12/2007-C.E. (N.T.), dated 1-3-2007 additional duty (CVD) levied under Section 3 of Customs Tariff Act, 1975 was added in the Notification No. 19/2004-C.E. (N.T.) as well as Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. As such, by virtue of said amendment, the rebate of CVD paid on imported materials has been allowed as per the statute.

22. Government also observes that the department in its parawise comments have contended that the explanation to Notification no. 21/2004 CE (NT) dated 06.09.2004 lists out the duties that are eligible for rebate which clearly shows that CVD is outside the purview of the Notification. Even though the Notification No.21/2004 CE (NT) dated 06.09.2004 was amended by Notification No. 12/2007 CE (NT) dated 1-3-2007 so as to include CVD within the definition of duty that can be claimed as rebate, it has got only prospective effect.

23. Government also observes that this controversy has been discussed in detail by Hon'ble Delhi High Court vide its order dated 2-5-2012 in the case of CCE, Delhi-I v. JS (RA) reported as 2013 (287) E.L.T. 177 (Del.) in the following manner :-

> *6..... the Central Board of Excise and Customs has clarified that the amendment vide Notification No. 12/2007-C.E. (N.T.), dated 1st March, 2007 is prospective and not retrospective vide letter dated 25th February, 2008. It is submitted that the general principle is that any substantive amendment should be prospective and not retrospective. More so, when benefit or exemption is being granted. The amendment is not clarificatory and a new beneficial provision has been incorporated vide Notification No. 12/2007.*
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> *7. In order to appreciate the controversy, we are required to examine the relevant portion of the Notification No. 21/2004 as it existed prior to 1st March, 2007. The said notification prior to 1st March, 2007 reads:*

"6th September, 2004

Notification No. 21/2004-Central Excise (N.T.)

In exercise of the powers conferred by of rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, Notification No. 41/2001-Central Excise (N.T.), dated the 26th June, 2001 [G.S.R.470 (E), dated the 26th June, 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter :-

(1) Filing of declaration. - The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.

(2) Verification of Input-output ratio. - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.

(3) Procurement of material. - The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002 :

Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers.

(4) Removal of materials or partially processed material for processing. - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise may permit a manufacturer to remove the materials as such or after the said materials have been partially processed during the course of manufacture or processing of finished goods to a place outside the factory -

(a) for the purposes of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture of the finished goods and return the same to his factory without payment of duty for further use in the manufacture of finished goods or remove the same without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory of the manufacture or process; or

(b) for the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or process of finished goods without payment of duty or remove the same, without payment of duty for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor;

(c) any waste arising from the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor.

(5) Procedure for export. - The goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure to this notification and the procedures specified in Ministry of Finance (Department of Revenue) Notification No. 19/2004-Central Excise (N.T.), dated the 6th September, 2004 or in Notification No. 42/2001-Central Excise (N.T.), dated the 26th June, 2001 shall be followed.

(6) Presentation of claim of rebate. - The claim for rebate of duty paid on materials used in the manufacture or processing of goods shall be lodged only with the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction of the place approved for manufacture or processing of such export goods.

Explanation : - "duty" means for the purposes of this notification, duties of excise c ollected under the following enactment, namely :-

(a) the Central Excise Act, 1944 (1 of 1944);

(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) and further amended by Section 3 of the Finance Act, 2004 (13 of 2004);

(e) special excise duty collected under a Finance Act;

(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);

(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No. 2) Bill, 2004.

8. *By Notification No. 12/2007 with effect from 1st March, 2007, the following addition was made to the term "duty" :*

"(i) the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975),equivalent to the duty of excise specified under clauses (a), (b), (c), (d), (e) and (g) above"

9. *The question raised in the present writ petitions is whether the aforesaid amendment is clarificatory or is a substantive amendment and, therefore, prospective in nature and not retrospective.*

10. *We find that the revisionary authority has ascribed good and valid reasons to come to the conclusion that the amendment made by Notification No. 12/2007 is clarificatory in nature and, therefore, retrospective. The reasoning given by the Joint Secretary reads as under :*

"6. Government has considered both oral and written submissions of the applicant and also perused the orders passed by the lower authorities and case laws cited by the applicant.

