F. NO. 195/758/13-RA
REGISTERED SPEED POST

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. 195/758/13-RA/ 5357 Date of Issue: 11.09.2020

ORDER NO.583/2020-CX (WZ) /ASRA/MUMBAI DATED 10.08.2020 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 Ayushi Engineering Company, Rajkot.

Respondent : Commissioner of Central Excise, Rajkot

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 170 to 173/2013(RAJ)CE/AK/Commr(A)/Ahd dated 08.04.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

ORDER

These Revision Applications have been filed by M/s Ayushi Engineering Company, Rajkot (hereinafter referred as 'the applicant) against common Order-in-Appeal bearing numbers No. 170 to 173/2013(RAJ)CE/AK/Commr(A)/Ahd dated 08.04.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. Brief facts of the case are that the applicant, a manufacturer exporter had filed three (03) Rebate claims under Notification No. 21/2004-C.E. (N.T.), dated 06-09-2004 in respect of the inputs used in the manufacture of their export goods . The Rebate sanctioning authority, i.e. Assistant Commissioner, Central Excise, Division-II, Rajkot vide Order in Original Nos. 1100 to 1102/Rebate/2012 dated 15.07.2012 sanctioned the said rebate claims by restricting the rebate claims on the basis of Input Output Ratio specifically fixed for the goods exported by them as shown below :-

Sr..No.	Amount of rebate claimed (Rs.)	Amount of rebate sanctioned (Rs.)	Refund Order No.
1	18416/-	9,064/-	1100/Rebate/2012
2	33,444/-	16,285/-	1101/Rebate/2012
3	29,993/-	14,580/-	1102/Rebate/2012

3. Being aggrieved by the said Orders in Original, the applicant filed the appeals before Commissioner (Appeals), Rajkot who vide Orders-in-Appeal No. 170 to 173/2013 (RAJ) CE/AK/Commr(A)/Ahd dated 08.04.2013 (impugned Order) upheld the Orders in Original and rejected the appeal of the applicant.

4. Being aggrieved with the impugned Order, the applicant filed the instant three (03) Revision Applications mainly on the following identical grounds:

4.1 the appellate authority has referred the finding of the adjudicating authority and mentioned that :

"I find, quite importantly that the impugned orders were passed in the month of July, 2012. The Jurisdictional Assistant Commissioner qua the adjudicating authority, vide letter F. No. IV/16-03/MP/2011-12 dated 10.08.2011 (emphasis supplied to the date) had categorically informed to the appellant about the rebate entitlement ratio with reference to the input stage rebate under Notification No. 21/2004-CE (NT). The rebate claims under the current proceedings have been undisputedly sanctioned as per the said letter fixing the norms. The relevant extract of the aforesaid letter reads as under :-

"3. Input output ratio given should be strictly adhered to while claiming rebate of duty paid on material used in manufacture of finished goods for export. Rebate of duty on material used for export goods shall be excluding recoverable waste and scrap..."

Accordingly, when the matter is viewed from the prism of the aforesaid letter dated 10.08.2011, it gives distinct impression that there is nothing incongruent to the law, insofar as sanctioning of rebate claims are concerned. I find that the appellant was fully aware of the quantum of the rebate that was mandated to be released vide the aforesaid vital letter dated 10.08.2011 of the divisional authority. Furthermore, more importantly, the appellant had, whatsoever, the appellant had. whatsoever, taken no exception to the aforesaid letter dated 10.08.2011 of the jurisdictional rebate claim sanctioning authority. So without going into the propriety of the case, I find that the appellant has apparently no locus stand to find fault with the current adjudicating proceedings restricting their rebate claims to the extent of the input-output already agreed upon or the actual quantity of material. To reprise the essence of the issue, I find that as held in the impugned order, the aforesaid letter is the instrumentalities out which the current refund/rebate proceedings has emanated and clearly sanctity of the aforesaid letter remains intact and unperturbed. Accordingly, it would he meaningless to raise protestation when everything has panned out as per the detailed sequence of event and ipso facto the rebate claim has been correctly sanctioned as per the actual material exported.

