F. No. 195/1015/13-RA
F. No. 195/1026-1039/13-RA

REGISTERED SPEED POST AD

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. 195/1015/13-RA
F. No. 195/1026-1039/13-RA /4820

Date of Issue: 04.11.19

ORDER NO. 49-63/2019-CX (WZ) /ASRA/MUMBAI DATED 9.10.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Hi-Shine Inks Pvt. Ltd.
C-1/202-205, GIDC Estate,
Antalia – 396 325
Bilimora

Respondent : Commissioner of C. Ex., Customs
& Service Tax, Daman,
2nd Floor, Hani's Landmark,
Vapi-Daman Road, Chala,
Vapi – 396 191

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the OIA No. DMN-EXCUS-000-APP-210 to 224-13-14 dated 01.11.2013 passed by the Commissioner(Appeals), Central Excise & Customs, Daman.

ORDER

These revision applications have been filed by M/s Hi-Shine Inks Pvt. Ltd., C-1/202-205, GIDC Estate, Antalia – 396 325, Bilimora(hereinafter referred to as "the applicant") against OIA No. DMN-EXCUS-000-APP-210 to 224-13-14 dated 01.11.2013 passed by the Commissioner(Appeals), Central Excise & Customs, Daman.

2.1 The applicants had imported two raw materials; viz. resins and additives without payment of duty under customs Notification No. 96/2009-Cus dated 11.09.2009 against advance licences and used them in the manufacture of ball pen inks which were subsequently exported out of India. The applicants had also procured dyes, solvents, packaging materials from the domestic market on payment of excise duty and availed rebate of central excise duty under Rule 18 of the CER, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004. The applicant had obtained the necessary permission vide letter F. No. V/Misc-T Rebate permission/H-Shine/2012-13 dated 21.05.2012. The rebate claims had been sanctioned vide 15 orders-in-original.

2.2 The 15 rebate sanction orders were subsequently set aside vide the impugned OIA No. DMN-EXCUS-000-APP-210 to 224-13-14 dated 01.11.2013 passed by the Commissioner(Appeals), Central Excise & Customs, Daman on the ground that the condition no. (viii) of Notification No. 96/2009-Cus dated 11.09.2009 stipulates that the benefit of advance authorization can be allowed only when the facility of rebate claim under Rule 18 of the CER, 2002 has not been availed.

3.1 Aggrieved by the impugned OIA, the applicant has filed these revision applications. The applicant submitted that the OIA passed by Commissioner(Appeals) violates natural justice and was also without authority and jurisdiction. It was further stated that the Commissioner(Appeals) had failed to appreciate that the applicant had procured indigenous raw material for the manufacture of export goods and

had meticulously followed the complete procedure under Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002; that the goods had been exported under ARE-2 and the declaration therein states that they have not availed CENVAT credit and the export was not being made in discharge of export obligation under value based advance licence issued prior to 31.03.1995 and that the materials on which input rebate is claimed are not imported under quality based advance licence issued prior to 31.03.1995. It was contended that if it was the intention of the Government to bar exporters from obtaining raw materials duty free for export under advance licence, there would have been a specific declaration as in (b) and (c) in ARE-2.

3.2 The applicant then drew attention to condition (viii) of the Notification No. 96/2009-Cus dated 11.09.2009. They averred that Notification No. 96/2009-Cus dated 11.09.2009 had been issued to enable exporters to obtain raw materials without payment of duty for export. It was inferred that the notification clearly provides that materials imported into India against advance authorization are exempted on the condition that no rebate on raw materials procured duty free is claimed and that the purpose of condition (viii) was to ensure that a licence holder does not get double benefit on raw materials for the same export. The applicant submitted that they had not availed double benefit; that they had claimed the benefit of Notification No. 96/2009-Cus dated 11.09.2009 for resin and additives & claimed the benefit of Notification No. 21/2004-CE(NT) dated 06.09.2004 for dyes, solvents and packaging materials. They stated that this fact was endorsed by the 15 OIO's passed by the Assistant Commissioner after establishing one to one co-relation. The applicant submitted that the reason why they had opted for the benefit of Notification No. 21/2004-CE(NT) dated 06.09.2004 was to procure some raw materials on payment of duty under claim of rebate since it was felt that CENVAT facility on exempted goods could not be availed for claim of rebate on finished goods under Rule 18 of the CER, 2002 or refund under Rule 5 of the CCR, 2004.

