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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 195/229/2013-RA

2307

Date of Issue:- 06/12/2018

ORDER NO. 400 /2018-CX(WZ)/ASRA/MUMBAI DATED 30.11.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SETION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/229/2013- RA	M/s Amber Eximp	Commissioner, Central Excise, Raigad

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. US/766/RGD/2012 dated 06.11.2012 passed by the Commissioner of Central Excise (Appeals-I), Mumbai Zone-II.



ORDER

These Revision applications is filed by M/s Amber Eximp, 122/123, Neelkanth Commercial Centre, Sahar Road, Andheri (East), Mumbai - 400 099 (hereinafter referred to as the 'applicants') against the Order-In-Appeal as detailed in Table below passed by Commissioner of Central Excise (Appeals) Mumbai-II.

TABLE

Sl. No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date/ Amount of Rebate Rejected in Rs.
1	195/229/2013-RA	US/766/RGD/2012 dated 06.11.2012	2559/11-12/DC(Rebate)/Raigad dated 29.03.2012 Rs. 13,31,706/-

2. Brief facts of the case are that the applicant are merchant exporters and have filed seven rebate claim amounting to Rs. 13,31,706/- (Rupees Thirteen Lakh Thirty One Thousand Seven Hundred Six Only) under Rule 18 of Central Excise Rules, 2002 in respect of goods manufactured by different manufacturers / processors viz. M/s Shankeshwar Fabrics Pvt. Ltd. & M/s Dhruval Tex Print. The details of the rebate claims are as under :-

Sr. No.	RC No. / Date	ARE-1 No. /Date	Amount of Rebate (Rs)	Name of Processor / manufacturer
1.	10638/05.09.06	12/06.01.06	187328	M/s Shankheshwar Fabrics Pvt. Ltd.
2.	00945/18.04.06	14/03.02.06	129977	-do-
3.	10636/05.09.06	21/21.01.06	213221	M/s Dhruval Tex Print
4.	10637/05.09.06	27/10.03.06	208887	-do-
5.	12576/25.05.05	18/24.03.05	197431	-do-
6.	12571/25.05.05	17/03.03.05	197431	-do-
7.	11393/06.05.05	16/18.02.05	197431	-do
		Total	1331706	



3. The rebate sanctioning authority rejected the rebate claims on the grounds that full exemption under Notification No. 30/2004-CE dated 09.07.2004 was applicable to in respect of the said rebate claims, description / tariff classification of the goods in the invoice do not tally with that of given in the shipping bill, the procedure required for self-sealing and self-certification given in Para 6.1 of the Chapter 8 of CBEC Manual has not been followed and thus the conditions for grant of rebate under Notification No. 19/2004-CE (NT) were not fulfilled. The rebate sanctioning authority observed that since the name of M/s Shankeshwar Fabrics Pvt. Ltd. is appearing in the Alert list issued by the Raigad Commissionerate and that of M/s Dhrubal Tex Print is appearing in the Alert list issued by Superintendent (AR), Jetpur, Rajasthan, the applicant were requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat Credit and subsequent utilization by the processors for payment of duty, which they failed. Accordingly, rebate claims were rejected.

4. Being aggrieved, the applicants filed appeal before Commissioner (Appeals), Central Excise, Raigad. The Appellate Authority upheld the order in original with following observations :-

4.1 The proviso to Notification No. 30/2004-C.E. makes it abundantly clear that the exemption contained in the Notification is not applicable to the goods in respect of which credit of duty on inputs has been taken under the provisions of the Cenvat Credit Rules, 2004. The ARE-1 s under which the goods were exported clearly declare that the goods have been manufactured availing facility of Cenvat credit under the provisions of Cenvat credit Rules, 2004. Therefore, the applicant could not have been possibly exempt under Notification No. 30/2004-C.E and hence this ground for rejection of rebate claim cannot be sustained.

4.2 The proforma of the Shipping Bills prescribed by the CBEC does not have a column for Central Excise Tariff classification of the exported product. What is required to be mentioned in the Shipping is RITC Code Number which is not necessarily the same as CET classification. There is no requirement of giving CET classification in the Shipping Bills. Accordingly, the classification of the product in the Excise invoices cannot be held as wrong merely on the basis of RITC Code number mentioned on the corresponding Shipping Bills.

