REGISTERED SPEED POST AD

सत्यमेव जयते

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. 195/1394 & 1395/12-RA/3927 Date of Issue: 10.06.2020

ORDER NO. 503-504 /2020-CX (WZ) /ASRA/MUMBAI DATED 09.06.2020 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 Vinergy International Pvt. Ltd.
Peninsula Business Park,
Unit No. 501, 5th Floor, Tower 'A',
Senapati Bapat Marg,
Lower Parel, Mumbai 400 013

Respondent : Commissioner of Central Excise, Raigad

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. US/454 & 455/RGD/2012 dated 13.07.2012 passed by the Commissioner(Appeals-II), Central Excise, Mumbai.

प्र. आयुक्त (रिवीजन एप्लीकेशन) एवं पदेन अपर सचिव, भारत सरकार
Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt of India
Mumbai
मुंबई

ORDER

These revision applications have been filed by M/s Vinergy International Pvt. Ltd., Peninsula Business Park, Unit No. 501, 5th Floor, Tower 'A', Senapati Bapat Marg, Lower Parel, Mumbai 400 013(hereinafter referred to as "the applicant") against OIA No. US/454 & 455/RGD/2012 dated 13.07.2012 passed by the Commissioner(Appeals-II), Central Excise, Mumbai.

2. The applicant had filed rebate claims under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. These rebate claims were rejected vide OIO No. 1530/10-11/AC(Reb)/Raigad dated 31.12.2010 & OIO No. 1531/10-11/AC(Reb)/Raigad dated 31.12.2010 by the rebate sanctioning authority on the grounds that the goods were not exported directly from the factory/warehouse but had been exported from the bunkering installation of BPCL at JNPT; goods had been exported much after the prescribed period of 6 months or extended period after their clearance from the factory; the triplicate copy of ARE-1 did not bear counter-signature of the central excise authority; the description of goods in the ARE-1 & excise invoice were not tallying with the description in the shipping bill; there was a difference in quantity mentioned in the ARE-1, invoice, shipping bill, bunker delivery note & disclaimer certificate and the secondary and higher education cess of 1% payable from 01.03.2007 had not been paid on the furnace oil which was exported.

3.1 Aggrieved by the orders of the rebate sanctioning authority, the applicant filed appeals before the Commissioner(Appeals). The Commissioner(Appeals) initially transferred the appeals to the call book vide OIA No. US/57 & 58/RGD/2012 dated 20.01.2011 as the Department had filed a writ petition in the Hon'ble Bombay High Court against order dated 31.05.2011 passed by the Joint Secretary to the Government of India in the same applicants case which was pending decision. However, as per the Chief Commissioners instructions, the cases were taken out of the call book for decision.

3.2 On taking up the case for decision, the Commissioner(Appeals) observed that since the goods were not exported within six months of clearance on payment of duty, the claims were liable for rejection on this ground alone; i.e. contravention of condition no. 2(b). He then proceeded to examine the other grounds. The Commissioner(Appeals) further observed that the goods were not examined by the jurisdictional Superintendent of Central Excise before export as required in terms of para 8.3 of CBEC Circular No. 294/10/97-CX. dated 30.01.1997 and the triplicate and quadruplicate copies of the ARE-1's were not sent to the Range Superintendent for verification of the duty payment as required under paragraph 8.6 of CBEC Circular No. 294/10/97-CX. dated 30.01.1997. He further noted that it was not established that the same goods on which duty was said to have been paid by M/s BPCL had been exported. As per paragraph 6 of chapter 8 of the CBEC Manual of Departmental Instructions, the facility of dispatch of goods by self sealing and self certification was available only to manufacturers. It was observed that the exported goods were not examined at any stage by Central Excise Officers for the purpose of verification of duty payment and the verification of duty payment was not done even post-export on triplicate/quadruplicate copies by the Range Superintendent.