3.3 The applicant further submitted that the Commissioner(Appeals) had failed to appreciate the fact that even if rebate of some raw materials exported under Notification No. 96/2009-Cus dated 11.09.2009 was not admissible, it was the Governments undisputed policy to not burden export goods with domestic taxes; that the Government does not want to make domestic goods uncompetitive when exported; that no country exports its taxes meant for taxing domestic consumption of goods and services; that there were various schemes for making available duty free goods & services for export production. It was contended that the Commissioner(Appeals) had failed to note that the applicant had followed proper procedure; that resin and additives had been procured under advance authorization without payment of customs duty whereas dyes, solvent and packaging materials had been procured from domestic manufacturers on payment of duty & under claim of rebate; that only one benefit had been claimed by them and that verification of one to one utilization had already been completed by the Department in terms of the provisions of Notification No. 21/2004-CE(NT) dated 06.09.2004.

3.4 The applicant argued that even if condition no. (viii) of Notification No. 96/2009-Cus dated 11.09.2009 was violated, rebate under Rule 18 cannot be denied. It was further stated that if an assessee while claiming the benefit of Notification No. 96/2009-Cus dated 11.09.2009 also avails input stage rebate, benefit of exemption under Notification No. 96/2009-Cus dated 11.09.2009 can be denied. However, rebate cannot be denied. It was pointed out that there was no provision in Rule 18 or Notification No. 21/2004-CE(NT) dated 06.09.2004 disallowing rebate in a case where customs duty exemption under Notification No. 96/2009-Cus dated 11.09.2009 is availed. In this regard, they placed reliance upon the case laws of Mardia Chemicals Ltd. vs. CCE[2006(199)ELT 110(T)] and Arvind Mills Ltd. vs. CCE[2009(240)ELT 613(T)]. It was further contended that the case laws relied upon by the Commissioner(Appeals) were distinguishable on facts & on other grounds as they had been passed per incuriam or sub silentio. On

these grounds, the applicant prayed that the impugned order be set aside with consequential relief.

4.1 The applicant thereafter filed written submissions when they were granted personal hearing on 05.12.2018 setting out various contentions. The applicant submitted that condition no. (viii) of the said customs notification does not apply to their case as they had not availed export rebate in respect of imported materials; viz. resin and additives which they had imported duty free under Notification No. 96/2009-Cus dated 11.09.2009. They further submitted that condition no. (viii) must be read keeping in mind the Governments consistent policy that all goods that go into the manufacture of export goods and the export goods itself are free from any duties or taxes. It was further averred that by the mere fact that exemption from customs duty had been granted on certain exempted raw materials, it could not be concluded that it was the Governments intention to disallow rebate of excise duty on other indigenous raw materials. They stated that by availing exemption from customs duty on two raw materials and simultaneously availing rebate of duty paid on the remaining three raw materials procured indigenously, the applicant cannot obtain double benefit. They placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Spentex Industries Ltd. vs. CCE[2015-TIOL-239-SC].

4.2 The applicant argued that even if the alleged contravention of condition no. (viii) of the customs notification is to be held in favour of the Department, even then the remedy lies in disallowing or taking back the benefit of exemption from payment of customs duty availed in respect of the two imported raw materials. Therefore, the impugned order holding the sanction of rebate in respect of three indigenously procured raw materials as improper was unsustainable in law. It was averred that a customs notification issued in exercise of the powers conferred by Section 25(1) of the Customs Act, 1962 cannot extend its tentacles to an altogether separate scheme of export rebate governed by an altogether separate statute or enactment; viz. Rule 18 of the CER, 2002 and central excise Notification No.

21/2004-CE(NT) dated 06.09.2004. It was submitted that the natural corollary for non-fulfillment of any condition of the customs notification would obviously be to deny the benefit of exemption from customs duty and therefore the impugned OIA was illegal, invalid and unconstitutional. In this regard, they placed reliance upon the decisions in the case of Arvind Mills Ltd. vs. CCE[2008(240)ELT 613(Tri)] & Mardia Chemicals Ltd. vs. CCE[2006(199)ELT 110(Tri)].

