F. No. 195/290-297/17-RA
F. No. 195/380-385/17-RA
F. No. 195/298/17-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

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

F. No. 195/290-297/17-RA
F. No. 195/285-289/17-RA 1197
F. No. 195/298/17-RA

Date of Issue: ~~.4.2022~~ 20.05.2022

ORDER NO. 418-431 /2022-CX (SZ) /ASRA/MUMBAI DATED 17.05.2022 OF THE 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.

Applicant : M/s. Indo-US MIM Pvt. Ltd.,

Respondent: The Principal Commissioner of CGST, Bengalaru.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. 309-316/2017 dated 05.06.2017, OIA No: 317/2017 dated 5.06.2017 and OIA No: 304-308/2017 dated 02.06.2017 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.

ORDER

These 14 Revision Applications have been filed by M/s. Indo-US MIM PVT. Ltd., Plot No. 43, 44, 45, KIADB Industrial Area, Doddaballapur, Bangalore, Karnataka-561203 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 304-308/2017 dated 02.06.2017, OIA No. 309-316/2017 dated 05.06.2017 and OIA No: 317/2017 dated 05.06.2017 passed by the Commissioner of Central Excise (Appeals-II), Bangalore as detailed in the table below:

Sr No	RA file Number	OIA No & Date	OIO No. & Date	Rebate claimed (Rs.)	Rebate Sanctioned (Rs.)	Rebate amount in dispute (Rs.)
1.	2.	3.	4.	5.	6.	7.
1.	195/285-289/17-RA	304-308 /2017 dtd 2.06.17	25/2015-R dtd 19.03.15	1,26,22,344/-	1,26,22,344/-	31,03,331/-
2.	-do-	-do-	07/2015-R dtd 27.01.15	15,40,658/-	15,40,658/-	3,16,562/-
3.	-do-	-do-	08/2015-R dtd 27.01.15	56,54,979/-	56,54,979/-	2,59,332/-
4.	-do-	-do-		66,26,487/-	66,26,487/-	3,57,032/-
5.	-do-	-do-	09/2015-R dtd 27.01.15	29,43,017/-	29,43,017/-	2,58,589/-
Sr No	RA file Number	OIA No & Date	OIO No. & Date	Rebate claimed (Rs.)	Rebate Sanctioned (Rs.)	Rebate Rejected (Rs.)
6.	195/290-297/17-RA	309-316 /2017 dtd 2.06.17	61/2015-R dtd 27.08.15	2,45,58,239/-	99,40,654/-	56,01,627/-
7.	-do-	-do-	64/2015-R dtd 28.03.16	25,85,514/-		25,85,514/-
8.	-do-	-do-	28/2016-R dtd 15.02.16	2,03,69,510/-	1,84,88,316/-	18,81,194/-
9.	-do-	-do-	90/2015-R dtd 31.12.15	57,06,844/-	42,35,149/-	14,71,695/-
10.	-do-	-do-	93/2015-R dtd 31.12.15	1,08,23,210/-	95,54,385/-	12,68,825/-
11.	-do-	-do-	92/2015-R dtd 31.12.15	1,48,02,484/-	1,11,75,161/-	36,27,325/-

12.	-do-	-do-	91/2015-R dtd 31.12.15	1,08,42,773/-	75,13,303/-	33,29,473/-
13.	-do-	-do-	83/2016-R dtd 26.14.16	20,80,829/-	19,51,456/-	1,29,373/-
14.	195/298/17-RA	317 /2017 dtd 2.06.17	94/2015-R dtd 31.12.15	22,58,786/-	18,52,948/-	4,05,837/-

2. The case in brief is that the Applicant are manufacturers and exporters of excisable goods viz. parts of turbo jet/turbo propellers, parts and accessories of endoscopic instruments, parts of sewing machines falling under Chapter 82, 83, 84, 85, 87, 88 & 90 of CETA, 1985 on payment of duty and under claim of rebate. The applicant had filed rebate claims under the provisions of Rule 18 of CER, 2002 and Notification No. 19/2004 CE (NT) dtd 6.09.2004 for the amounts mentioned at Col. No. 5 of the above table and the adjudicating authority after examining the eligibility of the claims, sanctioned the rebate amounts mentioned at Col. No. 6, partly in cash and partly by re-credit in their Cenvat credit and rejected partly as mentioned in Col. 7 above.

