F.No. 195/174/13-RA

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Mumbai- 400 005

F NO. 195/174/13-RA /1331 Date of Issue: 15.03.2018

ORDER NO. 48 /2018-CX (WZ) /ASRA/MUMBAI DATED 15.03.2018 OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. Rishabh Impex.

Respondent: Commissioner, Central Excise, Raigad.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/541/RGD/2012 dated 05.09.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

:ORDER:

This revision application has been filed by M/s Rishabh Impex Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/541/RGD/2012 dated 05.09.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The case in brief is that the applicant had filed an appeal against order-in-original No. 2308/11-12/DC (Rebate)/Raigad dated 28.02.2012 passed by Deputy Commissioner, Central Excise(Rebate), Raigad rejecting 20 (Twenty) rebate claims filed by the applicant collectively for Rs.6,12,884/- on the ground that the exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the Act read with CBEC Circular No. 937/27/2010-CX dated 26.11.2011, the applicant could not have paid duty and did not have the option to pay the duty. The adjudicating authority also rejected the claims on other grounds. These grounds as mentioned in the impugned order were that Chapter sub heading Number and description of Central Excise Tariff declared in excise invoice and in the corresponding shipping bills was not tallying; the declaration of self sealing/self certification not given on the ARE-1; the Duty Payment Certificates from the Central Excise authorities indicating the debit entries of the duty payments were not submitted; the name of the authorized signatory not appearing on ARE-1; the authority was wrongly mentioned as Refund Section, Meher Building, Chowpatty; copy of excise invoice issued under Rule 11 of the Central Excise Rules,2002 was not submitted ; no declaration was made at Sl. No. 3 (a),(b) and (c) & Sl. No. 4 in the form ARE-1;signature of master of vessel not appearing on shipping bill; Photostat copies of shipping bill/mate receipt/bill of lading etc. not bearing the necessary certificate as "certified true copy" and thus conditions for grant of rebate under Notification No. 19/2004-CE. (NT) were not fulfilled. The adjudicating authority further observed that the appellant had failed to submit the documentary evidence

to prove the genuineness of the availment of Cenvat credit and subsequent utilization by them for payment of duty on the above exports

3. Vide impugned Order-in-Appeal, the Commissioner (Appeals), upheld order-in-original No. 2308/11-12/DC (Rebate)/Raigad dated 28.02.2012 passed by Deputy Commissioner, Central Excise (Rebate), Raigad on grounds mentioned in impugned Order and rejected the appeal filed by the applicant.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the various grounds as enumerated in their application. Main grounds of appeal are follows;

4.1 In respect of Notification No. 30/2004-CE dated 09.07.2004 and 29/2004-CE dated 09.07.2004 the Commissioner (Appeals) accepted the endorsement made on the ARE1 that Cenvat availed in respect of 11 cases and in respect 9 cases he did not accept the same as there is no endorsement on the ARE1 however, in the back of the all the ARE-1s endorsements are made that RG23A Part-II/Cenvat E. No. & date and this is certified by the Jurisdictional Range Supdt. and Inspector. Further in respect of all the claims Duty Payment Certificate has been issued and this certificate clearly shows that duty has been paid from R.G.23A Part-II account only. Therefore upholding the OIO in respect of remaining 9 ARE-1s also not proper and correct hence needs to be set aside.

4.2 Regarding self-sealing, Applicants state and submit that Notification No. 19/2004-CE (NT) dated 06.09.2004 has two parts one part is "Conditions and limitations" and second part is "Procedures". Conditions and limitations broadly is the following conditions.

(a) Goods exported after payment of duty and directly exported from the factory of manufacture.

(b) The excisable goods should be exported within six months or within extended period.

(c) The market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed.

(e) The amount of rebate of duty is not less than five hundred rupees

(f) Exported goods are not prohibited under any law for the time being in force.

(g) Rebate claim should be filed within one year of export as laid down in Section 11B of Central Excise Act, 1944.