4.3 The applicant averred that the legality and allowability of rebate of duty paid on indigenously procured raw materials was required to be examined in terms of the provisions of Rule 18 of the CER, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004. It was contended that such rebate cannot be denied for any condition beyond the conditions prescribed in the rule and the notification. The applicants claimed that they had fulfilled all the conditions prescribed under Rule 18 and the notification issued thereunder. They pointed out that neither Rule 18 nor the notification prescribes any condition or vests any power with the rebate sanctioning authority to reject or recover sanctioned rebate claim even if condition no. (viii) of Notification No. 96/2009-Cus dated 11.09.2009 was violated and therefore the denial of the rebate claims was not supported by the provisions of Rule 18 or the notification. They placed reliance on the judgments in the case of National Tools(Export) vs. UOI[2017(348)ELT 638(Raj)] and Hi Speed Offsets vs. CCE[2014(304)ELT 3(Del)].

4.4 The applicant further submitted that if the interpretation adopted by the Commissioner(Appeals) in disallowing central excise duty rebate on the basis of a customs notification was accepted, then it would result in some glaring infirmities and anomalies. It was contended that such a stand would irrationally take away the option granted to an exporter to avail legitimate rebate of duty paid on raw materials and take away the discretion vested in the central excise authorities to sanction rebate under Rule 18. Such an interpretation would mean that by virtue of exercise of powers for issuing customs notification for granting exemption of customs duty, the

Department was actually restricting the rights granted under Rule 18 or making Rule 18 redundant. It was averred that the condition no. (viii) of the customs notification cannot be interpreted to render central excise rule 18 otiose. It was averred that such perception would militate against the Governments avowed policy that domestically produced goods when exported should not become uncompetitive and that the country does not want to export domestic taxes alongwith the goods. In this context, reliance was placed upon the judgment of the Hon'ble High Court of Gujarat in the case of Zenith Spinners vs. UOI[2015(326)ELT 97(Guj)].

4.5 It was further argued by the applicant that the availment of export rebate for the said three raw materials was backed by a legal and valid permission as contemplated under Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18. The permission granted vide letter F. No. V/Misc-T Rebate Permission/H-Shine/2012-13 dated 21.05.2012 by the Deputy Commissioner, Central Excise had been granted after he was "satisfied", verification of input-output ratio etc., that there is no likelihood of evasion of duty and other such parameters. It was pointed out that the permission granted still holds the field as it had not been challenged before, nor set aside by any appellate authority. It was averred that since the permission granted had attained finality, the impugned order could not sustain being illegal, being without jurisdiction and beyond the authority of law. Reliance was placed on the judgments in the cases of Rajguru Enterprises Pvt. Ltd. vs. CC(Export)[2011(266)ELT 286(Tri)], Bhagwati Gases Ltd. vs. CCE[2008(226)ELT 468(Tri)], Coastal Gases & Chemicals Pvt. Ltd. vs. CCE[1988(33)ELT 437(Tri)], CCE vs. Maharashtra State Bureau of Text Books Production & Curriculum Research[2015(39)STR 235(Tri)] & Wimco Ltd. vs. CCE[1986(26)ELT 877(Tri)] to canvas the stand that the aforesaid permission to avail benefit of rebate of central excise duty paid was an appealable order as it had civil consequences affecting the rights of the applicant and moreover it had been passed in exercise of the discretionary powers vested in the Deputy Commissioner and granted after due

verification of facts and parameters prescribed in Rule 18 and the subject notification.

4.6 In addition to the above contentions and without prejudice to them, the applicant submitted that if the rebate claims are not allowed on these three indigenously procured raw materials, then the applicant would be victimized and discriminated against because the Government has been consistently pursuing a policy of making all exports totally duty free. It was averred that there cannot be any intention of the Government or the legislature to allow exemption only on imported raw materials and to allow the burden of excise duty to be attached to indigenous raw materials; both of which are used in the manufacture of export goods. The applicant contended that the benefit intended for exporters cannot be made dependent upon the source from which the raw materials had been obtained; i.e. imported raw material and indigenously procured raw materials. They placed reliance upon the case laws of Hi Speed Offsets vs. CCE[2014(304)ELT 3(Del)], [2014(303)ELT 316(GOI)] & Spentex Industries Ltd. vs. CCE[2015-TIOL-239-SC].