3. In respect of the rebate claims sanctioned at Sr. No. 1 to 5 mentioned above, the department found that out of the rebate sanctioned, amounts as mentioned in Sr.No.7 has been sanctioned erroneously as the same pertains to exempted goods (Parts of endoscope Instruments) and cleared for export on payment of duty which is not correct in view of the provisions of Section 5A (1A) of CEA, 1944 read with Notification No. 12/2012 dated 17.03.2012 and Board's Circular No. 940/01/2011-Cx dated 14.01.2011. Hence the department filed appeal against the said OIOs with the Commissioner Appeals to the extent of sanctioning of rebate on exempted goods.

4. In respect of the rebate claims sanctioned at Sr. No. 6 to 14 mentioned above, the rebate amount rejected at Sr. No. 7 was on the grounds that the goods exported viz (Parts of endoscope Instruments and parts of sewing machines) are exempted from payment of duty in view of the provisions of Section 5A (1A) of CEA, 1944 read with Notification No. 12/2012 dated

17.03.2012 and Board's Circular No.940/01/2011-Cx dated 14.01.2011 and therefore payment of duty and claiming rebate thereafter is not correct. Aggrieved by the same the applicant filed appeal with the Commissioner Appeals.

5. Commissioner Appeals vide the aforementioned 3 Orders, allowed the department's appeal in respect of the claims at Sr. No. 1 to 5 and upheld the Assistant Commissioner's Order in Original in respect of the claims at Sr. No. 6 to 14. Aggrieved by the Commissioner Appeal's Orders, the applicant filed the impugned fourteen Revision applications on the following grounds:

I. The Applicant submitted that they have not passed on any duty to downstream units enabling them to avail any cenvat credit. Further, the Board's Circular No. 940/1/2011-CX., dated 14-01-2011 only debars the assessee to pass on the duty paid on the final product to the downstream units facilitating them to avail cenvat credit and it does not bar the assessee to pay the duty and apply for Rebate. Hence, the Applicant submitted that they have not violated any of the conditions laid down in the Board's Circular.

II. Further, paragraph 8.4 of Chapter 8 of C.B.E. & C. Central Excise Manual reads as followed -

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

III. It is clear from the above that all the conditions envisaged in the above said paras have been fulfilled viz., (i) goods have been exported covered by ARE-1's, (ii) the same have been certified by the Customs, (iii) the goods have been exported on payment of duty, In view of the above the Applicant submit

that the learned first Appellate authority has erred in rejecting the said Rebate claims on the ground that it pertains to exempted goods.

IV. The Commissioner has not discussed the case citations submitted to him nor had he discussed as to how the same is not applicable to the instant case.

V. The Applicant further submitted that non sanction of the duty paid on the goods exported either in cash or by re-credit to Cenvat account of the assessee amounts to export of domestic duties to International market which is bad in law.

VI. The said Board's circular is mutatis mutandis is applicable only in respect of the domestic clearances, and there is no mention when the duty is paid erroneously in respect of exempted goods meant for export that he cannot avail the rebate of claim of CENVAT credit of the duty paid on inputs. Thus the applicant submitted that they are entitled to credit in respect of export of excise duty paid erroneously.

VII. Further as per the said circular at Para 3 "The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944. Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the Rule 14 of the CENVAT Credit Rules, 2004. This really clarifies that the amount of duty paid is only in respect to domestic clearances and not for export for the reason the same is to be deposited with the government in terms of section 11D of CEA 1944. The said circular does not speak about the clearance made for export and duty paid. The correct interpretation is only when the duty is paid in respect of exempted goods cleared for domestic clearances; the same is not available as Cenvat credit. The said circular is not attracted in respect of export and rebate claims.

VIII. In view of the above the Applicant submitted that they have not (i) passed on any duty to the downstream units enabling them to avail the cenvat credit; (ii) sold the goods in DTA and collected any duty. Hence the Applicant

have not violated any conditions as laid down in the above said Board's Circular. They are therefore entitled for Refund of the Rebate claims.