On perusal of the above finding, it appears that the appellate authority failed to appreciate the facts and their submissions

4.2 Their input output ratio of main raw material is 1:1 vide their letter dated 21.07.2011. In spite of such clear submission, the Assistant Commissioner of Central Excise, Rajkot had not made it clear whether input output ratio has been fixed on weight hack or on piece basis. It is also not clear in the said letter that recoverable waste referred therein is recoverable waste of pieces forgings or recoverable waste generated after machining. Moreover, if the Assistant Commissioner wants to decide input output ratio other than 1:1 as claimed by the applicant, the Assistant Commissioner was required to pass speaking and appealable order after observing principle of natural justice. So, immediately on receipt of the said letter, they filed revised submission dated 17.08.2011 along with all details and documents and with specific mention of input output ratio of main raw material to finished goods as 1:1. This application/letter is pending for order with the office of the Assistant Commissioner of Central Excise Division-II, Rajkot.

4.3 The appellate authority failed to appreciate the fact that in relevant ARE-2, in the relevant column of permission of the Assistant Commissioner, the applicant has mentioned that "Applied vide letter dated 17.08.2011 with ref to letter F. No. IV/16-03/MP/2011-12 Dated 10.08.2011". The applicant has exported the said goods and claimed the rebate with reference to their application dated 17.08.2011, which is pending decision before the Assistant Commissioner qua Adjudicating Authority. Thus, the impugned order

passed by the appellate authority without considering the facts and submissions of the applicant is not legal and sustainable.

4.4 The appellate authority failed to appreciate their submission based on basic provisions of Notification 21/2004 CE (NT) dated 06.09.2004. The provisions of the first paragraph of the Notification 21/2004 CE (NT) dated 06.09.2004, reads as under:

NOTIFICATION NO 21/2004-Central Excise (N.T), DATED : September 6, 2004

"In exercise of the powers conferred by of rule 18 of the Central Excise Rules. 2002 and in supersession of the Ministry of Finance. Department of Revenue, notification No.41/2001-Central Excise (N.T.), dated the 26th June. 2001[G.S.R.470 (E) dated the 26th June. 2001]. the Central Government hereby. directs ***that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods*** *shall on their exportation out of India. to any country except Nepal and Bhutan. he paid subject to the conditions and the procedure specified hereinafter -*

[emphasis supplied]

On perusal of the above stated provision of notification 21/2004 CE (NT) dated 06.09.2004, it appears that notification grants rebate of whole of the duty paid on excisable goods (i.e. MATERIALS) used in the manufacture or processing of export goods. **In the instant case, the material purchased and used by them for manufacture of export goods is Forgings. So, the applicant is entitled for rebate of whole of the duty paid on Forging.**

The term "materials- has been further clarified at para 1.4 of Part V of Chapter 8 of the CBEC manual. The said para 1.4 reads as under:

"1.4. The expression 'material' shall mean all raw materials. consumables, components. semi-finished goods. assemblies, sub-assemblies. intermediate goods. accessories, parts and packing materials required for manufacture or processing of export goods. Rebate of Central Excise duty paid on equipment and machinery in the nature of capital goods used in relation to manufacture or process of finished goods shall not be allowed.-

On perusal of the above stated para 1.4, it appears that the expression -material- contained in Notification 21/2004 CE (NT) shall mean all raw materials. consumables, components, semi-finished goods, assemblies. sub-assemblies, intermediate goods, accessories, parts and packing materials required for manufacture or processing of export goods. The consumable used for processing of export goods may not be contained in finished goods at the time of export, inspite of these facts, the assessee is eligible for rebate of duty of consumables which they have used for manufacture and processing of export goods. Thus, assessee is entitled for rebate of duty of

material which they have used for export production irrespective of fact whether export goods at the time of export contains that material or not.

In light of the above, the impugned order deducting/rejecting rebate is not legal and sustainable and is liable to be set aside.