4.3 The provision of self sealing / self certification is mandatory provision and the appellant has not followed the procedure as kid down para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.9.2004 and para 6.1 of the Chapter 8 of CBEC Manual.



4.4 The appellants did not produce evidence of the genuineness of the Cenvat Credit availed by the processors. The appellants are a merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. The processors, M/s Dhruval Text Print & Mis Shankeshwar Fabrics Pvt. Ltd., who processed the goods were figuring in the Alert notices issued by the Central Excise Commissionerates for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/ non-existent grey manufacturers. The credit had been availed by who may have availed the said Cenvat Credit fraudulently and the appellants may also be a party in the said fraudulent availment of Cenvat Credit. The bona fide nature of transaction between the merchant-exporter and supplier-manufacturer is imperative for admissibility of the rebate claim filed by the merchant exporter.

5. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

5.1 The impugned order is passed on the assumption that there was no bonafide nature of transaction between the merchant-exporter and supplier-manufacturer. The Hon'ble Commissioner has failed to appreciate that a mere appearance of supplier's name in certain alert list will not ipso facto make them to be availing Cenvat Credit on the basis of invoices issued by bogus/non-existent gray manufacturers. The Range Superintendent letters dt.04.04.2007 and another letter dated 25.5.2009 and 24.08.2007 will abundantly prove the existence of gray manufacturer and duty payment at the input stage as well as at the time of clearing the goods for export after processing.

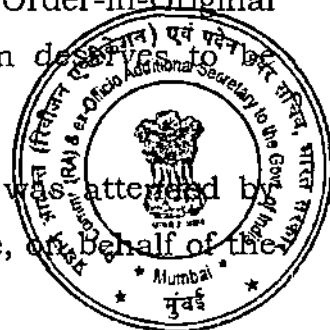
5.2 The Hon'ble Commissioner Appeals has mis-placed the reliance on the decisions - UOI V/s Rainbow Silks - 2011 (274) ELT 510 (Bom) and Sheetal Exports - 2011 (271) ELT 461 (GOT).

5.3 The Hon'ble Commissioner has failed to appreciate that in the present case both the gray supplier as well as the processors are existing firms. There is no finding nor there any allegation of these firms being bogus. To a specific query from the Assistant Commissioner (Rebate) Central Excise, Raigad, the Superintendent of Central Excise & Service Tax, Pali regarding the verification of processor and gray stage duty verification in respect of the impugned 7 invoices and ARE-is, The Superintendent, Jetlpur vide his letter F. No. AR-JET/REFUND/REB/04-05/07

dt.4.4.2007 and The Superintendent, Pali vide his letter C.No. GL-2(1)Misc/Pali-1/2009/366, dated 25.5.2009 and C.No. 9/4/Misc/Pali/04/313 dated 24.08.2007 (Exhibit 'G' colly) has given his

verification regarding the Central Excise Duty debited by the processors. A report was also submitted in respect of verification of input stage Cenvat Credit with reference to the subject ARE-Is.

- 5.4 As the verification of duty payment at the Input Stage i.e duty on the gray fabrics covered under the impugned ARE-Is, has been done by the Superintendent of Central Excise and Service Tax, the said credit cannot be considered as 'Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms as held in the case of UOI V/s Rainbow Silks -2011(274)ELT 510 (Bom). Also duty paid nature of the goods exported can not be doubted as held in the case of Sheetal Exports - 2011 (271) ELT 461 (GOI), since the duty on goods exported had been debited by the processors by utilizing the accumulated input stage credit which was validly taken and verified by the Range Superintendent.
- 5.5 It is well settled law that when duty element has been paid to the supplier in this case processors/gray suppliers and the exports have been duly verified and certified by the Customs Officer, the rebate cannot be rejected. Therefore the impugned order is bad in law and deserves to be quashed and set aside.
- 5.6 The receipt of the inputs on payment of duty element to the supplier and the quantum is not under question. The processor has paid duty on the value addition and cleared the same for export and goods have been exported. The duty paid on the final product exported i.e processed fabrics is more than the credit availed. The difference amount is admittedly not discharged from any ineligible credit. Therefore the order of denial of the entire rebate is not permissible in law.
- 5.7 There is no allegation and/or finding that the Custom Officers have found any objection as regards the nature of the goods after examining them as prescribed or/and that the Customs Officer have waived the examination of non-sealed containers. Therefore denying the rebate on this ground is not permissible in fact and law.
- 5.8 The Hon'ble Commissioner has failed to appreciate that the Export from India are required to be encouraged and lawful incentives cannot be denied on technical grounds.
- 5.9 They submit that the impugned Order-In-Appeal and Order-in-Original passed be set aside and the rebate claimed by them deserves to be sanctioned.
6. A Personal hearing held in this Revision Application was attended by Shri R.K. Sharma, Advocate and Smt Soma Sharma Advocate, on behalf of the



applicant. They reiterated the submission filed on the date of personal hearing and pleaded that in view of the same, the Revision Application may be allowed and O-I-A be set aside. In their additional submissions filed on the date of hearing the applicant submitted as under :-