IX. Government cannot retain the Assessee's money without any authority of law. By rejecting a portion of Rebate claim either in cash or by credit into Cenvat account on the ground that the said amount pertains to exempted goods which is contrary to law. The Applicant further submitted that the Hon'ble courts have held in several cases that the Government cannot retain the excess paid amount and the same has to be returned to the concerned manufacturer to be re-credited in their Cenvat account/adjusted in Cenvat Credit account of Assessee. Hence, the Applicant submitted that the said OIO passed and upheld by the Commissioner is unsustainable. In this connection the Applicant rely on the following case laws;

i. 2015 (320) E.L.T. 419 (Bom.);
ii. JOLLY BOARD LTD., Vs CCE AURANGABAD 2015 (321) ELT 502
iii. GOI's Order in the case of GARDEN SILK MILLS LTD. vide case law 2014 (311)E.L.T.977
iv. GOI's Order in the case of Chenab Textile Mills Ltd vide case law 2013 (290) ELT 145;

X The adjudicating authority has erred by rejecting a portion of Rebate claim either in cash or by credit into Cenvat account on the ground that the said amount pertains to exempted goods which is contrary to law. The Applicant further submit that the Hon'ble courts have held in several cases that the Government cannot retain the excess paid amount and the same has to be returned to the concerned manufacturer to be re-credited in their Cenvat account/adjusted Cenvat Credit account of Assessee. Hence, Applicant submit that the said OIO passed by the learned Respondent is unsustainable. In this connection Applicant rely on the following case laws;

i. The Hon'ble High Court of judicature at Bombay in the case of CCE, Mumbai VS CIPLA vide case law-2015(320) E.L.T. 419 (Bom.);
ii. GOI's Order in the case of WATSONPHARMA PVT LTD., vide the case law 2014 (313) ELT. 876 (G.O.L.) ;
iii. GOI's Order in the case of Brilliant International vide the case law 2014 (313) E.L.T. 871 (G.O.I.);

iv. GOI's Order in the case of Hindustan Zinc Ltd, vide the case law 2014 (313) E.L.T. 854 (G.O.I.);
v. GOI's Order in the case of Technocraft Industries Ltd., vide the case law 2014 (312) E.L.T. 908 (G.O.I.);
vi. GOI's Order in the case of JVS Exports vide the case law 2014 (312) E.L.T. 877 (G.O.I.);
xi. The Hon'ble High Court Of Punjab & Haryana at Chandigarh has in the case of Nahar Industrial Enterprises Ltd VS UOI vide the case law 2009 (235) E.L.T. 22 (P & H);

XI. The applicant submitted that in a nutshell, it is submitted that:

(a) The Applicant have not passed on any duty to Downstream units enabling any buyer to avail cenvat credit;
(b) Government cannot retain the assessee's money;
(c) Rejection of Rebate claim amounts to export of taxes and duties to International market which is bad in law;

XII. The applicant submitted that he had paid the duty erroneously as contained in the CETA; the said tariff head does not contain any chapter note or other notes to caution the applicant not to pay the duty in respect of export of goods. The applicant in this case, on the bonafide belief, paid the duty inadvertently and assumed and presumed that the duty what he paid can be claimed as rebate after export of goods. Had he had known that the goods that are exported are exempted from payment of appropriate central excise duty, he would not have discharged the same. In the circumstances the appropriation of duty paid by the applicant without granting rebate by the department is totally erroneous, unjustifiable and not backed by any law in force. The department cannot deny his wrong payment of duty and enrich the revenue without any authority of law. The Applicant relies the citation made supra that "The Revisionary Authority. GOI, Ministry of Finance, New Delhi vide case law Chenab Textiles Mills ltd vide case law 2013 290 ELT 145 has concluded that Government cannot retain the Assessee's money without any authority of law.

XIII. In view of the above the Applicant submits that the Order-in-appeal passed by the Commissioner Appeals-II Bangalore, upholding the rejection of rebate claim on the ground that pertains to exempted goods is unjust unfair

and untenable and therefore it is prayed that the said Order be set aside in the interest of justice.

6. The personal hearing in the matter was held on 08.12.2021 and was attended on behalf of the applicant by Shri Ramesh Ananthan, Advocate and Shri Anand Dy. Manager. They appeared online and submitted that their application be allowed. They submitted that since they have paid duty on export goods, they should either be given rebate or amount paid should be returned to them, if duty was not payable. They informed that an additional submission would be submitted within a week. Applicant filed additional submissions vide letter dated 13.12.2021 wherein they reiterated the submissions made in their Revision Application which are supported by case laws and also submitted the following:

i. The applicant confirmed that almost 92% of the goods manufactured are exported and the raw materials for the export goods are procured locally on payment of Central Excise Duty. As such, the goods exported have suffered duty and thereby the same were cleared on payment of duty under claim of rebate.