4.5 Without prejudice to other submissions, it is further to submit that it is undisputed fact that they used duty paid forging for manufacture of Druck Teller. Out of the said duty paid forgings, two products come into existence (i) one is Druck Teller which is exported and (ii) other is waste and scrap. The adjudicating authority has allowed rebate on steel portion of export goods and have not allowed rebate on steel portion of waste and scrap. As discussed above, they have admitted to clear the waste and scrap with payment of duty. Since, duty is payable on waste and scrap portion, the balance amount of rebate which pertains to steel portion of waste and scrap should have been allowed at least by credit in Cenvat Credit Account. Thus, they are eligible for full rebate i.e. (i) cash rebate on steel portion of goods exported and (ii) rebate by credit in cenvat credit account on steel portion of waste and scrap. With reference to this alternate plea, the appellate authority has found and ordered that :

9. The appellant has also made labourious submissions before this appellate authority to the effect to allow their rebate claims on Wastage quantity on the basis of the various representations made against letter dated 10.08.2011 for reconsidering the norms OR to allow Cenvat Credit on the wastage quantity cleared on payment of duty. I prima facie do find substance in the alternate plea of the appellant-assessee as regards availment of Cenvat credit on the input portion of the waste/scrap statedly cleared by them on payment of duty. It is contention of the appellant that if the rebate is not allowed on the full quantity, the Cenvat credit on the inputs attributable to remaining quantity of inputs, eventually cleared as waste on payment of duty, should be allowed. However, I am of considered opinion that it would not be proper and apt for this appellate authority to address the said plea of the appellant at this juncture as, unless the decision in this regard is first taken by the original refund/rebate sanctioning authority qua the adjudicating authority, as per the law, this authority cannot opine on the same prematurely.

9.1 Furthermore, I also find that the appellant had not taken any plea as regards availment of Cenvat credit before the lower adjudicating authority, If the rebate was not sanctioned in respect of entire quantity of inputs. I accordingly refrain from offering any direct findings in this regards. The appellant-assessee may, however, approach the jurisdictional authority for claiming the said benefit along with all documents and evidences required in support of their plea, who shall after entertaining the said request of the appellant-assessee, take a call within the framework of law, especially, considering the provisions of Cenvat Credit Rules, 2004."

Since, the applicant has submitted all the documents at the time of claiming rebate to the adjudicating authority as well as at the time of appeal before the appellate authority. The appellate authority failed to appreciate that the adjudicating authority had not given any opportunity to the applicant for any submissions at the time of rejecting rebate claim. Moreover, it is worthy to note here that the adjudicating authority has not decided their applications dated 17.08.2011 and 14.02.2012 till today. Thus, referring this issue again to the adjudicating authority is not delivery of justice to the applicant especially when all the documents were available with the appellate authority.

5. A Personal hearing in this case was scheduled on 15.02.2018 and 27.08.2019 and 17.09.2019. However, the applicant did not appear for hearing on said dates. In respect of Revision Applications bearing No. 195/439-445/13-RA filed by the same applicant against Order in Appeal No. No. 958 to 964/2012(RAJ)CE/AK/Commr(A)/Ahd dated 31.12.2012 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad , involving identical issue for previous period, the applicant was offered personal hearing on 03.10.2019 However, the applicant vide letter dated 28.09.2019 waived their right of personal hearing and requested this authority to decide the case in the light of their submissions given in their Revision Application itself. Accordingly, Government in this case also proceeds to decide the case on the basis of available records.

6. The respondent department vide letter F. No. V/2-108/OIO/RRA/2013 dated 26.08.2019 filed counter reply /comments on Grounds of appeal of these Revision Applications mainly stating as under :-

6.1 The contentions of applicant giving the reference of Para 8.3 of Order-In-Appeal No.170 to 173/2013 (Raj)CE/AK/Commr.(A)/AHD dated 08.04.2013, that Appellate Authority failed to appreciate the facts and submissions of the applicant is not correct. In fact, it is held by the Appellate Authority in the initiation of the para 8.3 quoted as under :

"Now, if one shift focus to the findings delivered by the lower adjudicating authority, I find that at para IV of the impugned orders it has been inter alia rendered as under :-

"IV. Input output ratio as fixed by the Assistant Commissioner, C. Ex. Division - II, Rajkot has been verified and it is observed that the assessee has claimed the rebate on total quantity of raw material used in manufacture of final product. As per Input-Output ratio fixed, the assessee has to claim the rebate claim on quantity of row material used, after deduction of recoverable quantity of scrap..".