These are mandatory conditions and are not condonable. Other than the above mandatory conditions the remaining conditions are all procedures and they can be condoned.

4.3 Applicant further submit that the manufacturer/ assessee started export during that time only and they were taking the guidance of the Departmental officers how to export accordingly they were preparing the ARE1. Same is the case with the Applicant. In the process they were not aware that they have to make the endorsement of self sealing on the ARE 1. After export within 24 hrs. they have submitted the ARE 1 Triplicate and Quadruplicate copies of ARE1 to the Jurisdictional Range Supdt. and he has certified on the back of Triplicate copy and handed over the same in the sealed cover to submit to the Rebate authority. No objection of `Self Sealing' was also raised by the Range Supdt. This procedure was going on and objection of `sealing' was not raised at any time by the Supdt. of Central Excise. The Rebate authority also called for the duty payment certificate from the jurisdictional Range Superintendent (same

was also received by him. In view of the same both Department as well as the Applicant were unaware of the procedure and in the interest of justice this needs to be condoned when the physical export & proper duty payment not in dispute. The BRC from the Bank is also received in both the cases. Hence rejection on this ground is not proper and correct. Further in respect of many of the ARE l s self-sealing certificate is already there and Applicants crave leave to submit the same at the time of personal hearing before the Hon'ble Joint Secretary, GOI, R.A. , New Delhi.

4.4 Regarding duty payment, the Applicants submit that they submitted the duty payment certificate duly endorsed by the Jurisdictional Range Supdt. in respect of all the exports. The Deputy Commissioner (Rebate) had any doubt he should have got the same verified from the concerned ranges. The Commissioner (Appeals) also passed order on the basis of presumption without getting the same verified from the concerned range Supdt. Hence the rejection on this ground is not proper and correct.

4.5 Regarding endorsement on the ARE 1 on the last of the ARE1 in respect of 3(a), (b) and (c) & Sl. No. 4. In most of the ARE ls endorsements were made, in some cases same was remained to be scored. However, the Hon'ble Joint Secretary to the GOI, R.A. has passed Order treating this as procedural mistake.

4.6 In respect of duty payment the Commissioner (Appeals) relied on the case Hon'ble High Court Judgment in respect of Rainbow Silk and GOI order of Sheetal Exports. In both the cases there is no duty payment certificate. But in the case of Applicants they have submitted duty payment certificate in respect of all the rebate claims. If there is an doubt same could have got verified from the jurisdictional officers instead of rejecting the claim on

the presumption that no evidence has been produced of taking cenvat credit by the processor. Further Commissioner (Appeals) did not pass any order on the Judgment of Gujarat and GO1 which are in favour of the Applicants and passed after the order of M/s. Rainbow Silk order of Hon'ble Bombay High Court, referred below submitted along with their appeal before him. This is the vague order and needs to be set aside.

4.7 All these Rebate claims are filed in January and February, 2005 and no letter or any objection in spite of repeated request for sanction of rebate claims till the issue of deficiency memo dated 02.02.2012. This is the only correspondence Applicants have received against these rebate claims i.e. after 5 years. This itself shows the injustice happened to the Applicants.

4.8 The duty on the exported goods has been appropriately paid by the manufacturer and the Merchant Exporter reimbursed the said amount to the manufacturer i.e. Applicants. Hence the rebate claims filed by the Applicants are proper and correct as proper duty has been paid by the manufacturer. It is also the policy of the Government that no duty should be exported along with the goods. Further even if the merchant exporter is not responsible as the manufacturer is registered with central excise and the manufacturer does anything wrong the jurisdictional officers should take appropriate action to recover the duty from the manufacturer as the Applicants have received the goods under proper central excise duty paid invoice from the registered manufacturer. For any fault of manufacturer merchant exporter is not responsible. In this connection Hon. Joint Secretary Government of India has passed number of Orders. The Applicants also rely on these Orders/Judgments in this regard:

(a)GOI Order No. 140/12-CX dated 17.02.2012 in re. of Commissioner of Central vs. Krishna Exports, Surat, Gujarat- It is in para 10.4 held as under:

"10.4 Government notes that applicability of G.O.I. order dated 18.05.07 has been categorically upheld by Hon'ble High Court. It is also mentioned here that in the case of CCE Mumbai-I vs. Rainbow Silk Mills, Hon'ble High Court of Bombay vide order dated 27.06.11 in W.P. No. 3956/10 reported as 2011 (274) ELT 501 (BOM) has also expressed almost similar view. Hon'ble High Court has not questioned Government decision in the G.O.I. order No.304-307/07 dated 18.05.07 in the case of Shree Shayam International. Government notes that regarding the point whether duty paid from illegally accumulated Cenvat Credit can be termed as duty paid for the requirement of Rule 18 of the Central Excise Rules, 2002, Hon'ble Gujarat High Court in the above said judgment para 12, has categorically held that merchant exporter has made payment to the manufacturer i.e. seller of goods and therefore entire duty is paid by them of which it is claiming rebate of duty paid on excisable goods upon eventual export." In this case GOI has upheld the Order in Appeal and rejected the Revision Application filed by the Department being devoid of merit. Copy of the said GOI order is enclosed herewith and marked as EXHIBIT –'E'

(b) Commissioner of C.Ex. & Customs vs. D.P. Singh - 2011 (270) E.L.T.321 (Guj). This Judgment is referred in the above referred GOI order and on the same issue. In this case also the Special Civil Application of the Department has been dismissed. Department filed SLP against this order before the Hon'ble S.C. and the Hon'ble S.C. dismissed the SLP after condoning the

delay. Copy of the judgment and copy of the Hon. S.C. orders are enclosed herewith and marked as Exhibit - 'F' & 'G'.

4.10 The Applicants state and submit that they have received all the duty payment certificates and also the same has been independently called by the A.C. (Rebate) from the jurisdictional Range Supdt.

4.11 Applicants state and submit that there is no allegation against debit of duty on exported goods. The allegation is against the availment of Cenvat credit by the manufacturer. The Applicants are the Merchant exporter who is concerned with the payment of duty on exported goods which is accepted by the department.

4.12 The Applicants state and submit that these are same goods and it is certified by the Central Excise officers as well as Customs authorities. The ARE1 No. is shown on the Shipping Bill and the S.B. No. shown on the ARE 1. Both these entries are certified by the Customs Authorities. When the physical export is certified, even if there is any clerical mistakes are there this needs to be condoned in the interest of justice. Hon. Joint Secretary, R.A. G.O.I. has passed many order in respect of condonation of procedural mistakes if any in the interest of export, Applicants rely on the same. In this connection Applicants rely on CBEC Circular No. 81/81/94 -CX dated 25.11.1994.

4.13 The Applicants state and submit that Section 3 of the Act i.e. duty should be paid by the manufacturer. In this case the Applicants are merchant exporters and not manufacturer. Therefore, any duty is required to be recovered from, to be recovered from manufacturer. Further in this connection Applicants rely on the following Orders.

(a) 2005(186)ELT100(Tr.Mumbai) - Prachi Poly Products Ltd. VS CCE, Raigad –

(b) 2005(184)ELT 397(Tr.Delhi) - CCE, Jallandhar vs. Aggarwal Iron Industries-

(c) 2005(191) ELT-899 (Tri. -Del.) - Parasrampuria Synthetics Ltd. vs. CCE, Jaipur -

4.14 In connection with availing credit and exemption, Applicants rely on the CBEC Circular No. 795/28/2004-CX., dated 28.7.2004 issued immediately after abolition of Rule 12B. This Circular gives the pros & cons how the Notification 29/2004-CE dated 9.7.2004 and 30/2004-CE 9.7.2004 are independently can be claimed and simultaneously claimed. The Adjudicating authority did not go through this Circular hence there is confusion with him. Whatever it may if the manufacturer commits any mistake Applicants are not responsible and they should not suffer. Further proper action has been taken against the manufacturer and wrong credit has been got deposited. Therefore the rebate claimed by the Applicants needs to be refunded to them. Copy of the Circular No. 795/28/2004-CX., dated 28.7.2004 is enclosed herewith and marked as EXHIBIT-'H'.