4.7 The applicant further submitted that the entire exercise was revenue neutral and that even if they are held to not be entitled to avail export rebate, they would be entitled to claim refund of excise duty paid on such indigenously procured raw materials in terms of Rule 5 of the CCR, 2004. They claimed that, alternatively if the customs duty exemption on the two imported raw materials had been denied, they would have got the benefit of duty drawback of customs duty. They therefore contended that the entire exercise of recovering the sanctioned rebate claims would be revenue neutral and therefore the impugned order was not sustainable in law. They placed reliance on the judgments in the case of Zenith Spinners vs. UOI[2015(326)ELT 97(Guj)] and CCE vs. Ineos ABS Ltd.[2011(267)ELT A155(SC)], [2010(254)ELT 628(Guj)]. The applicant reasoned that the Commissioner(Appeals) had erred in setting aside the rebate sanction orders on a ground which was not contained in the rebate sanction orders whereas

all the fifteen rebate sanction orders had been passed on the basis of the parameters set in Rule 18 read with Notification No. 21/2004-CE(NT) dated 06.09.2004. Therefore, they could not be found fault with on the basis of an extraneous reason such as violation of condition of Customs Notification No. 96/2009-Cus dated 11.09.2009 put forth by the Department in the appeal before the Commissioner(Appeals). In this regard they placed reliance upon the judgment of the apex court in the case of UOI vs. GTC Industries Ltd.[2003(153)ELT 244(SC)].

4.8 The applicant submitted that the impugned OIA had been passed without prior issuance of SCN for recovery of rebate under Section 11A of the CEA, 1944. It was pointed out that the entire OIO deals with the provisions for sanction of rebate under Rule 18, the factual aspects of the case and thereafter gives findings as to how the applicant is eligible and entitled for rebate claims of excise duty paid on raw materials. Therefore, since no SCN had been issued for alleged non-fulfillment of condition no. (viii) of the notification, they averred that the OIO could not have been set aside on a totally extraneous ground about non-fulfillment of a condition of the customs notification without finding any fault or deficiency in the findings recorded by the learned adjudicating authority with regard to the applicants eligibility for rebate claim under Rule 18. It was therefore reasoned that the impugned OIA was liable to be quashed for the reason that no SCN was issued and also that it records findings which are not germane to the findings in the OIO.

4.9 It was pointed out by the applicant that the Department had subsequently issued SCN No. V(Ch.32)3-40/Err.-Refund/Dem/13-14 dated 09.05.2014 seeking to recover the sanctioned rebate claims amounting to Rs. 1,48,53,400/- which also includes the amount of Rs. 62,46,717/- covered under the impugned OIA. The said SCN had culminated into OIO No. VLD-EXCUS-000-COM-0009-15-16 dated 30.12.2015 which had been challenged by the applicant before the Hon'ble Tribunal in appeal no. E/10314/2016. The applicant therefore submitted that since there was

another order passed by the Commissioner in which the very same amount of Rs. 62,46,717/- was also included, it had resulted in a double demand for the same amount and therefore this OIA was liable to be quashed.

5. The applicant was granted a personal hearing on 20.08.2019. Shri Willingdon Christian, Advocate appeared on behalf of the applicant. He placed reliance on Notification No. 96/2004-Cus dated 11.09.2009 and reiterated the contents of the synopsis submitted by them on 05.12.2018. He submitted that only the customs portion could be denied and relied upon the CESTAT decision in their own case. They also filed a written submission on 16.08.2019 wherein they stated that the issue involved was no longer res integra by relying on the Order No. A/12547/2018 dated 02.11.2018 reported at 2018(11)TMI 299 – CESTAT AHMEDABAD in their own case. They pointed out that the CESTAT Order had emanated out of the subject case and resulted in the setting aside of OIO No. VLD-EXCUS-000-COM-0009-15-16 dated 30.12.2015 which was passed on adjudicating SCN No. V(Ch.32)3-40/Err.Refund/Dem/13-14 dated 09.05.2014 demanding an amount of Rs. 1,48,53,400/-; that the said SCN had been issued for recovery of the entire sanctioned rebate amount of Rs. 1,48,53,400/- covered by a total of 32 rebate claims and also includes the disputed amount of Rs. 62,46,717/- covered by the 15 rebate claims involved under the present case.

6. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and order-in-appeal. The issue involved in the present case is whether rebate claim of central excise duty paid on indigenously procured raw materials used in the manufacture of export goods would be admissible when the condition of Notification No. 96/2009-Cus dated 11.09.2009 providing for exemption to raw materials imported against Advance Licence specifically bars the availment of facility of rebate of duty paid on materials used in the manufacture of the export product under Rule 18 of the CER, 2002.