- the rejection of rebate- claim on technical grounds is harassment to genuine exporter and discourages export,
- the CBEC vide its 'Circular No.845/03/2006-CE dated 01.02.2007 has even permitted simultaneous use of both the Notifications No. 29/2004-CE & No.30/2004-CE both dated 09.07.2004. And especially provided provisions for textile manufacturers considering the use of common inputs in the manufacture by them. In instant Case Clamant is Merchant Exporter. (Circular copy attached for Reference),
- the endorsements pertaining to Sr. No. 3 to 5 on ARE- I have nothing to do with the rebate claims. All of these are post export benefits either from Customs or DGFT,
- the allegation of procedural nature raised are not statutory requirements and circular is only an instruction.
- as regards Sr. No. 3(c) of the said ARE-1 it talks about availment or whereas, in the instant case rebate is claimed on the finished exported goods. Non filling up these columns by the merchant exporter will not have any bearing on the admissibility of the rebate claim. Hence, rebate claim cannot be denied on this ground,
- The Commissioner (Appeals) and the adjudicating authority have overlooked the fact that it is settled law laid down in series decisions of various appellate authorities that claim for exemption is always optional i.e. the manufacture has the option of either claiming an exemption if it is available or relinquishes its entitlement to claim exemption. Moreover it has time and again been emphasized by the Hon'ble Tribunal, GOI, and Higher Courts that the Substantial benefit of rebate is not to be denied on technical and procedural grounds when duty paid and export of the goods is established. Such technical and procedural lapses are liable to be condoned. Hence, when the mandatory requirements have been fulfilled, the rejection of claim is not in order.
- They rely upon the following cases laws in support of the instant case.
 1. GOI Order - 2011-272-ELT-476-GOI M/s Inter Globe Services
 2. M/s Sanket Industries Limited. [2011 (268) E.L.T. 125 (G.O.I)]
 3. Krishna Filament Limited [2001 (131) E.L.T. 726 (G.O.I.)]
 4. G.T,C, Export Limited [1994 (74) .E.L.T. 468 (001)1

7. 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.

8. Government observes that the Commissioner (Appeals) vide his impugned Order has upheld the rejection of the rebate claims by the original adjudicating authority on the following grounds:-

(8)



(i) the applicant has not followed the procedure as laid down in para 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 08.09.2004 and para 6.1 of the Chapter 8 of CBEC Manual. As the provisions of self sealing / self certification is mandatory and hence the subject claim is liable for rejection, and

(ii) The names of M/s Dhruval Tex Print & M/s Shankeshwar Fabrics Pvt. Ltd., the processors of the goods, were appearing in the alert list issued by Superintendent (AR), Jetpur, Rajasthan and the applicant was requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat Credit and subsequent utilization by them for payment of duty, which they failed.

9. Government observes that Para (3)(a)(xi) Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides, where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods.

10. Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure has been prescribed for identification and correlation of export goods at the place of dispatch. From the random scrutiny of copies of the ARE-1s Nos. 12/06.01.2006, 21/21.01.2006, 27/10.03.2006, 18/24.03.2005, 17/03.03.2005 and 16/18.02.2005, enclosed to the Revision Application, Government observes that all the ARE-1s bear the remark *"Certified that the description and value of the goods covered by this invoice / ARE-1 have been checked by me and the goods have been packed and sealed with lead seal having O.R.P. under my supervision"*. However, the original adjudicating authority has observed that there is no certificate with regard to the sealing of the said export goods and hence rejected the rebate claims.

11. Government observes that Para (3)(a)(xi) of Notification No. 19/2004-CE(NT) dated 6-9-2004 provides as under:



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

Para (3) (a)(xii) of the said Notification says that

in case of self-sealing, the Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars, send to the officer with whom rebate claim is to be filed, or send to Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration.