7. Government observes that the issue to be decided is whether the Countervailing Duty (CVD) (Additional duty) leviable under Section 3 of the Customs Tariff Act, 1985 equivalent to the duty of excise paid on the imported inputs/materials used in the manufacture of exported goods is rebatable under Rule 18 of Central Excise Rules, 2002 read with Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004.

8. In this regard, Government observes that the countervailing duty (CVD) is levied on the goods imported into India, equal to the duty of excise leviable on the like goods if produced or manufactured in India. The assesses paying CVD at the time of import of goods is allowed to take the Cenvat credit of CVD paid. The exporter exporting the goods can claim rebate of duty under Rule 18 of the Central Excise Rules, 2002 of the duty paid from the Cenvat credit taken for CVD. Similarly, the assessee can claim the rebate of duty, paid on the Inputs used in the manufacturing/processing of the exported goods under Rule 18 of the Central Excise Rules, 2002.

9. It is observed that the Cenvat Credit of CVD is allowed as per Rule 3(vii) of the Cenvat Credit Rules, 2004. The Cenvat credit, in respect of the input or input service so used shall be allowed to be utilized by the manufacture or provider of output service towards payment of,

(I) duty of excise on any final product cleared for home consumption or for export on payment of duty, or

(II) Service tax on output service.

Where for any reason such adjustment is not possible, the manufacturer, or the provider of output service shall be allowed refund of such amount under Rule 5 of Cenvat Credit Rules, 2004 subject to such safeguards, conditions and limitations, as may be specified by the Central Govt. by Notification.

From above, it is clear that the Cenvat credit of CVD paid can be utilized for payment of excise duty on any final product for home consumption or for export. And if such Cenvat credit remain unutilized, it can be refunded to the manufacturer.

10. C.B.E. & C. vide its Circulars No. 83/2000-Cus., of 18-10-2002 has clarified that where ever duty appears, it is construed to having reference to Central Excise or the additional duty under Section 3 of the customs Tariff Act, 1975. The relevant paras 4, 5, 6 are reproduced below for ready reference.

> *"4. A combined and harmonious reading of these provisions reveals that the word 'duty' appearing anywhere in the Modvat Rules, unless otherwise qualified, should always be construed as having reference to duty of Central Excise or the additional duty under Section 3 of the customs Tariff Act, 1975. Since Rule 57F(13) mentions the wording "Credit of specified duty in respect*

of inputs so used....." and Rule 57F(14) states that no credit in sub-rule (13) shall be allowed if the exports avail of drawback.....in respect of such duty, it is amply clear that the prohibition of Rule 57F(14) for grant of refund is only in respect of availment of drawback as regards the Central Excise duty or countervailing duty. There is no double benefit available to the manufacture where only Customs portion of All Industry Rate of Drawback is claimed, if refund of unutilized credit is given, as no Modvat (now Cenvat) credit facility is permissible for customs duties suffered on imported inputs. Denial of refund of Modvat credit of Excise/Countervailing duty paid on inputs relating to export products, if this cannot be used otherwise, will this not only act harshly on the exporters, it will not be in accordance with the provisions of the modvat rules.

5. It is, therefore, clarified that where only customs portion of duties is claimed as per the all industry rate of drawback, Rule 57F(14), does not come in the way of admitting refund of unutilized..... credit of Central Excise/Countervailing duty paid on inputs used in products exported.

6. Rule 57AC(7) of the Cenvat contains similar provisions for refund of unutilized credit earned on inputs used in goods/intermediate goods cleared for export. Therefore, the interpretation would be applicable to all such cases under the erstwhile modvat rules (sic) as well as the Cenvat rules effective from 1-4-2000."