7. The timeline of events leading up to the instant proceedings would be pertinent. The applicant has stated that they had filed a total of 32 rebate claims for a total amount of Rs. 1,48,53,400/-. These claims were sanctioned by the lower authorities. However, the Department issued SCN dated 09.05.2014 for recovery of the entire sanctioned amount and simultaneously filed appeal against rebate sanction orders in respect of 15 rebate claims involving an amount of Rs. 62,46,717/-. On appeal by the Department, the Commissioner(Appeals) set aside the 15 orders-in-original sanctioning rebate claims and held that the rebate amount had been erroneously sanctioned. Aggrieved, the applicant has filed revision applications against the adverse OIA. On the other hand, the SCN dated 09.05.2014 was adjudicated and the demand was confirmed by the Commissioner of Central Excise, Valsad. The applicant being aggrieved by the OIO passed by the Commissioner of Central Excise, Valsad filed appeal before the CESTAT. The CESTAT has thereupon passed Order No. A/12547/2018 dated 02.11.2018 allowing the appeal filed by the applicant and setting aside the order for recovery of the rebate sanctioned.

8.1 Government observes that the entire issue revolves around the question as to whether the condition no. (viii) in Notification No. 96/2009-Cus dated 11.09.2009 would debar the applicant from the benefit of rebate of duty paid on inputs used in the manufacture of export goods under Rule 18 of the CER, 2002. The text of the said condition is reproduced hereinafter.

> *"(viii) that the export obligation as specified in the said authorization(both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of Rule 19 of the Central Excise Rules, 2002 has not been availed:"*

8.2 The Notification No. 96/2009-Cus dated 11.09.2009 has been issued in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 to exempt the materials imported into India against an Advance Authorization from the whole of the duty of customs and the whole of the additional duty subject to specified conditions. A cursory reading of the condition would reveal that the facility of rebate on raw materials would not be available to a holder of Advance Authorization availing the benefit of Notification No. 96/2009-Cus dated 11.09.2009. The arguments of the applicant regarding the bar applying only to imported raw materials notwithstanding, the condition does not make any distinction between domestically procured raw materials and imported raw materials. The applicant has made out various submissions to buttress their argument that the purpose of the condition is to ensure that a licence holder does not get double benefit on raw materials for the same export in as much as they had not availed the benefit of exemption under Notification No. 96/2009-Cus dated 11.09.2009 on the raw materials which had been procured from domestic market. However, the plain reading of the condition does not leave any room for interpretation. The condition under the said notification very unequivocally bars the holder of Advance Authorization from availing the benefit of rebate of duty paid on materials used in the manufacture of the final product under Rule 18 of the CER, 2002.

9.1 Government observes from the CESTAT Final Order No. A/12547/2018 dated 2.11.2018 that the Tribunal has decided upon the admissibility of the very same rebate claims. On review of the orders sanctioning the 15 rebate claims, the Department had filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) had vide the impugned order dated 01.11.2013 allowed the Department's appeals. Simultaneously, the Department issued show cause cum demand notice dated 09.05.2014 for recovery of refunds sanctioned in such manner in all 32 rebate claims; including the 15 rebate claims involved in these proceedings.

9.2 Government notes that the CBEC circulars issued from time to time stipulating adjudication powers of Central Excise Officers under Section 33 and Section 11A set out that cases related to issues mentioned under first proviso to Section 35B(1) of the Central Excise Act, 1944 are to be adjudicated by the Additional/Joint Commissioners without any monetary limit. Reference must be had to category C in para 3 of CBEC Circular No. 752/68/2003-CX., dated 01.10.2003; text reproduced.

> *"C. Cases related to issues mentioned under first proviso to Section35B(1) of Central Excise Act, 1944 would be adjudicated by the Additional/Joint Commissioners without any monetary limit."*

The issues mentioned under first proviso to Section 35B(1) include cases relating to rebate of duty of excise on goods exported and therefore the cases where Section 11A of the Central Excise Act, 1944 is invoked were required to be adjudicated by the Additional/Joint Commissioner without any monetary limit. The words "without any monetary limit" clearly indicate that immaterial of the amount of duty involved, the demands under Section 11A for these category of cases are to only be adjudicated by the Additional/Joint Commissioner. In other words, there is no upper limit set for adjudication by Additional/Joint Commissioner for adjudication of these demands. The implication of this expansive power of adjudication vested in the Additional/Joint Commissioner was that the next appeal would lie before the __Commissioner(Appeals) and after being—decided by the Commissioner(Appeals) the matter would travel to the Revisionary Authority as a case falling under the first proviso to Section 35B(1) of the Central Excise Act, 1944. However, the show cause cum demand notice issued in the present case came to be adjudicated by the Commissioner and the demand was confirmed with penalties. Since the adjudication was done by the Commissioner, the applicant preferred appeal before the CESTAT.