3.3 The Commissioner(Appeals) noticed that the applicants had purchased furnace oil from M/s BPCL, JNPT depot which was not a factory. Although the CBEC had by general order issued vide Circular No. 294/10/97-CX. dated 30.01.1997 relaxed the conditions for direct export from the factory subject to the prescribed procedure being followed, as was evident from paragraph 4 and 6 of the circular it was applicable only when the identity of the goods cleared on payment of duty from the factory could be co-related with the identity of the goods exported later. The Commissioner(Appeals) referred the judgment of the Hon'ble Supreme Court in the case of Indian Aluminium Co. Ltd. vs. Thane Municipal Corporation[1991(55)ELT 454(SC)] wherein it was held that if it is likely to facilitate the commission of fraud and introduce administrative

inconveniences, non-observance of even a procedural condition is not to be condoned. He observed that the condition of direct export from the factory is waived subject to the condition that the exporter desiring to export duty paid excisable goods(capable of being clearly identified) which are in original factory packed condition should make an application in writing to the jurisdictional Superintendent of Central Excise and the Central Excise Officer, who on verification if satisfied about the identity of the goods, duty paid character and the duty payment is got verified from the originating Range where the duty was paid. He observed that in this case, the applicant had not complied with the aforesaid conditions and that the identity of the goods cannot possibly be verified after the goods have been cleared for export.

3.4 The Commissioner(Appeals) further observed that in an identical case of M/s BPCL, Mumbai, the Revisionary Authority had vide Order No. 204-205/09-CX dated 06.08.2009 observed that in a case where the goods have been cleared under self-certification without examination by central excise or customs officers, the condition of direct export from the factory can be relaxed only when the identity of goods cleared on payment of duty from the factory can be co-related with the identity of the goods exported later and held that the rebate claim had rightly been rejected. With regard to the contentions of the applicant regarding the interpretation of the term "warehouse", the Commissioner(Appeals) observed that as per CBEC Circular No. 796/29/2004-CX dated 04.09.2004 warehouses are not permitted as bonded warehouse. He took note of the fact that BPCL, JNPT was registered as a Dealer and was thus covered under the definition of warehouse as per Notification No. 19/2004-CE(NT) dated 06.09.2004. The Commissioner(Appeals) placed reliance upon the decision of the Revisionary Authority vide GOI Order No. 388/2010-CX dated 25.03.2010 in the case of In Re : Philip Electronics India Ltd.[2011(273)ELT 461(GOI)] wherein it was held that "warehouse" referred to in Notification No. 19/2004-CE(NT) dated 06.09.2004 is a warehouse in which excisable goods are permitted to be stored without payment of duty so that the manufacturer/exporter can export the goods

after payment of duty directly from the warehouse. He also concurred with the adjudicating authority's reliance upon the judgment in the case of CCE vs. IOC Ltd.[2009(234)ELT 405(HP)] wherein it was held that when an assessee wants to take the benefit of any rebate, he must satisfy all the conditions which are necessary for availing the rebate. In the light of these findings, the Commissioner(Appeals) vide OIA No. US/454 & 455/RGD/2012 dated 13.07.2012 rejected the appeals filed by the applicant.

4. Aggrieved by the rejection of the appeals filed by them, the applicant has filed revision applications on the following grounds:

(a) The issue covered in these applications is identical to 50 claims covered under Order No. 612 to 666/2011-CX dated 31.05.2011 passed by the Government of India in the same applicants case. The Commissioner(Appeals) was bound by the principles of judicial discipline as set out by the Hon'ble Supreme Court in UOI vs. Kamlakshi Finance Ltd.[1991(55)ELT 433(SC)] as the said order has neither been set aside or stayed. In fact, the Writ Petition No. WPL/2451/2011 filed by the Department against the said order has been dismissed on 11.07.2012 before admission of the case by the Registry of the Hon'ble Bombay High Court. In view of the dismissal of the Writ Petition, the Commissioner(Appeals) ought to have applied the ratio of the Order No. 612 to 666/2011-CX dated 31.05.2011 passed by the Government of India while deciding this case on 13.07.2012.

(b) It was averred that there was no dispute that furnace oil was procured from JNPT terminal of M/s BPCL on payment of duty on 19.04.2007 and supplied the same day by M/s BPCL directly to the foreign going vessel "MT Oriental Ruby" through a dedicated pipeline of M/s BPCL. The entire operation was undertaken by M/s BPCL itself and the goods were examined by the Customs Officer who had signed Part-B on the reverse side of ARE-1 form by putting his rubber stamp certifying the description & quantity as per ARE-1 & Shipping Bill.