11. *Government has issued two notifications under Rule 18 of the Central Excise Rules, 2002 for claiming rebate of duty on export of goods. Notification No. 19/2004-C.E. is for claiming rebate of duty paid on finished goods and Notification No. 21/2004-C.E. (N.T.) is for claiming rebate of duty paid on inputs/materials on goods used in manufacture/processing of export goods. Both the Notifications are issued prescribing the procedure for clearance of the exported goods under claim of rebate. Govt. further observes that the exporter has the option to export the goods under Rule 18 under claim of rebate, or under Rule 19 of the Central Excise Rules, 2002 under Bond or undertaking without payment of duty. The purpose of both the schemes is the same that is to relieve the duties paid on the exported goods to make these competitive in International market to earn foreign exchange.*

As per Rule 18, the duty paid on goods exported and duty paid on materials used in manufacture or processing of such goods is to be rebated. The Rule 18 of Central Excise Rules, 2002 reads as under :

Rule 18 reads as under :

"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 and duty paid on materials used in the manufacturer or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."

The plain reading of this rule makes it clear that duty paid inputs/materials is to be rebated.

12. Government notes that in the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002 in the explanation, the additional duty of excise specified under clause (a), (b), (c), (d), (e) & (g) was not mentioned. It was added only vide Notification No. 12/2007-C.E. (N.T.), dated 1-3-2007 so as to set right the anomaly in the Rules as discussed in above Paras. In this case the period prior to 1-3-2007 similar type of situation was created at the time of levy of Education Cess as the Education Cess is levied from 9-7-2004 in terms of Section 91, 92 and 93 of the Finance Act, 1944. However, the Education Cess has been included in the Notification No. 19/2004-C.E., dated 6-9-2004, 20/2004-C.E., dated 6-9-2004, 21/2004-C.E., dated 6-9-2004 vide Notification No. 28/2004-C.E., dated 21-10-2004, 29/2004-C.E., dated 6-9-2004 & 30/2004-C.E., dated 21-10-2004 respectively. The applicants throughout India filed the rebate of Education Cess from date of its levy i.e. from 9-7-2004. But the department rejected the claim for the period from levy of education cess to issue of Notification No. 28/2004-C.E., dated 21-10-2004. Finally this matter was settled by the Hon'ble High Court of Rajasthan in the matter of M/s. Banswara Syntex Ltd. v. Union of India [(2007) 216 E.L.T. 16 (Raj.)]. Vide the above judgment, Hon'ble High Court has decided that the amendment in rebate Notification adding education cess as duty of excise clarificatory in nature. Hence, the Rebate of education cess is eligible from date of effect of levy. The said decision is being followed by the department now in the case of Education cess. The Hon'ble Supreme Court judgment in the case of Belapur Sugar & Allied Inds. Ltd. v. Collector of Central Excise, Aurangabad - 1999 (108) E.L.T. 9 (S.C.) on the interpretation of exemption Notification also lends support to the fact that the Notification No. 12/2007-C.E. (N.T.) dated 1-3-2007 should be retrospective being clarificatory in nature.

13. Government further observes that in the case of M/s. Satkar Plywood Pvt. Ltd., the rebate under Rule 18 on the inputs used in the manufacture/processing of the exported goods were denied by the lower authorities on the plea that the CVD is not covered under the definition of duty under Notification No. 21/2004-C.E., dated 6-9-2004 as is levied under Section 3 of the Customs Tariff Act, 1975. On a revision application filed by the applicant. Government vide its Order No. 54/07-C.E., dated 15-3-2007 F.No. 195/663/06-RA held that the rebate of duty paid as CVD on the imported inputs utilized in the manufacture/processing of exported goods is admissible under Rule 18 of the Central Excise Rules, 2002.