9.3 On appeal by the applicant, the CESTAT held that Rule 18 and Notification No. 21/2004-CE(NT) dated 06.09.2004 were self-contained

provisions for grant of rebate and that it was not permissible to import any extraneous condition of Notification No. 96/2009-Cus dated 11.09.2009 into the provisions for rebate. It was further observed that the applicant had claimed rebate only in respect of indigenously procured raw material on which benefit of Notification No. 96/2009-Cus dated 11.09.2009 had not been availed. The Bench inferred that there was no provision in the statute to recover rebate claims sanctioned under Rule 18 for violation of the condition of Notification No. 96/2009-Cus dated 11.09.2009 and that the applicant was legally entitled to rebate claim even if there was violation of any condition thereof. The CESTAT therefore held that the order for recovery of rebate was not tenable, set aside the order and allowed the appeal.

9.4 The applicant relies heavily on the CESTAT Order passed in their own case in the same rebate claims. However, the question that precedes all else is whether the bar on claiming rebate under Notification No. 96/2009-Cus dated 11.09.2009 would have bearing on the rebate claim filed by the applicant. Government notes that the exporter is very well aware of the fact that they are exporting the goods in discharge of export obligation of advance authorization. The applicant has accounted for the said exports towards discharge of export obligation under advance authorization and therefore allowing them input stage rebate would clearly be in the nature of allowing double benefit. Needless to say, the intention of the Government while instituting a scheme cannot be to allow double benefit. Since the Rule 18 and Rule 19 are specifically mentioned in Notification No. 96/2009-Cus dated 11.09.2009, the benefit available under these rules is to be read in conjunction with the said notification. There being a specific embargo on input stage rebate in condition (viii) of Notification No. 96/2009-Cus dated 11.09.2009 and since the benefit of the said notification is also being availed in terms of completing the export obligation, it would follow that the input rebate would not be admissible. Notification No. 96/2009-Cus dated 11.09.2009 has an exacting reference to Rule 18 which is undoubtedly conscious and deliberate.

9.5 The objective in Rule 18 is to grant rebate on payment of excise duty whereas the objective of Notification No. 96/2009-Cus dated 11.09.2009 is to grant exemption from payment of duties on materials imported. The applicant seeks to canvas as permissible the use of the same export transaction for seeking discharge of advance authorization issued under the Customs Act, 1962 as well as for seeking rebate of excise duty. As such, the condition no. (viii) in Notification No. 96/2009-Cus dated 11.09.2009 cannot be viewed in isolation. On a conjoint reading of Rule 18 and the Notification No. 96/2009-Cus dated 11.09.2009, the applicants right to claim rebate of central excise duty is negated by condition no. (viii) of the notification.

10.1 The decisions in the case of Omkar Textile Mills[2012(284)ELT 302(GOI)] and Sonal Garments India Pvt. Ltd.[2012(280)ELT 305(GOI)] which have been relied upon by the Commissioner(Appeals) while passing the impugned order are squarely applicable to the facts of the case. The decision of the Revisionary Authority in the case of International Tractors Ltd.[2011(267)ELT 429(GOI)] which involved interpretation of condition no. (v) in Notification No. 93/2004-Cus dated 10.09.2004 is another binding precedent. Government further observes that the issue had received the attention of the Hon'ble Delhi High Court in International Tractors Ltd. vs. CCE & ST[2017(354)ELT 311(Del)]. The relevant text is reproduced.

> *"**15.** The submission of the petitioner, that availing of the benefit under Rule 18 of CER is not dependent or contingent upon any other notification or obligation, is incorrect. Rule 18 is a rebate, which is subject to such conditions or limitations, as may be stipulated.*
>
> ***16.** In the present case, there is a categorical reference to Rule 18 in Notification No. 93. It is a conscious and deliberate inclusion, inasmuch as, the policies envisaged in Rule 18 of the CER and Notification No. 93 is grant of rebate on payment of excise and exemption from payment of customs duty respectively. A party cannot*

be allowed to avail of both the exemptions when clearly, the intention seems to be to permit only one exemption.