(c) The applicant submitted that the JNPT terminal was a warehouse of M/s BPCL duly registered under Rule 9 of the CER, 2002 where furnace oil of M/s BPCL was being stored after having been removed from their refinery. Prior to 06.09.2004, the goods were removed from the refinery without payment of duty as this terminal was approved for storage of goods without payment of duty under Rule 20. However, in view of the change effected from 06.09.2004 onwards, the manufacturers had to pay duty at the time of removal of goods for storage in the same warehouse in view of the withdrawal of facility of storage of goods in a warehouse without payment of duty on petroleum goods vide Notification No. 17/2004-CE(NT) dated 04.09.2004 read with CBEC Circular No. 796/29/2004-CX. dated 04.09.2004. Even in this case, the goods had been removed without payment of duty but duty was paid on the entire stock lying in the warehouse as per the change in provisions for warehousing.

(d) The applicant pointed out that the warehouse of M/s BPCL where the goods were stored remained the same with the only difference that the material was stored after payment of duty and that they had cleared the goods for export from that warehouse on payment of duty only on 19.04.2007. They submitted that merely because the material purchased by them was supplied by M/s BPCL from their own warehouse on which duty had already been paid in the year 2004 in compliance of the Board circular, it would not mean that the benefit of rebate could be denied to them on the ground that export was made after more than six months from the date of removal of goods from the factory. They pointed out that as per condition no. 2(b) of the Notification No. 19/2004-CE(NT), the goods were required to be exported within six months from the date on which they were cleared for export from the factory or warehouse and in their case the duty paid goods were stored in the manufacturers warehouse and were not cleared for export immediately but were cleared for export on payment of duty and exported on the same day.

(e) The applicant alluded to Rule 2(h) of the CER, 2002 to aver that "warehouse" means any place or premises registered under Rule 9. They submitted that the judgment in the case of Philips Electronics India Ltd. was not applicable to the facts of the present case as in that case the goods were exported from the depot of the exporter himself where that exporter was storing indigenous as well as imported goods whereas in the instant case the goods were exported from the manufacturers own terminal which was also a warehouse in terms of Rule 20 till 06.09.2004. They also referred the judgment of the Hon'ble High Court of Gujarat in the case of Shakti Shipping International vs. UOI vide Orders dated 28.06.2011 & 21.07.2011 in SCA No.'s 15212/2010 & 4449/2011 wherein it was held that the rebate for goods procured from the depot of the wholesaler was also to be allowed when the duty paid character of the goods and export thereof was established. It was further pointed out that these orders of the Hon'ble Gujarat High Court had been maintained by the Hon'ble Supreme Court vide its order dated 02.03.2012.

(f) The applicant submitted that the Commissioner(Appeals) ought to have followed the order dated 31.05.2011 passed by the Government of India in their own case wherein it had been held that the reference to Circular No. 294/10/97-CX. dated 30.01.1997 was not correct as the goods had been cleared on payment of duty for export from the manufacturers warehouse and directly exported therefrom. They further submitted that the Commissioner(Appeals) should have noted that in all the central excise invoices issued by M/s BPCL, JNPT Terminal, particulars like the name of the foreign going vessels to which the furnace oil had been supplied, central excise registration no., quantity and central excise invoice no./date of issue were invariably mentioned.

(g) The applicant pointed out that the procedure for examination of goods at the place of export has been prescribed in para 7.3 and 7.4 of Chapter 8 of the CBEC's Central Excise Manual of Supplementary Instructions, 2005. They submitted that as per these instructions, the goods had been

examined by the Customs at the place of export. The Customs Officer had duly endorsed the original and duplicate copy of the ARE-1's after satisfying himself about the fact that the goods intended for export are the same which were cleared under the relevant ARE-1's. The relevant shipping bill no. & date against which the goods were exported were also mentioned in the customs endorsement on ARE-1 Part-B.