4.15 The Applicants state and submit that it is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borne by them at various stages of their manufacture in order to make them competitive in the International Market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate. Thus in order to make Indian goods competitive in the International market, the tax element in the exporter's cost is refunded to him through the system of rebate. This is only a reimbursement and not any kind of incentive. The Applicants have claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export. Therefore, rejection of the genuine rebate claim only on technical grounds

as is done by the adjudicating authority in the present case, is nothing but harassment to the genuine exporter and discouraging export.

4.16 The Applicants have exported the goods under ARE1 and submitted the Triplicate copy of ARE 1 s within 24 hours as required. After export submitted rebate claim along with all the required documents. Out of this Shipping Bill, ARE1 in original and Duplicate, Custom Certified Export Invoice and Packing slip on all endorsement by Customs Authorities showing that whatever goods cleared under ARE1 has been duly exported. Along with the Rebate claim the Applicants has also submitted the Triplicate copy of ARE 1 received from the Range Supdt. insealed cover and Original copy of the Central Excise Invoice showing therein the Description of goods cleared, quantity cleared, duty payable etc. all these particulars are shown on the ARE1 and description and quantity is also shown on the S.B. and export Invoice. There is no allegation that whatever cleared has not been exported. It is also accepted that the goods cleared under ARE1 has been exported. The remaining allegation is procedural which needs to be condoned in the light of the following Orders of GOI, Tribunal and Judgments.

(a) GOI Order No. 514/2006 dated 30.6.2006 - M/s. Ambica Knitting - Distinction between Mandatory and procedural lapses and procedural lapses required to be condoned. Marked as EXHIBIT — ' I'

(b) M/s. Banner International Order No. 255/07 dated 27.4.07. Marked as EXHIBIT- 'J'

(c) M/s. Vipul Dye Chem Ltd. Order No.873/2006 dated 29.9.2006. Marked as EXHIBIT — 'K'

(d) M/s. Britannia Industries Ltd, Mumbai. Order No. 380-382/07 dated 29.06.2007. Marked as EXHIB 'L'

4.17 It is the policy of the Government that no duty should be exported along with the goods. Therefore, the Technical lapse on their part may please be condoned and OIO may be set aside.

4.18 Rule 18 of Central excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004 allows rebate of duty on excisable Goods exported through a merchant exporter. Since there is no denying the fact that proper duty was paid on the finished products were duly exported, the cannot be penalised for merely for non-compliance of procedures. Applicants rely on the following judgments

a) Krishna Filaments Ltd 2001 (131) ELT 726 (GOI). - Marked as EXHIBIT-M

b) CBEC Circular No. 510/06/2000-CX., dated 3- 2-2000 - Marked as EXHIBIT –'N'

5. A personal hearing was held in this case on 29.12.2017. Shri R.V. Shetty, Advocate duly authorized by the applicant appeared for hearing and reiterated the submission filed through Revision Application and along with those made in the synopsis filed during the personal hearing. He pleaded that the Revision Application may be allowed and the Order-in-Appeal be set aside.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E.(NT) dated 06.09.2004 was rejected on the ground as mentioned in para-supra.

7. Government observes that the Appellate authority i.e. Commissioner (Appeals) has upheld the findings for rejecting the rebate on the following issues :

(i) CBEC Circular No. 705/28/2004-CX., dated 28-7-2004 allows simultaneous availment of full exemption under Notification No. 30/2004-C.E. as well as clearance of goods on payment of duty under Notification No. 29/2004-C.E. provided the manufacturer maintains separate books of account for goods availing of Notification No. 29/2004-C.E. and for goods availing of Notification No. 30/2004-C.E. It was further clarified by the CBEC vide Circular No. 845/3/2007-CX. dated 1-2-2007 that non- availment of credit on input, is a precondition for availing exemption under this notification and if manufacturers avail input tax credit, they would be ineligible for exemption under this notification. Out of 20 rebate claims filed by the applicant, in 11 cases where declarations under Sr. No. 3 of the ARE-1s 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, hence it is clear that in these 11 cases they could not have been possibly exempt under Notification No.30/2004-C.E. However in 9 cases where no declarations at Sr.No. 3 of ARE-1, has been made and no other supporting document has been submitted rejection of rebate claim is upheld