17. *The reference to Rules 18 and 19(2) in Notification No. 93 clearly reveals that non-payment/rebate of either excise duty or customs duty is being granted to encourage exports. Once an export transaction has been used for seeking discharge of Advance Authorizations issued under the CA, the same export transaction cannot be used for seeking rebate of duty under CER, as the rebate, in this case, is subject to the conditions and limitations, as specified in Notification No. 93, which clearly requires that 'the facility under Rule 18 or sub-rule (2) of 19 of CER, 2002' ought not to have been availed. The petitioner's right to seek rebate is clearly limited by this condition and hence it is not entitled to rebate under Rule 18 CER.*

Conclusion

18. *In view of the above, we find no error in the order dated 24th February, 2014 of the RA. The petitioner is not entitled to the relief prayed for.*

19. *The writ petition is dismissed, with no order as to costs."*

10.2 The judgment of the Hon'ble Delhi High Court has been rendered in context of condition (v) of Notification No. 93/2004-Cus dated 10.09.2004 which provided exemption for import of materials under Advance Licence Scheme. The said condition is similar to condition (viii) of Notification No. 96/2009-Cus dated 11.09.2009 except that the condition in Notification No. 93/2004-Cus dated 10.09.2004 was more extensive in that it encompassed the entire Rule 18(both rebate on inputs and rebate on final products) whereas the condition in Notification No. 96/2009-Cus bars rebate only in respect of duty paid on materials used in the manufacture of the resultant product. The High Court has very categorically held that once a transaction has been used for seeking discharge of Advance Authorizations issued under the Customs Act, 1962, the same transaction cannot be used for seeking

rebate of duty under Rule 18 of the CER, 2002. It has further been held that the condition under the notification that rebate under Rule 18 ought not to be availed would limit their entitlement to rebate.

10.3 The Special Leave Petitions filed by M/s International Tractors Ltd. before the Supreme Court against the judgment of Hon'ble Delhi High Court have also been dismissed on 11.09.2019. Therefore the judgment of the Hon'ble High Court still holds the field and is therefore binding. The judgment of the Hon'ble Delhi High Court was not brought to the notice of the Tribunal in the proceedings leading up to the passing of the Final Order No. A/12547/2018 dated 2.11.2018 in the case of the respondent. The order of the tribunal has been passed without taking the binding judgment of the Hon'ble Delhi High Court and is rendered *sub silentio*. Although the judgment rendered by the Hon'ble Delhi High Court is in respect of Notification No. 93/2004-Cus dated 10.09.2004, the judgment lays down the principle that the condition in the notification barring rebate under Rule 18 is to be interpreted strictly and given full latitude. Applying the same principle, the embargo in Notification No. 96/2009-Cus dated 11.09.2009 on rebate of duty paid on materials used in the manufacture of resultant product is also to be strictly applied. Therefore, the rebate of duty paid on inputs/raw materials used in the exported goods in discharge of their export obligation under the Advance Authorization cannot be allowed to the applicant. By virtue of the dismissal of the SLP's filed by the respondent before the Hon'ble Supreme Court on 11.09.2019, the issue has attained finality. The judgment of the Hon'ble High Court having been upheld by the Hon'ble Supreme Court is a contemporaneous exposition of the law and hence is a binding precedent. The interpretation of law in the CESTAT Final Order No. A/12547/2018 dated 2.11.2018 cannot be accepted. Consequently, the rebate claims filed by the respondent are not admissible.

11. In the result, the impugned Order-in-Appeal No. DMN-EXCUS-000-APP-210 to 224-13-14 dated 01.11.2013 passed by the Commissioner(Appeals), Central Excise & Customs, Daman is upheld.

12. Revision applications filed by the applicant are rejected being devoid of merits.

13. So ordered.

9/10/19

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 49-63 /2019-CX (WZ) /ASRA/Mumbai DATED 9.10.2019

To,
M/s Hi-Shine Inks Pvt. Ltd.
C-1/202-205, GIDC Estate,
Antalia – 396 325
Bilimora

Copy to:

1. The Commissioner of CGST & CX, Surat Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Surat
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
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