(h) The absence of the signature of the Superintendent of Central Excise having jurisdiction over the manufacturers premises on the reverse of the ARE-1 was not sufficient ground for rejecting the rebate claim when the duty paid character of the goods was not in dispute as had already been held in the applicants own case vide GOI Order dated 31.05.2011 and by Hon'ble High Court of Gujarat Orders dated 28.06.2011 & 21.07.2011 in SCA No. 15212/2010 and 4449/2011 in the case of M/s Shakti Shipping which have been maintained by the Hon'ble Supreme Court vide Order dated 02.03.2012 in SLP CC No.'s 1052/2011 and 108/2011. It was further averred that the purpose of signature of the Superintendent on Part-A of the ARE-1 was to ensure that the central excise duty had been paid on the goods and in this case the duty paid nature of the goods has never been disputed by the Department. The orders of the authorities below clearly state that the goods had been cleared from the refinery on payment of duty to the JNPT terminal of M/s BPCL and thereafter have been cleared from JNPT terminal of M/s BPCL. It has also been stated that the duty payment particulars are mentioned on each invoice.

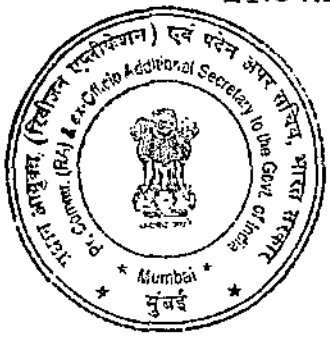
(i) The applicant submitted that the case law of Indian Aluminium Company Ltd. vs. Thane Municipal Corporation[1991(55)ELT 454(SC)] should not have been relied upon by the Commissioner(Appeals) as this case had already been discussed and found inapplicable by the Government of India in its Order dated 31.05.2011 as it was in respect of octroi chargeable under different law of the municipal corporation whereas there are umpteen number of case laws on the issue involved in the

present case in favour of the applicant which have been referred to and relied upon by them.

(j) The Commissioner(Appeals) ought not to have referred to and relied upon the judgment in the case of BPCL vide Order No. 204-205/09-CX. dated 06.08.2009 when the facts were different from those in the applicants case because in that case the goods of BPCL were stored in the same tank where the goods of HPCL were stored. In the present case, the goods were stored in tanks exclusively containing goods of M/s BPCL and these goods were examined by Customs officer at the port. M/s BPCL's JNPT terminal like the Sewree Terminal was an exclusive tankage area of M/s BPCL.

(k) The applicant contended that the Commissioner(Appeals) had wrongly concluded that the goods exported were not identifiable and co-relatable to the goods cleared from the factory on payment of duty and hence the benefit of relaxing the condition that goods should be cleared directly from the factory or warehouse cannot be extended. The applicant pointed out that the goods had been examined by the Customs Officer at the port and he had signed Part-B of the ARE-1 and confirmed the quantity, description of the goods vis-à-vis the shipping bill number and date. Since the material had directly been delivered at the vessel by the manufacturer BPCL himself, there was no question of doubting the identity of the export goods. The Chief Engineer of the vessel MT Oriental Ruby had issued Bunker Delivery Note as a token of receipt of the goods on his vessel, the sale proceeds had been received by the applicant and therefore it was clear that the goods had been cleared on payment of duty from the registered premises of the manufacturer, were exported and that they were eligible for rebate with interest.

(l) The applicant contended that the Commissioner(Appeals) should have appreciated that three identical claims of the applicant had already been sanctioned by his predecessor vide Order No. 21/R/2010 dated 21.04.2010 and had been accepted by the Department. The Department



having accepted that order could not now take a different stand for this case. Similarly the Commissioner(Appeals), Rajkot had also allowed identical appeals of the same applicant vide his OIA No. 227 to 229/2011/COMMR(A)/RBT/RAJ dated 08.12.2011 which the applicant had produced before the Commissioner(Appeals) in these proceedings.

(m) The applicant averred that the Commissioner(Appeals) had erred in not following the various judgments cited and relied upon by them in their appeal before him and at the time of personal hearing. They appended the list of citations of such judgments.

(n) The applicant also made submissions that they were eligible for interest on the rebate claimed under Section 11BB of the CEA, 1944 from the expiry of three months of filing of the rebate claim; i.e. 09.04.2008 as per the Orders of the Government of India in Order No. 247/10-CX dated 17.03.2011 in the case of Jindal Drugs Ltd. which has been maintained by the Hon'ble Bombay High Court vide Order dated 30.01.2012 in W.P. No. 9100/2011, Order No. 1239-1243/2011-CX dated 21.09.2011 passed by the Government of India in the case of Reliance Industries[2012(181)ELT 132(GOI)] and the judgment of the Hon'ble Supreme Court in the case of Ranbaxy Industries Ltd. vs. UOI[2011(273)ELT 3(SC)].