Then, Paras (3)(a)(xiii) and (xiv) of the said Notification, read as under :

"(xiii) On arrival at the place of export, the goods shall be presented together with original, duplicate and quadruplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer;

(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export :

Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export."



A combined reading of the aforesaid paras reveals that following of proper procedure prescribed in the Notification mentioned above, by the assessee opting for self-sealing of the goods is to ensure the nexus between the goods cleared under ARE-1s and the goods actually exported. In the instant case the applicant has followed the procedure for self sealing of export goods, and has certified on each ARE-1 that the goods have been packed in his presence. Moreover the endorsements of Customs Officers at the port of export, on part "B" of said ARE-1s is a sufficient corroboratory evidences that goods covered vide impugned ARE-1s have actually been exported vide impugned export documents, as envisaged vide Paras (3)(a) (xiv) of the Notification stated supra.

12. In view of the above, Government holds that the re-verification by the adjudicating authority in respect of self sealing certification on ARE-1s needs to be done and revise the order in this regard on the basis of results of such verification ARE-1 wise.

13. As regards another issue for rejection of rebate claims, Government observes that the Commissioner (Appeals) at page 4 of the impugned Order in Appeal has observed that :

*"The Appellants are merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. The processors, M/s Bluechip Fabric Pvt. Ltd. & M/s Shankeshwar Fabrics Pvt. Ltd, who processed the goods were figuring in the Alert notices issued by Central Excise Commissionerates for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/ non-existent grey manufacturers. The credit had been availed by the one who **may have** availed the said Cenvat Credit fraudulently and the appellants **may also** be a party in the said fraudulent availment of Cenvat Credit. The bona fide nature of transaction between the merchant-exporter and supplier-manufacturer is imperative for admissibility of the rebate claim filed by the merchant exporter."*

14. Further, the Appellate authority in the impugned Order in Appeal has not adduced or relied upon any evidence that the transaction was not at arm's length, there are no findings that the transactions were bogus or were influenced by any extra commercial consideration or mutuality of interest between the Applicant and the supplier processors. While rejecting the rebate claim the impugned order states that, since the processors of manufactured goods were figuring in the alert notices issued by Central Excise Commissionerates, the Applicants may also be a party in the said fraudulent availment of credit.



15. Government further observes that the reliance by the Commissioner (Appeals) in impugned order on the judgment of the Hon'ble Bombay High Court in Union of India V/s Rainbow Silks -2011 (274) E.L.T. 510 (Bom.) and M/s Sheetal Exports - 2011 (271) ELT 461 (G.O.I) is misplaced in as much as in the case of Rainbow Silks show cause notice was issued to the manufacturer supplier i.e. the processor alleging therein credit has been taken based on invoices issued by bogus and fictitious firm; there was a clear admittance that, the processor had not received the grey fabrics from the supplier but had received it through exporter-assessee. In the other case of M/s Sheetal Exports relied upon by the Commissioner (Appeals), claims filed by merchant exporter were rejected on the ground that, the merchant exporter had purchased the goods from a manufacturer who was found to have no manufacturing activity and the duty paying documents were found to be bogus on investigation. As against the same, in the present case, the impugned Order has merely proceeded on presumption that, the Applicants may be a party to the fraudulent availment of credit, without any evidence to that effect, nor do records indicate anything to the effect that any show cause notice was issued to the applicant alleging bogus purchase or wrong availment of credit.. The facts in the present case, again are at variance with the aforementioned referred judgement relied upon by the Commissioner (Appeals).

16. Government observes that the documents submitted by the applicant at the time of personal hearing depict/support the entire co-relation of the transaction. The Range Superintendents of the department have certified the genuineness of the processors / grey manufacturers. It therefore follows that the duty paid by the processors M/s Dhruval Tex Print & M/s Shankeshwar Fabrics Pvt. Ltd, is on the basis of credit accumulated from the duty paying documents supplied by the grey manufacturers. Hence denial of rebate based on presumptions and assumptions is not legally sustainable. Government also observes that there is nothing on record to show that there was any further investigation/issuance of show cause notices and Orders in original in this case by the Central Excise Commissionerate. Government therefore, is of considered opinion that the Order in Original No. 2559/11-12/DC(Rebate)/RGD dated 29.03.2012 passed by the Deputy Commissioner (Rebate) Central Excise, Raigad lacks appreciation of evidence and hence is unjustifiable.