ii. The department took a view that the appellant is not entitled to the rebate claim on the ground that as per Section 5A (1A) of CEA it is provided that the "*for the removal of doubts it is hereby declared that where exemption under sub-section 1 in respect of any excisable goods from the whole of duty of excide liveable thereon has been granted absolutely, the manufacturer of such excisable goods shall pay the duty of excise on such goods*". Read with the Board's circular No. 940/01/2011 CEx dated 14.01.2011 that "in view of specific bar provided under Sub-Section 1A of Section 5 A of the CEA the manufacturer cannot opt to pay the duty in respect of conditionally fully exempted goods and he cannot avail CENVAT credit of the duty paid inputs and that the duty so paid cannot be termed as 'duty of excise'. Thus the rebate claim was rejected by the lower authority even though this rule and interpretation is applicable only in respect of goods cleared locally in order to benefit certain end users. However, this interpretation is not applicable for

goods cleared on payment of duty in respect of exports, where the export documents are assessed with duty and the same were discharged. The ARE-1, were assessed to duty in our case also and the duty was certified by the Customs officers.

iii. On appeal with the Commissioner Appeals who rejected the appeal on the ground that and held that Section 5A of CEA the Central Government to grant exemption from duty of excise, Section 5A (1) held that "thus Section 5(1A) of the Act clearly stipulates that when the exemption is granted unconditionally, the manufacturer of such goods cannot pay the duty of excise on such goods. Thus, absolute and conditional exemption is compulsory". This interpretation of the Commissioner Appeals was totally incorrect inasmuch as the goods manufactured were exported on rebate of duty and as well against the judicial precedents that were quoted by the appellant.

iv. The Appellant submitted that on a similar facts of the case was dealt by the Hon'ble High court of Gujarat, in the case of Arvind Limited Vs. U.O.I, reported in 2014(300)ELT 0481 (Guj) in para 9 and in particular para 10 which reads "*10. We also cannot be oblivious of the fact that in various other cases the other assessee have been given refund/rebate of the duty paid on inputs used in exported goods. The stand of the Revenue is also not sustainable that the payment of duty on final products exported at the will of the assessee cannot be compared with other type of cases of refund/rebate of duty. Admittedly, when the petitioner was given exemption from payment of whole of the duty and the petitioner if had paid duty at the time of exporting the goods, there is no reason why it should be denied the rebate claimed which otherwise the petitioner is found entitled to*". Accordingly, the rebate in this case was allowed. The Union of India being aggrieved of the order of the High Court went on Special Leave before the Hon'ble Supreme Court, and The Supreme Court Bench comprising Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice N.V. Ramana on 01-03-2016 after condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) Nos. 5441-5442 of 2014 filed by

Union of India with SLP (C) No. 27285 of 2015 and SLP (C) No. 27282 of 2015 against Judgment and Order dated 19-06-2013 of Gujarat High Court in Special Civil Application No. 10887 of 2012 and SCA No. 10891 of 2012 as reported in 2014 (300) E.L.T. 481 (Guj.) *(Arvind Ltd.* v. *Union of India)* while dismissing the petitions, the Supreme Court passed the following order:

"Delay condoned.

We have heard learned counsel for the parties.

We find no reason to interfere with the impugned judgment(s) and order(s).
The special leave petitions are dismissed."

As such, the ratio of the above decision is wholly applicable in our case also and requires to be followed.

v. The Appellant further submits that in the case of M/s. Spentex Industries Ltd Vs. Commissioner of Central Excise, reported in 2015(324)ELT 686 (S.C.) the Hon'ble Supreme Court while analysing the different provisions relating to Rule 18 of Central Excise Rules, have held that "Notification issued under Rule 18 of Central Excise Rules, 2002, contemplates rebate of all duties paid both on inputs as well as finished product and as such appellant entitled to rebate of both the duties. Further on a Review filed by the UOI, the Hon'ble Supreme Court Bench comprising Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice Rohinton Fali Nariman on 09-03-2016 after condoning the delay dismissed the Review Petition (Civil) No. 233 of 2016 in Civil Appeal No. 1978 of 2007 with R.P. (C) No. 270 of 2016 in C.A. No. 10534 of 2013, R.P. (C) Nos. 1590-1591 of 2016 in C.A. Nos. 2025-2026 of 2013 and R.P. (C) No. 1592 of 2016 in C.A. No. 2027 of 2013 filed by Commissioner of Central Excise, Nagpur against the Judgment and Order dated 9-10-2015 in Civil Appeal No. 1978 of 2007 with C.A. Nos. 2025-2026 of 2013, 2027 of 2013 and 10534 of 2013. While dismissing the Petition, the Supreme Court passed the following order: *"Delay condoned. The instant review petitions are filed against judgment dated 09-10-2015 whereby the aforementioned civil appeals were allowed. We have carefully gone through the review petitions and the connected papers. We*