14. Now ,the similar issue is decided by Hon'ble High Court of Punjab and Haryana vide order dated 14-1-2008 in Central Excise Appeal No. 10/07, in the case of CCE, Gurgaon v. Simplex Pharma Pvt. Ltd. - 2008 (229) E.L.T. 504 (P & H). In this case, the merchant exporter exported the goods under Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 read with Rule 18 of the Central Excise Rules, 2002 and filed refund claims on the duty (CVD) paid on the imported inputs used in the processing/ manufacturing of the exported goods which was rejected by the Assistant Commissioner and Commissioner (Appeals). The merchant exporter filed an appeal with the CESTAT who set aside the order of the Commissioner (Appeals) and allowed the exporter's appeal. The department filed an appeal to the Hon'ble High Court of Punjab and Haryana who vide order held "Refund of Countervailing Duty-the eligibility of applicant for benefit of Cenvat/Modvat Credit on Countervailing Duty paid by him is not disputed by Revenue then applicant is entitled to payment/refund of said amount under Section 11B(2) of Central Excise Act, 1944."

The relevant para 10 & 11 of the said judgments are reproduced below for ready reference :

> *"Para 10 : From the perusal of Section 11B, it is clear that any person claiming refund of any duty of excise may apply for refund of such duty in such form and manner as may be prescribed along with such documentary or other evidence to establish that the amount of duty of the excise in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty had not been passed on by him to any say other person. Proviso (A) to sub-section (2) of Section 11B further provides that if the competent authority is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable he may make an order accordingly and the amount*

so determined relatable to rebate on duty of excise on excisable goods exported out of India or on excisable material used in the manufacture of goods exported out of India or on excisable material used in the manufacture of goods which are exported out of India. Explanation (A) of Section 11B of the Central Excise Act, 1944 has further clarified the issue "refund" includes rebate of duty of excise on excisable goods out of the India or on excisable material used in the manufacture of goods which are exported out of India. Section 3(1) of the Central Excise Act, 1944 provides for levying and collection of duty of excise/special duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods which are produced or manufactured in India and at the rates set forth in the First and Second Schedules to the Central Excise Tariff Act, 1985. The proviso to this Section has further added that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a 100% export oriented undertaking shall be an amount equal to the aggregate of the duties of the customs which would be leviable under the Customs Act, 1962 on like goods produced or manufactured outside India if imported into India and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods notwithstanding anything contained in any other provision of this Act be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975. Thus, from the conjoint reading of the above referred provisions of the Act, it is crystal clear that the rebate of duty of excise on goods exported or on excisable material used in the manufacture of goods which are exported are eligible for refund and such refund includes rebate of duty as well as the duty of excise on excisable material and the refund of such rebate of duty is payable in cash to the applicant if such amount is relatable to rebate of duty of excise on excisable goods exported out of India on excisable material used in the manufacture of goods which is exported out of India."

Para 11 : From the facts on the record, it is not disputed that the countervailing Duty amounting to Rs. 9,69,250/- paid by the applicant at the time of import of raw material was in fact a duty of excise equivalent to the excise duty payable on such raw material if manufacturing in India and admittedly, the said raw material was consumed in the manufacturing of excisable goods exported out of India by the time of import of raw material was leviable. Further, the applicant is admittedly eligible for the

benefit of Modvat/Cenvat Credit, on the CVD/additional duty paid by him at the time of import of raw material and if he had availed the Modvat/Cenvat Credit, then he would have got the refund of the same under the provisions of Section 11B(2). Once the eligibility of the applicant for the benefit of Modvat/Cenvat Credit on the CVD paid by him is not disputed by the Revenue then in that case the applicant is entitled to payment/refund of the said amount under Section 11B(2) of the Act."

The above judgment is not only on identical issue but laid down a clear principal to be followed for setting the confusions/disputes which would have emerged and are pending for decision. Moreover, this recent judgment is directly from the Hon'ble High Court of the very jurisdiction which covers the area of notices under reference. The ratio of said judgment is squarely applicable to this case as the identical issue is involved in both the cases.