Further, at para 8.4 of the above referred OIA, the Appellate Authority, in his findings held as under:

> *"Accordingly, when the matter is viewed from the prism of the aforesaid letter dated 10.08.2011, it gives the distinct impression that there is nothing incongruent or repugnant to the law, insofar as sanctioning of rebate claims by the lower adjudicating authority is concerned.* ***I find that the appellant was fully aware of the quantum of the rebate that was mandated to be released vide the aforesaid vital letter dated 10.08.2011 of the divisional authority. Furthermore, quite importantly, the appellant had, whatsoever, taken no exception to the aforesaid letter dtd. 10.08.2011 of the jurisdictional rebate claim sanctioning authority.*** *So, for a moment, without going into the propriety of the case,* ***I find that the appellant has apparently no locus standi to find fault with the current adjudicating proceedings restricting their rebate claims to the extent of the Input-Output already agreed upon or the actual quantity of material.***
>
> *To reprise the essence of the issue, I find that* ***as held in the impugned order, the aforesaid letter is the instrumentalities out which the current refund/rebate proceedings has emanated and clearly sanctity of the aforesaid letter remains intact and unperturbed. Accordingly, it would be meaningless to raise protestations when everything has panned out as per the detailed sequence of event and ipso facto the rebate claim has been correctly sanctioned, as per the actual material exported."***

From the above it is crystal clear that the Appellate Authority has gone through the facts and submission made by the applicant. Therefore, the appellant's plea is not tenable and not correct.

6.2 As regards the Assistant Commissioner of Central Excise, Rajkot had not made clear whether input output ratio has been fixed on weight basis or on piece basis, the Appellate Authority had made their ample clear finding at second sub-para of para 8.3 as under:

> *"I find, quite importantly that the impugned orders were passed in the month of July, 2012.* ***The jurisdictional Assistant Commissioner qua the adjudicating authority, vide letter F. No. IV/16-03/MP/2011-12 dated 10.08.2011 (emphasis supplied to the date) had categorically informed to the appellant about the rebate entitlement ratio with reference to the input-stage rebate under Notification No. 21/2004CE(NT). The rebate claims under the current proceedings have been undisputedly sanctioned as per the said letter fixing the norms.***

Therefore, the Appellate Authority, in his finding, had suitably made it clear that the adjudicating authority ***vide letter F. No. IV/16-03/MP/2011-12 dated 10.08.2011 (emphasis supplied to the date)***

had categorically informed to the appellant about the rebate entitlement ratio with reference to the input-stage rebate under Notification No. 21/2004CE(NT). The Appellate Authority also further made it clear by his finding that ***The rebate claims under the current proceedings have been undisputedly sanctioned as per the said letter fixing the norms***.

In fact, the appellant failed to note the clear cut instructions about the rebate entitlement ratio with reference to the input-stage rebate under Notification No. 21/2004CE(NT) given by the jurisdictional Assistant Commissioner vide letter F. No. IV/16-03/MP/2011-12 dated 10.08.2011.

6.3 The contentions of Appellant, that Appellate Authority failed to appreciate the basic provisions of Notification No.21/2004 –CE(NT) dt. 06.09.2004, is not correct.

In fact, it is categorically discussed the basic provisions of Notification No.21/2004 –CE(NT) dt. 06.09.2004 in their findings by the Appellate Authority at para 8, 8.2 and 8.6 of the above referred OIA. At para 8.6 of the said OIA, the Appellate Authority has placed reliance of the recent **judgment of the Hon'ble Government of India, Joint Secretary IN RE : Tuffware Industries reported in 2012 (276) ELT 141 (G.O.I.).**

In light of the above verdict straight from the higher judicial forum, the Appellate Authority had held that *"it is clear that the appellant was entitled to rebate on the quantity of the goods actually exported, which was quantitative-wise only 50% (approx.) of the inputs used."*

6.4 The contentions of Appellant, that *Appellate Authority failed to appreciate that the adjudicating authority had not given any opportunity to the applicant for any submissions at the time of rejecting rebate claim ; that the adjudicating authority has not decided applicants applications dated 17.08.2011 and 14.02.2011 till to-day & thereby not delivery of the justice to the applicant especially when all the documents were available with the appellate authority* ; is not correct & not tenable.