17. Government observes that the benefit of rebate claim cannot be denied on the basis of conjecture. GOI vide its Order No. 501/2009-CX, dated 29-12-



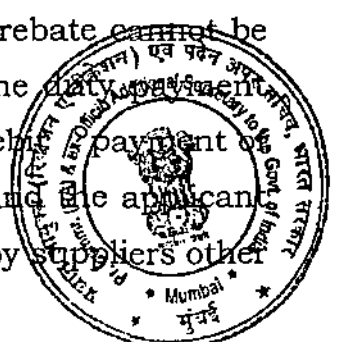
2009, in F. No. 195/88/2007-RA-CX, in the case of M/s Vikram International observed that

".....there is no doubt that the goods have not been exported out of India in terms of Rule 18 of Central Excise Rules, 2002 read with procedure prescribed under Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 and under certification of Customs authorities at the port of export. There is no observation to the contrary either in the order of rebate sanctioning authority or order of Commissioner (Appeals). It is also observed that goods were supplied to the applicant under cover of duty paying Central Excise documents and in the invoices issued the duty amount paid by manufacturer has been mentioned and for the goods supplied the applicant has made payment of total amount inclusive of Central Excise Duty. This position is not disputed. The only statutory requirement of duty paid character by way of certification by Supdt. Central Excise in triplicate copy of ARE-1 in terms of Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 read with paras 8.3 and 8.4 of Central Excise Manual is also not in dispute. In the order-in-original and order-in-appeal, there is no charge or allegation that the transaction between exporter/applicant and the manufacturer/supplier was not at arms length or not in the nature of a transaction in the normal course of business or non-bona fide and influenced by any extra commercial consideration. In fact there is nothing on record to establish, much less point out even prima facie any role direct or indirect, connivance or intention of the applicant in the act of procurement of inputs by supplier manufacturer on basis of bogus invoices....."

The applicant/exporter who has bonafidely purchased and exported the goods after payment of entire amount inclusive of duty per se cannot be also penalized by way of denying his claim for rebate if otherwise it is in order, especially when no evidence has been laid to show any mutuality of interest financial control or any flow-back of funds between the applicant exporter and the manufacturer supplier of goods....."

A similar view has also been taken by GOI in its Order No. 351/2010-CX, dated 26-2-2010 in F. No. 195/130/2007-RA-CX in respect of M/s Sheetal Exports.

18. In view of discussions and findings elaborated above, Government is of the considered opinion that a detailed verification by the original authority into the allegations of alert Circulars is required to be carried out. Moreover, Government observes that "even if it is assumed, that the applicant paid duty on the goods to be exported, from the Cenvat account, wherein they have also availed inadmissible credit on the basis of bogus invoices issued by M/s Dhruval Tex Print & M/s Shankeshwar Fabrics Pvt. Ltd, the rebate cannot be denied due to the fact that one to one co-relation between the duty payment and the Cenvat credit availed cannot be established, as the debit payment of duty is made out of total Cenvat credit available in balance and the applicant has also availed Cenvat credit on the basis of invoices issued by suppliers other



than M/s Dhruval Tex Print & M/s Shankeshwar Fabrics Pvt. Ltd". This verification from the original authority is also necessary, to establish the genuineness of the Cenvat credit availed & subsequently utilized by the applicant for payment of duty towards the above exports.

19. In view of discussions and findings elaborated above, Government sets aside the Order in Appeal No. US/766/RGD/2012 dated 06.11.2012 and remands the case back to the original authority for denovo adjudication/ verification as stated at paras supra. The applicant is also directed to submit all the relevant records/documents to the original authority in this regard. The original authority will complete the requisite verification expeditiously and pass a speaking order within Eight weeks of receipt of said documents from the applicant.

19. Revision application is disposed off in above terms.

20. So ordered.

(Signature)
20/11/14

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

To

M/s Amber Eximp, 122/123,
Neelkanth Commercial Centre,
Sahar Road, Andheri (East),
Mumbai - 400 099.

Copy to :

1. The Commissioner of CGST & CX, Raigad, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai - 410 206.
2. The Commissioner of CGST & CX (Appeals-II), 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai - 400 012.
3. The Deputy / Assistant Commissioner of (Rebate), CGST & CX, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai - 410 206.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.