(ii) The provision of self sealing/self certificate is mandatory provision and the applicant has not followed the procedure as laid down in para 3(a) (ix) of the Notification No. 19/2004-CE(NT) dated 06.09.2004. Similarly the Duty Payment Certificates from the Central Excise authorities indicating the debit entries of the duty payments and excise invoice issued under Rule 11 of Central Excise Rules, 2002 are essential to prove duty payments.

(iii) Sr.No. 3(a),(b) and (c) & Sl.No.4 in the form ARE-1 is not certified by the applicant which are held to be the provisions which are required to be followed by the applicant wherein they declare the facts about

the availment of facility of Cenvat Credit or benefit of exemption Notification.

(iv) The applicants did not produce evidence of the genuineness of the Cenvat Credit availed by the processors. The applicants are a merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. During the material time their processors fraudulently availed Cenvat Credit on the basis of 'invoices' issued by bogus / non-existent grey manufacturers. The applicants 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 manufacturer. The Commissioner (Appeals) relying on the Hon'ble Bombay High Court's Judgement in UOI Vs Rainbow Silk 2011(274) ELT 510 (Bom), Revisionary Authority's Order Re: Sheetal Exports-2011(271)ELT.461 (GOI) and Board Circular No.766/82/2003-CX dated 15.12.2003 arrived at a conclusion that lower authorities have rightly observed that duty paid character of goods exported was not proved

8. Government observes that out of 20 rebate claims filed by the applicant, in 11 cases where declarations under Sr. No. 3 of the ARE-1s 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, however in 9 cases where no declarations at Sr.No. 3 of ARE-1, has been made and no other supporting document has been submitted. The applicant in revision application has contended that in the back of all the ARE 1s endorsement are made that RG23 A Part-II / Cenvat E.No. & date and this is certified by the Jurisdictional Range Supdt. and Inspector. As copies of the ARE-1 has been submitted, the authenticity of the applicant's contention cannot be verified at this end.

9. As regards Self Certification and Self sealing procedure, Government observes that Government of India vide Order No. 10/2016-CX dated

15.01.2016 in case of M/s Universal Impex, Mumbai while upholding the order of the Commissioner (Appeals) and rejecting the Revision Application filed by the assessee on similar grounds observed that

- *as per Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 ibid, the manufacturer exporter registered under Central Excise Rules, 2002 and merchant exporter who procure and export goods directly from the factory or warehouse can exercise an option of exporting the goods sealed at the place of dispatch by a Central Excise Officer or under self sealing.*

- *where the exporter desires self sealing and self certification for removal of goods from the factory the owner, working partner or Managing Director among others of the manufacturing unit shall certify on all copies of ARE-1 that the goods have been sealed in his presence and shall distribute the various copies as prescribed including to the jurisdictional Superintendent or Inspector of Central Excise within 24 hours of removal of goods.*

- *from a plain reading of the above provisions it is clear that if goods are cleared from a factory for export under claim for rebate it has to be under the cover of an ARE-1 duly certified for purpose of identity of goods either by the Superintendent/Inspector or the person from the factory as the case may be. This duly verified/certified ARE-1 is then certified by the Customs after due verification/examination that goods have been exported and the verification on ARE-1 prior to clearance from factory and thereafter by the Customs at the time of export helps to establish that the goods which were cleared from the factory are the same which are exported and without having followed the procedure as described in the Notification it cannot be established that goods which were cleared from factory were the ones actually exported or goods exported cannot be correlated with goods cleared from factory.*