In this context, kind attention is also invited to the Appellate Authority's findings at para 8.3 wherein it was held that,

"I find, quite importantly that the impugned orders were passed in the month of July, 2012. ***The jurisdictional Assistant Commissioner qua the adjudicating authority, vide letter F. No. IV/16-03/MP/2011-12 dated 10.08.2011 (emphasis supplied to the date) had categorically informed to the appellant about the rebate entitlement ratio with reference to the input-stage rebate under Notification No. 21/2004CE(NT)***. ***The rebate claims under the current proceedings have been undisputedly sanctioned as per the said letter fixing the norms.*** *The relevant extract of the aforesaid letter reads as under: -*

"3. Input output ratio given should be strictly adhered to while claiming rebate of duty paid on material used in manufacture of finished goods for export. Rebate of duty on material used for export goads shall be excluding recoverable waste and scrap..."

Therefore, in view of the clear instructions given vide letter F. No. IV/16-03 MP/ 2011-12 dated 10.08.2011 by the Department to the appellant, the contentions of the appellant that the adjudicating authority had not given any opportunity to the applicant for any submissions at the time of rejecting rebate claim ; that the adjudicating authority has not decided applicants applications dated 17.08.2011 and 14.2.2012 till to-day ; is not tenable & not legally sustainable.

Further, the Appellate Authority has specifically mentioned at para 9 of the above referred OIA, regarding the above contentions of the applicant which is re-produced here in below:

"9. The appellant has also made labourious submissions before this appellate authority to the effect to allow their rebate claims on Wastage quantity on the basis of the various representations made against the letter dated 10.08.2011 for reconsidering the norms OR to allow Cenvat Credit on the wastage quantity cleared on payment of duty. I prima facie do find substance in the alternative plea of the appellant assessee as regards availment of Cenvat credit on the input portion of the waste/scrap statedly cleared by them on payment of duty. It is contention of the appellant that if the rebate is not allowed on the full quantity, the Cenvat credit on the inputs attributable to remaining quantity of inputs, eventually cleared as waste on payment of duty, should be allowed. However, I am of considered opinion that it would not be proper and apt for this appellate authority to address the said plea of the appellant at this juncture, as, unless the decision in this regard is first taken by the original refund / rebate sanctioning authority qua the adjudicating authority, as per the Law, this authority cannot opine on the same prematurely.

*9.1 Furthermore, **I also find that the appellant had not taken any plea as regards availment of Cenvat credit before the lower adjudicating authority, IF the rebate was not sanctioned in respect of entire quantity of input. I, accordingly, refrain from offering any direct findings in this regards.** ....."*

Further, at para 8.4, second sub para of the said OIA, the Appellate Authority had given their findings, wherein it was held that,

"To reprise the essence of the issue, I find that as held in the impugned order, the aforesaid letter is the instrumentalities out which the current refund/rebate proceedings has emanated and clearly sanctity of the aforesaid letter remains intact and unperturbed. Accordingly, it would be meaningless to raise protestations when everything has panned out as per the detailed sequence of event and ipso facto the rebate claim has been correctly sanctioned, as per the actual material exported."

In this context, as per findings recorded by the Appellate Authority in the said OIA, as the appellant had not taken any plea as regards availment of Cenvat credit before the lower adjudicating authority, If the rebate was not sanctioned in respect of entire quantity of input, the question to decide the issue involved regarding availment of Cenvat Credit does not arise, at the time of rejecting of rebate claim.

Therefore, appellant's plea *that Appellate Authority not delivery of the justice to the applicant especially when all the documents were available with the appellate authority;* is not correct, not tenable and not legally sustainable.

7. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal. The issue involved in these Revision Applications is whether the rebate sanctioning authority was correct in restricting rebate on the basis of Input Output ratio fixed for the exported goods. The applicant in its grounds of appeal interalia contended that their input output ratio of main raw material was 1:1 vide their letter dated 21.07.2011; that in spite of such clear submission, the Assistant Commissioner of Central Excise, Rajkot had not made it clear whether input output ratio has been fixed on weight hack or on piece basis; that it was also not clear in the said letter that recoverable waste referred therein was recoverable waste of pieces forgings or recoverable waste generated after machining; that if the Assistant Commissioner wanted to decide input output ratio other than 1:1 as claimed by the applicant, the Assistant Commissioner was required to pass speaking and appealable order after observing principle of natural justice; that immediately on receipt of the said letter, they filed revised submission dated 17.08.2011 along with all details and documents and with specific mention of input output ratio of main raw material to finished goods as 1:1; that this application/letter is pending for order with the office of the Assistant Commissioner of Central Excise Division-II, Rajkot.

8. Government observes that the applicant had vide letter dated 27.06.2011 under "*Subject: Ratio of input/output of Druck Teller-6675330* submitting therein the details of the processes carried out on the each piece of the forgings towards the production of the Druck Teller- 6675330, reflecting the nature of operations carried out on the each piece of the forgings alongwith recovery and loss of waste and scrap at each stage of such processing. The details also contained therein the initial weight of the forging and final weight of the product alongwith the total amount of recoverable waste and total amount of loss of irrecoverable waste from each piece of forging. Thereafter, the applicant vide letter dated 21.07.2011 informed the Assistant Commissioner as under:-

In continuation of our above application and as discussed with the jurisdictional Range officers during their visit for verification of input output ratio, we would like to clarify that for manufacture of our export product i.e. Druck Teller-6675330, our principle input is FORGING and input output ratio of the said principle inputs and said export product is 1:1. In other words, for manufacture of one piece of Druck Teller-6675330 we need one piece of Forging of Druck Teller. We have mentioned weight of forging just to give details of scrap which is being generated due to machining on the forging. We will claim input stage rebate on number of pieces consumed in manufacture and export of number of pieces of Druck Teller-6675330.

Regarding waste and scrap mentioned in our application dated 27.06.2011,it is further to submit that we are accounting the said recoverable Waste and scrap in our regular Waste and scrap account and are not recycling the same but clearing the said waste and scrap with payment of duty. In light of the above, we request your honour to kindly approve our input output ratio for the purpose of input stage rebates on export of the above stated finished goods under the provisions of Notification 21/2004 CE (NT) and oblige.

9. Thereafter, Assistant Commissioner, Central Excise Division-II, Rajkot vide letter dated 10.08.2011 informed applicant as under:

Please refer to your application and request letter dated 27.06.2011 & 21.07.2011 for granting permission to manufacture and export goods namely Druck Teller-6675330 from the duty paid raw material under the provisions of Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules 18 of Central Excise Rules.

"Based on the input / output ratio declared by you, duly verified by the jurisdictional Range Superintendent vide report dated 15.07.2011 (copy enclosed) you are hereby permitted to manufacture and export goods, from the duty paid raw material under the provisions of Notification No.21/2004-Central Excise(NT) subject to fulfillment of the condition laid down in the said Notifiation and also of fulfillment of the following conditions :.....

10. On going through the correspondences referred above, Government observes that Assistant Commissioner, Central Excise Division-II, Rajkot had fixed the input-output norms based on details, submitted by the applicant and which was duly verified by the jurisdictional Range officers vide *jurisdictional Range Superintendent's report dated 15.07.2011.* Therefore, through this letter dated 10.08.2011, the applicant was aware of the input / output ratio fixed and the quantum of the rebate that could be sanctioned in its case.