find no error, much less apparent, in the judgment impugned. The review petitions are, accordingly, dismissed." It is further submitted that the ratio of the decision has been also followed by the Hon'ble High Court of Madras in the recent case of M/S. Larsen & Toubro Ltd. vs Union Of India on 12 September, 2019, the Hon'ble High Court while following the aforesaid ruling of the Hon'ble Supreme Court allowed the petition while setting aside the order of the Revisionary authority. As such, the ratio of the Hon'ble Supreme Court has to be followed by the authorities down below, keeping in view of the law of precedents. It is also relevant to point out that the decisions quoted and relied upon by the Commissioner of Appeals, the decision of the Hon'ble High Court of Gujarat in Arvind Mills, has not been either relied or discussed upon. Since, the G.O.I had taken the matter to the Hon'ble Supreme Court who have dismissed the special leave would tantamount that the law laid down in Arvind Mills is a good in law and has to be followed. Further, while discussing the grounds under which the Rebate is not available, the Commissioner of Appeals has also not considered the Hon'ble Supreme Court decision in Spentex Industries Limited, which has a binding effect on the Lower Authorities.

vi. The appellant submits that the majority of the Ratio relating to the rebate of duty in respect of the exports under Rule 18 of the Central .Excise Rules, favour them and as such the law and the interpretation as laid down by the Hon'ble Supreme Court has to be followed. It has been the consistent view that in respect of the Exports, duties suffered should be refunded as rebate since that was the pith and substance of export procedures and incentives. As such, the Order of the Lower authorities, not being in consonance with the law laid down, has to be set aside. Accordingly, it is prayed that the Revision applications be allowed with consequential reliefs in the interest of justice and equity.

7. Government has carefully gone through the relevant case records available in case file, perused the impugned Order-in-Original and Order-in-Appeal and submissions of the applicant.

8. Government observes that the applicants are manufacturers and exporters of parts of locks, parts of turbo jets or turbo propellers, Parts and accessories of Endoscopic Instruments and parts of sewing machines. The instant rebate claims were rejected by the appellate authority on the ground that the goods manufactured viz Parts and accessories of Endoscopic Instruments (CSH 90189044) and parts of sewing machines (CSH 84529099) and cleared for export were exempted absolutely from payment of duty in terms of the Notification No. 12/2012-C.E., dated 17-3-2012 and therefore in terms of Section 5A(1A) of the Central Excise Act, 1944 they had no option to pay duty and claim rebate of duty paid. Now, the applicant has filed this revision application on grounds mentioned above and requested to sanction either in cash or permitted to be re-credited to the Cenvat Account.

9. Government observes that the issue to be dealt whether the applicant was right in paying Central Excise duty on the goods exported which were unconditionally exempted in terms of Notification No. 12/2012-CE dated 17.03.2012. The relevant legal provisions which are extracted below:-

Notification No. 12/2012-C.E., dated 17-3-2012 states as follows

Exemption and effective rates of duty for specified goods of Chapters 1 to 98 — Jumbo Exemption — Notification Nos. 3/2005-C.E., 3/2006-C.E., 4/2006-C.E., 5/2006-C.E., 6/2006-C.E. and 10/2006-C.E. replaced

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) *and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 3/2005-Central Excise, dated the 24th February, 2005, ...except as respects things done or omitted to be done before such supersession,* ***the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below*** *read with relevant List appended hereto and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and* ***subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid*** *:*

Provided that nothing contained in this notification shall apply to the goods specified

against serial number 296 and 297 of the said Table after the 31st day of March, 2013.

Explanation 1. - For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified.

Explanation 2. - For the purposes of this notification, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and a person using such name or mark with or without any indication of the identity of that person.

TABLE

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
254	8452 90	All goods	Nil	-
309	9018 or 9019 or	(i) Parts and accessories of goods of headings 9018 and 9019	Nil	-

9.2 The exemption in terms of the aforesaid Notification have been granted in exercise of the powers conferred under Sub-section (1A) of Section 5A of CEA, 1944. In this regard it would be relevant to refer to the provisions of Sub section (1A) of Section 5A of CEA, 1944 which stipulates that:

"(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely the manufacturer of such excisable goods shall not pay the duty of excise on such goods."