15. In this regard. Govt. further observes that rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation nof (sic) procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In Suksha International v. UOI 1993 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation *unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy given with the other. In the Union of India v. A.V. Narasimhalu 1983 E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 51 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed.*

16. In view of the above discussion and findings. Govt. observes that the rebate of Countervailing Duty (CVD) paid on inputs/materials used in the manufacture of exported goods is

admissible to the applicants under Rule 18 of Central Excise Rules, 2002 read with Notification No. 21/2004, dated 6-9-2004 provided no Cenvat credit or drawback is availed by the applicants."

11. The aforesaid reasoning is logical and merits acceptance. Para 15 quoted above however has to be read with our observation below. Section 11 B(2)(a) of the Act provides for "rebate of duty of excise on excisable goods exported out of India or on excisable materials used or manufacture of goods which are exported out of India". Explanation (A) to the Section states that refund includes rebate of any duty of excise on excisable goods exported out of India or on excisable material used and manufactured goods which are exported out of India.

24. Thus, while dismissing the Writ Petition filed by Revenue the Hon'ble High Court upheld the view of the Revisionary Authority that Rule 18 of the Central Excise Rules, Section 3 of Customs Tariff Act and Notification No. 21/2004-CE issued under Rule 18 of Central Excise Rules harmoniously and cumulatively read together shows that CVD is included in the term "Duty" in Notification No. 21/2004 and the amendment Notification No. 12/2007-CE clears and was issued with intention to bring all debates and disputes to an end. It ensures that the same fully applies to all cases and there is no discrimination. **Even without Notification No. 12/2007-CE there is valid plausible and a good case to include and treat CVD as a duty covered by Notification No. 21/2004.** The Hon'ble Court also found that the Exemption Notification should be construed strictly and literally. However, once the assessee satisfies the eligibility clause /criteria, the exemption therein to be construed liberally if the contextual construction does not deserve destruct meaning.

25. Government also observes that in a similar issue in the case of *CCE*, Gurgaon v. Simplex Pharma Pvt. Ltd., 2008 (229) E.L.T. 504 (P & H), (also relied upon by the applicant and discussed at para 23 supra) wherein the merchant exporter exported the goods under Notification No. 21/2004-C.E. (N.T.), dated 6-9-04 read with Rule 18 of the Central Excise Rules, 2002 and filed refund claims on the duty (CVD) paid on the imported inputs used in the processing/manufacturing of the exported goods, but the same was

rejected by the Assistant Commissioner and Commissioner (Appeals). However, on Appeal filed by the merchant exporter, CESTAT set aside the orders of the Commissioner (Appeals) and allowed the exporter's appeal. The department filed an appeal to the Hon'ble High Court of Punjab and Haryana who vide order dated 14-1-08 in Central Excise Appeal No. 10/07, held

> *"Refund of Countervailing Duty - the eligibility of applicant for benefit of Cenvat/Modvat Credit on Countervailing Duty paid by him is not disputed by Revenue then applicant is entitled to payment/refund of said amount under Section 11B (2) of Central Excise Act, 1944".*

26. In view of the above discussion and findings, Government holds that the rebate of Countervailing Duty (CVD) paid on inputs/materials used in the manufacture of exported goods is admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification 21/2004-C.E. (N.T.), dated 6-9-2004 provided no Cenvat credit or drawback is availed by the applicant.

27. As such, Government sets aside the impugned Order-in-Appeal and allows the revision application.

28. All the above revision application thus succeeds in terms of above.

29. So, ordered.

22.11.18

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

ORDER No. 383/2018-CX (SZ) /ASRA/Mumbai DATED 22.11.2018.

To,

M/s Sarkar Plywoods Pvt. Ltd.
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2. The Commissioner of Central Tax & Central Excise (Appeals), Kochi, Central Revenue Building I.S. Press Road, Kochi-682 018.
3. The Deputy/Assistant Commissioner of Central Tax & Central Excise, Idukki Division, KPC Tower, Muvattupuzha 686673.
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6. Guard file
7. Spare Copy.