- *that the nature of above requirement is both a statutory condition and mandatory in substance which also finds support in various judgments of the Apex Court and also noted that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani-(AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory. It is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of*

conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd - 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

9.1 While refuting the reliance placed by the applicants on the various judgments regarding procedural relaxation on technical grounds, Government in its Order No. 10/2016-CX dated 15.01.2016 observed that

- *the point which needs to be emphasized is that when the applicant seeks rebate under Notification No.19/2004-CE (NT) dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 ibid, the applicant should have ensured strict compliance of the conditions attached to the said Notification. Government places reliance on the judgment in the case of Mihir Textiles Ltd. Versus Collector of Customs, Bombay, 1997 (92) ELT 9 (S.C.) wherein it is held that:*

> *"concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."*

9.2 Government in its aforementioned Order No. 10/2016-CX dated 15.01.2016 further observed as under:

- *Government notes that it is an undisputed fact on record that in the present case the goods have been cleared by the applicant from the factory of Manufacturer on invoices only between 19.04.2007 to 23.04.2007 and dispatched to JNPT Container Terminal for stuffing. They had prepared the ARE-1 only on 24.04.2007 subsequent to clearance from the factory after the complete consignment was received*

at JNPT. It was only signed by Customs officials and the triplicate copy was submitted to the jurisdictional Superintendent of Central Excise on I8.02.2008. The impugned goods were thus cleared from the factory without an ARE-1 bearing certification about the goods cleared from the factory either under excise supervision or under serf-sealing and self-certification procedure. The conditions and procedure as laid down under Notification No. 19/2004-CE(NT) dated 06.09.2004 for sealing of goods at the place of dispatch were not followed. Correlation can therefore not be said to have been established as to whether the goods that were cleared from the factory, were the same as those exported.

9.3 In the context of the aforesaid judgment, which has decided the issue of requirement of self sealing and self certification for removal of goods from the factory for export, the applicant's contention that

"the manufacturer/ assessee started export during that time only and they were taking the guidance of the Departmental officers how to export accordingly they were preparing the ARE1; same was the case with the Applicant; in the process they were not aware that they have to make the endorsement of self sealing on the ARE 1; after export within 24 hrs. they submitted the ARE 1 Triplicate and Quadruplicate copies of ARE1 to the Jurisdictional Range Supdt. and he certified on the back of Triplicate copy and handed over the same in the sealed cover to submit to the Rebate authority. No objection of `Self Sealing' was also raised by the Range Supdt; this procedure was going on and objection of `sealing' was not raised at any time by the Supdt. of Central Excise; the Rebate authority also called for the duty payment certificate from the jurisdictional Range Superintendent, same was also received by him; in view of the same both Department as well as the Applicant were unaware of the procedure and in the interest of justice this needs to be condoned when the physical export & proper duty payment not in dispute; the BRC from the Bank is also received

in both the cases; hence rejection on this ground is not proper and correct;"

is unacceptable.

9.4 In view of the foregoing, Government observes that the impugned goods which were cleared from the factory without an ARE-1 bearing certification about the goods cleared from the factory either under excise supervision or under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed and therefore the correlation between the goods cleared from the factory and those exported cannot be said to have been established. Government, therefore, holds that non observations of the conditions and procedure of self-sealing as provided in the Notification No.19/2004–CE(NT) dated 06.09.2004 cannot be treated as minor procedural lapse for the purpose of availing benefit of rebate of duty on impugned export goods. Therefore, the various judgments relied on by the applicant regarding procedural relaxation on technical grounds as well as applicant's plea about treating this lapse as procedural one cannot be accepted. The applicant has further stated that in respect of many of the ARE I s self-sealing certificates are already there, however, in view of the non submission of the same, the authenticity of the applicant's contention cannot be verified at this end.