9.3 Government notes that the above provisions make it amply clear that when any excisable goods are granted absolute exemption under Subsection (1A) of Section 5A of the Central Excise Act, 1944, the manufacturer shall not pay duty of excise on such goods. In the instant case, the goods viz Parts and accessories of Endoscopic Instruments (CSH 90189044) and parts of sewing machines (CSH 84529099)are unconditionally and absolutely exempted from payment of C.Ex duty in terms of Sr. No. 254 and 309 of the Notification No.12/2012-CE dated 17.03.2012. The said Notification is issued under Section 5A(1) of Central Excise Act, 1944 and in view of provisions of sub-section (1A) of Section 5A, the applicant cannot pay duty. Since there is no condition in the notification for availing exemption to the said goods, the provisions of sub-section (1A) of Section 5A(1) are applicable and no duty was

required to be paid on such exported goods. The duty paid without authority of law cannot be treated as duty paid under the provision of Central Excise Law. As such rebate claim is not admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

9.4 Government observes that the applicant has relied upon the case laws in respect of M/s Arvind Mills and M/s Spentex Industries to argue that the Department has erred in rejecting the rebate claim. In this regard, the Government observes that the case law of Arvind Mills dealt with the subject that when there are two unconditional exemption notifications which co-exist, there cannot be any compulsion on the assessee to avail the one which fully exempts excisable goods. In respect of the case law of M/s Spentex Industries, it is found that it deals with the rebate of the Excise duty paid both on inputs and on exported manufactured product. Hence Government finds that the case laws relied by the applicant are not relevant with the present issue which has been elaborated above.

9.5 In view of this position, Government holds that the instant rebate claims are rightly held inadmissible under Rule 18 of Central Excise Rules, 2004 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Therefore, the orders passed by the lower authorities rejecting the rebate claims are found to be in order.

9.6 Government observes that the Applicant has also submitted in their application that they had on the bonafide belief, paid the duty inadvertently and assumed and presumed that the duty what he paid can be claimed as rebate after export of goods. Had they known that the goods that are exported are exempted from payment of appropriate central excise duty, they would not have discharged the same. The applicant also contended that the rebate of duty claimed pertaining to the exempted goods may be sanctioned in cash or permitted to be re-credited in their Cenvat account. The applicant has relied on several judgements wherein it was held that Government cannot

retain the excess paid amount and has to be returned to the concerned manufacturer to be re-credited in their Cenvat account/adjusted in Cenvat credit account of the assessee.

9.7 Government observes that the duty paid in this case without the authority of law cannot be treated as duty paid under the provision of Central Excise Act. As such said paid amount has to be treated as a voluntary deposit made by applicant with the Government. Government cannot retain any amount without any authority of law. So, any excess paid amount has to be returned to the applicant in the manner in which it was paid. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11-9-2008 in CWP Nos. 2235 & 3358 of 2007, in the case of *M/s. Nahar Industrial Enterprises Ltd.* v. *UOI* reported as 2009 (235) E.L.T. 22 (P&H) has decided as under :

"Rebate/Refund - Mode of payment - Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable - Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty - Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat credit is appropriate. As such the excess paid amount/duty is required to be returned to the respondent in the manner in which it was paid by him initially.

10. In the instant case the applicant had exported the goods on payment of duty through their Cenvat account. In view of the aforesaid judgement and the case laws relied by the applicant, Government orders the amount paid by the applicant on the exported goods may be re-credited in their Cenvat account.

11. In view of above discussions, Government holds that in the instant case rebate claim is not admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. However the amount paid on duty without any authority of law being a

voluntary deposit may be allowed to be re-credited in their Cenvat credit account. The impugned Order-in-Appeal is modified to the extent.

12. These Revision applications are disposed off on the above terms.

17/5/22

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

ORDER No 418-431 /2022-CX (SZ) /ASRA/Mumbai DATED 17.05.2022

To,
M/s. Indo-US MIM Pvt. Ltd.,
Plot No. 43,44,45 KIADB Industrial Area,
Doddaballapur, Bangalore,
Karnataka-561203

Copy to:

1. The Pr. Commissioner of CGST, C.R. Building, Queen's Road, Bengalaru-560001
2. The Jurisdictional AC/DC -CGST, C.R. Building, Queen's Road, Bengalaru-560001
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Notice Board.