5. The applicant was granted a personal hearing on 03.04.2014. Shri Ashok Aggarwal, Consultant appeared on behalf of the applicant. He submitted that the rebate claims had been rejected on the grounds that the goods had been exported after six months of clearance from the factory, that they were not cleared directly for export from the factory, that the triplicate copy of the ARE-1 was not signed by the Superintendent. The consultant of the applicant then reiterated the grounds for revision application and submitted a written submission dated 03.04.2014. In their written submission dated 03.04.2014, the applicant contended that the facts in these cases were similar to the cases covered under Order No. 612-666/2011-CX dated 31.05.2011 passed by the Government of

India and reconfirmed vide Order No. 285-286/13-CX dated 20.03.2013 in the second round of litigation. The applicant pointed out that the Department had filed Writ Petitions No. 447/2013, 2655/2013 and 2667/2013 before the Hon'ble Bombay High Court challenging these orders and that the Hon'ble High Court had dismissed all the three writ petitions as withdrawn on 26.08.2014. The applicant submitted that it was much easier to establish the correlation between the furnace oil removed from the factory with the goods which were exported in this case than in the cases covered under the earlier orders which have been upheld by the Hon'ble High Court because in the instant cases the furnace oil was supplied as ship stores directly through the dedicated pipeline of the manufacturer M/s BPCL from their exclusive terminal at JNPT to the vessels and these goods were then exported on the same day when they were cleared for export from the terminal which was duly registered with Central Excise under Rule 9 of the CER, 2002 whereas in the earlier cases the goods were transported from the terminal to the vessels through truck tankers. They therefore prayed that these revision applications may be decided expeditiously on merits. Likewise, the Department filed written submissions and reiterated the finding of the Ld. Commissioner(Appeals).

6. Thereafter, on change in the Revisionary Authority, the applicant was granted opportunity of personal hearing on 14.12.2017, 09.02.2018, 11.12.2018, 12.12.2018 & 20.08.2019. However, neither the applicant nor the Department availed of the opportunity to be heard.

7. Government has carefully gone through the relevant case records, the written submissions filed by the applicant, their submissions at the time of personal hearing and perused the impugned orders-in-original and orders-in-appeal.

8. The issue involved in these revision applications is that the rebate claims filed by the applicant were rejected on the grounds that the goods had not been

exported within six months from the date of removal of goods for export from the factory as required in terms of condition no. 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004, that the goods had not been exported directly from the factory or warehouse, that the goods had not been examined by the Superintendent of Central Excise as required by Circular No. 294/10/97-CX dated 30.01.1997, that the ARE-1's had not been signed by the Range Superintendent of Central Excise and that the identity of the goods cleared on payment of duty from the factory could not be correlated with the goods which had been exported. The applicant has made out detailed submissions to controvert these contentions of the Department.

9. Government observes that the applicant has made submissions to contend that in view of the dismissal of the WPL/2451/2011 by the Hon'ble Bombay High Court, the ratio of the Order No. 612 to 666/2011-CX dated 31.05.2011 passed by the Government of India would be applicable to the facts of the present case. The applicant has made these submissions on the basis that the facts of the said case are similar to those in the present case. It is observed that the WPL/2451/2011 was registered as Writ Petition No. 447 of 2013 before being dismissed as withdrawn alongwith Writ Petition No. 2655 of 2013. The writ petition was withdrawn by the Counsels for the Department after their Lordships called upon them to state why the writ jurisdiction of Article 226 of the Constitution of India should be exercised at the behest of the Commissioner of Central Excise who was part of the Department of Revenue. As such, the Writ Petition being relied upon by the applicant has not been decided on merits and has been dismissed on a technical ground. The Commissioner of Belapur was therefore called upon to forward copies of the Writ Petition, the grounds for writ before the Hon'ble Bombay High Court and grounds of appeal against the order of the High Court; if any, to ascertain whether the facts involved/grounds in those cases are similar or if there are any differences. However, the Commissionerate was unable to trace out these records. In the circumstances, Government proceeds to decide the present revision applications on merits.