10. As regards the issue i.e Sr.No. 3(a),(b) and (c) & Sl.No.4 in the form ARE-1 is not certified by the applicant which are held to be the provisions required to be followed by the applicant wherein they declare the facts about the availment of facility of Cenvat Credit or benefit of exemption Notification, Government observes that it is now a well settled law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer

and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in Birla VXL - 1998 (99) E.L.T. 387 (Tri.), Alfa Garments - 1996 (86) E.L.T. 600 (Tri), Alma Tube - 1998 (103) E.L.T. 270, Creative Mobous - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

11. It is observed that one of the grounds for rejecting the claims was that the applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processors and the duty on exported goods was paid out of Cenvat credit taken on invoices raised by fake/fictitious firm/persons. This ground of rejection in the said order-in-original was upheld by Commissioner (Appeals) holding that bonafide nature of transaction between the merchant exporter and supplier manufacturer is imperative for admissibility of the rebate claim filed by the merchant manufacturer. Government observes from Order in Original dated 28.02.2012 that "during the material time DGCEI, Vadodara & Surat Commissionerate had detected several cases of non – existent / bogus firms who were purportedly either supplying grey fabrics or processing grey fabrics. The DGCEI investigation further revealed that these non – existent / bogus grey fabrics suppliers had merely supplied duty paying documents, i.e. cenvatable invoices, on a commission basis without supplying any grey fabrics to the grey processors with the intention to pass on fraudulent / bogus Cenvat credit. Subsequently without proper verification of genuineness of invoice received from grey fabrics supplier, the processor availed the Cenvat credit on the bogus / fake invoices issued by the non-existent grey fabrics suppliers and utilized the said bogus credit for payment of Central Excise duty on export goods.

12. Government in this case observes from the Order in Original dated 28.02.2012 that opportunity was given to the applicant (merchant exporter) for submission of document /record regarding the genuineness of the availment of Cenvat Credit on grey fabrics, which were subsequently used as

inputs in the manufacture of exported goods covered under the subject ARE-1, however, the applicant did not submit any records / documents proving the genuineness of the Cenvat credit availed & subsequently availed utilized by the processors for payment of duty on the above exports.

13. In this connection Government observes that there were some investigations caused and proper show cause notice was issued and adjudicated and the same would decide whether the duty payment was genuine or not.

14. In view of above discussions and findings, Government sets aside the impugned order-in-appeal and remand the case back to the original authority to consider and sanction the claimed rebates as per the observations given in the preceding paras and in accordance with law after giving proper opportunity to the applicant who shall submit all requisite collateral evidences/documents to prove the export of duty paid goods as per provisions of Notification No. 19/2004-C.E. (N.T.), dated 6-9-04 read with Rule 18 of Central Excise Rules, 2002. The original authority while causing verification of Duty Payment Certificates, may take into account the adjudication order passed in respect of investigation carried out / show cause notices issued by DGCEI, Vadodara as well as Surat Commissionerate. The applicant is also directed to submit all the documents relating to payment of duty before original authority along with original copies of BRCs for verification. In respect of 9 cases where no declarations at Sr. Nop. 3 of ARE-1 has been made, the applicant shall submit supporting documents to the original authority to show that the goods had been manufactured availing facility of Cenvat Credit under the provisions of Cenvat Credit Rules, 2004. The original authority will complete the requisite verification expeditiously and sanction the rebate claims wherever admissible in compliance of this order and on the basis of evidences submitted / available within six weeks of receipt of said documents from the applicant if they are found to be genuine. However,

sanction of rebate will be restricted to only those ARE-1s which bear self-sealing certificate.

15. Revision application is disposed off in above terms.

16. So, ordered.

15.3.2018
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 48 /2018-CX (WZ) /ASRA/Mumbai DATED 15.03.2018.

To,
M/s. Rishabh Impex, Behram Mahal,
2nd Floor,Near Edward Cinema,
534, Kalbadevi Road, Mumbai 400 002.

True Copy Attested
15.3.18
एस. आर. हिरूलकर
S. R. HIRULKAR
(A.C)

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner, Central Excise, (Appeals) Raigad.
3. The Deputy / Assistant Commissioner(Rebate), GST & CX Mumbai Belapur.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.