10.1 Government observes that two of the grounds for rejection of the rebate claims are interconnected; viz. the charge that the goods have not been exported directly from the factory or warehouse and that the goods have not been exported within the stipulated period of six months from the date of removal of goods from the factory. These contentions are based on the averment that the applicant has failed to adhere to the condition no. 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004. The condition stipulates that *"the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;"*. In the present case, the excisable goods have originally been cleared from the factory of M/s BPCL more than six months before the goods were exported. Government observes that the condition reproduced below clearances from a factory of manufacture or from a warehouse. It can be inferred that the time limit of six months would start from the time when the goods are cleared from a factory or a warehouse, depending on the place where the goods are cleared from. The Department has concluded that the goods have been cleared for export from the factory and hence the time limit of six months had expired much before the actual date of export. However, the aspect of whether the bunkering division of M/s BPCL at JNPT could be categorized as a warehouse must be examined before any such conclusion is drawn.

10.2 In this regard, Government observes that the definition of "warehouse" in the central excise statute would be of relevance. The Central Excise Rules, 2002 define a "warehouse" at Rule 2(h) of the CER, 2002 as *"warehouse" means any place or premises registered under rule 9;"*. By this definition it is clear that any place or premises registered under Rule 9 of the CER, 2002 is a warehouse. On going through the text of sub-rule (1) of Rule 9 of the CER, 2002, it is observed that it stipulates that *"Every person, who produces, manufactures, carries on*

trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered:". Government observes that the invoices attached by the applicant alongwith their rebate application contains the registration no. of the bunkering division of M/s BPCL at JNPT as a dealer. The bunkering division of M/s BPCL at JNPT has obtained a dealer registration for this installation to enable the clearance excisable goods directly into the ships bunkers to power their engines. Therefore, the bunkering division of M/s BPCL at JNPT was a separate entity recognized by the provisions of the Central Excise Act, 1944 and the rules as a dealer and the installation/tanks which have been registered for the purpose of trading in bunkering oils is a warehouse. The date on which the goods were cleared from the refinery of M/s BPCL to their bunkering depot at JNPT would have no relevance to the claim of rebate. In this view, the clearance of the goods from the warehouse; viz. the Bunkering Division would be the point in time when the time limit of six months of clearance for export would commence. Since the furnace oil has been exported immediately after clearance from the warehouse of M/s BPCL at JNPT, Government finds that the stipulation of condition no. 2(b) of Notification No. 19/2004-CE(NT) has been satisfied.

10.3 It is observed that the Commissioner(Appeals) has interpreted warehouses to be those covered under Rule 20 of the CER, 2002. Government finds that this finding recorded by the Commissioner(Appeals) is not tenable as Rule 20 applies only to warehouses where goods can be stored without payment of duty whereas in the present case the Bunkering Depot of M/s BPCL at JNPT had stored and cleared duty paid goods to foreign vessels. Rule 20 of the CER, 2002 by its limited applicability to warehouses which can store goods without payment of duty cannot override the provisions for registering a warehouse under Rule 9 of the CER, 2002 or cause a change in the definition of the term "warehouse" itself in Rule 2 of the CER, 2002.

11. The case of the Department includes an allegation that there is no corelation between the goods cleared the manufacturing unit i.e. M/s BPCL and

the goods cleared from the bunkering depot at JNPT for export to foreign vessels and hence their duty paid character was not proved. Government observes that the said contention is unviable for the reason that the invoices issued by the Bunkering Depot of M/s BPCL at JNPT which is a dealer registered with central excise contain the details of the original invoice of the manufacturing unit and the duty particulars. There is no case made out by the Department that there were clearances of furnace oil from the manufacturing unit of M/s BPCL to their bunkering depot without payment of duty. No aspersions have been cast about the authenticity of the duty particulars in the dealer invoices issued by the Bunkering Depot of M/s BPCL at JNPT. There is also no case that the Bunkering Depot was storing non-duty paid furnace oil. In the absence of any evidence to the contrary, the Department has no cause to reject the legitimacy of duty payment particulars recorded in the dealer invoices. Another fact that cannot be lost sight of is that M/s BPCL is a PSU and the Bunkering Installation also belongs to the same PSU. However, even if the Department had any doubts about the duty paid nature of the furnace oil stored at the Bunkering Depot, it was the duty of the Department to lead evidence to prove its contention. Government observes that no such evidence has been adduced. Since the dealer registration is an entity recognized by the Central Excise Department as a warehouse, the duty payment particulars are sufficient to allow the exporter the benefit of rebate claimed without tracing backwards to the manufacturer of the goods. In this regard, the Government follows and reiterates its decision in the same applicants case vide Order No. 612-666/11-CX dated 31.05.2011.

12. The Commissioner(Appeals) in the impugned order has opined that the condition of direct export from the factory is waived subject to the condition that the exporter makes an application to the jurisdictional Superintendent of Central Excise and the Superintendent in turn verifies and is satisfied about the identity about the goods and their duty paid character. The said condition is not applicable to the present case as the goods were exported from the warehouse/premises of a registered dealer and hence there was no question of

waiving direct export from the factory. With regard to the apprehensions raised by the Department about the triplicate and quadruplicate copies of the ARE-1 not having been sent to the Range Superintendent for verification of duty payment, Government observes that the goods were supplied directly from the bunkering terminal to the foreign going vessel through dedicated pipeline of the Bunkering Terminal of M/s BPCL at JNPT, the ARE-1's contained all the particulars of central excise invoice, the destination, the name of the vessel. Moreover, the Customs Officer has signed in acknowledgment of having supervised the shipping of the export goods as detailed in the invoice no. mentioned on the front side of the ARE-1 in the Part-B of the ARE-1's and certified that the consignments were shipped under the respective shipping bills. Be that as it may, even if it is viewed as an error on their part, the failure to submit copies of the ARE-1 to the Superintendent of Central Excise was at best a technical lapse and could not render their claim to rebate fatal.

13. The rebate sanctioning authority has also averred that there is a difference in the description of the goods which were exported. The impugned order does not record any findings in this regard. However, to avoid any ambiguity arising herefrom Government proceeds to examine this aspect. It has been recorded by the rebate sanctioning authority that there is a difference in the description of the goods mentioned in the ARE-1's, excise invoices vis-à-vis the shipping bill. In this regard, the Government observes that the Customs Officer had supervised the shipping of the furnace oil into the vessel through the pipeline of the Bunkering Terminal of M/s BPCL at JNPT. The description of the excisable goods as per the central excise invoice and the ARE-1 are in order. The fact that there was a difference in the description of the goods recorded by other persons would not detract from or undermine the examination carried out by the Customs Officer. As pointed out hereinbefore, the excisable goods have been cleared for export from the installation of a dealer of M/s BPCL which is a PSU. It would defy logic to conclude that the furnace oil transferred by pipeline from an installation of M/s BPCL was an entirely different product when it was supplied

into the bunker of the foreign going vessel. Government therefore does not find any merit in these submissions. There is also an issue regarding a difference in the quantity of furnace oil exported which has again not been examined by the Commissioner(Appeals). However, it is observed that the applicant has produced a disclaimer for the lower quantity and has also claimed rebate for the lower quantity. Hence, this observation made by the rebate sanctioning authority does not merit further discussion. The applicant has also made out a ground for grant of grant of interest on the rebate amount under Section 11BB of the CEA, 1944 from the expiry of three months from the date of filing the rebate claim. Government observes that the Hon'ble Supreme Court has interpreted and laid down the law in this regard in the case of Ranbaxy Laboratories Ltd. vs. UOI[2011(273)ELT 3(SC)].

14. In the light of the observations recorded hereinbefore, the Government remands the case to the rebate sanctioning authority with directions to sanction the rebate claims within a period of three months of communication of this order, after ascertaining whether the sale proceeds for the exported goods have been received and verifying the duty payment particulars; if need be.

15. So ordered.

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

ORDER No. 503-504 /2020-CX (WZ) /ASRA/Mumbai DATED 09.06.2020.

To,
M/s Vinergy International Pvt. Ltd.
Peninsula Business Park,
Unit No. 501, 5th Floor, Tower 'A',
Senapati Bapat Marg,
Lower Parel, Mumbai 400 013

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

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