11. Government further observes that while requesting specifically to fix the input-output ratio to 1:1 vide letter dated 21.07.2011 the applicant had already submitted the details of the processes carried out on each piece of the forgings towards the production of the Druck Teller- 6675330, reflecting the nature of operations carried out on each piece of the forgings alongwith recovery and loss of

waste and scrap at each stage of such processing, vide earlier letter dated 27.06.2011. Tabular chart was also presented showing initial weight of forging, final weight of the product alongwith total amount of recoverable waste and total amount of loss of irrecoverable waste from every piece of forging. Assistant Commissioner, Central Excise Division-II, Rajkot fixed the input-output norms based on such details, submitted by the applicant after due verification of the same by the jurisdictional range Superintendent. Moreover, vide condition no. 3 of the letter dated 10.08.2011, the Assistant Commissioner, Central Excise Division-II, Rajkot categorically informed the applicant that "**Input output ratio should be strictly adhered to while claiming rebate of duty paid on material used in manufacture of finished goods for export. Rebate of duty paid on material used for export goods shall be excluding recoverable waste and scrap.....**" thereby restricting the rebate of duty to the extent of materials used for export goods excluding the recoverable waste and scrap. However, the applicant neither challenged the jurisdictional Superintendent's report dated 15.07.2011 which was supplied to them, nor the decision of the Assistant Commissioner, Central Excise Division-II, Rajkot communicated to them vide letter dated 10.08.2011. The applicant contended that immediately on receipt of the said letter(dated 10.08.2011), they filed revised submission dated 17.08.2011 along with all details and documents and with specific mention of input output ratio of main raw material to finished goods as 1:1. This application/letter is pending for order with the office of the Assistant Commissioner of Central Excise Division-II, Rajkot.

12. Government observes that the applicant also vide letter dated 18.08.2011 made application for approval of input output ratio and permission for Export of Product Druck Teller 6612090 and submitted the details of the processes carried out on each piece of the forgings towards the production of the Druck Teller-6612090, reflecting the nature of operations carried out on each piece of the forgings alongwith recovery and loss of waste and scrap at each stage of such processing. Tabular chart was also presented showing initial weight of forging, final weight of the product alongwith total amount of recoverable waste and total amount of loss of irrecoverable waste from every piece of forging. Assistant Commissioner, Central Excise Division-II, Rajkot fixed the input-output norms based on such details, submitted by the applicant after due verification of the same by the jurisdictional range Superintendent. Moreover, vide condition no. 3 of the letter dated 21.12.2011, the Assistant Commissioner, Central Excise Division-II, Rajkot categorically informed the applicant that "**Input output ratio should be strictly adhered to while claiming rebate of duty paid on material used in**

manufacture of finished goods for export. Rebate of duty paid on material used for export goods shall be excluding recoverable waste and scrap....." thereby restricting the rebate of duty to the extent of materials used for export goods excluding the recoverable waste and scrap. However, the applicant neither challenged the jurisdictional Superintendent's report dated 18.08.2011 which was supplied to them, nor the decision of the Assistant Commissioner, Central Excise Division-II, Rajkot communicated to them vide letter dated 21.12.2011. The applicant thereafter, vide letter dated 14.02.2012 by referring to letter dated 21.12.2011 informed the Assistant Commissioner as under:-

> *In this respect, we would like to submit that in the permission letter, we found that our working of process-wise scrap generated is being referred and the said working is also attached with the permission letter. In the said working one piece of forging with its weight is mentioned and one piece of finished goods with its weight is mentioned. Our purchase bills of forging does not contain the details of weight of the consignment but contains details regarding number of piece of forging purchased.*
>
> *So from input/output ratio approved by your honour, we have understood that in light of the provisions of notification 21/2004 CE(NT), so far as our main raw material is concerned, i.e. forging of Druck Teller-6612090, we will get input stage rebate of duty paid on number of pieces of forging which we have utilized in number of pieces of Druck Teller manufactured and exported.*
>
> *If our understanding about the above referred letter dated 21.12.2011 is correct, we request your honour to kindly grant us input stage rebate at the earliest.*
>
> *If our understanding is not correct, we request your honour to kindly issue speaking and appealable order.*

13. Government is of the considered opinion that the Assistant Commissioner, Central Excise Division-II, Rajkot had already taken decision on the applicant's letters dated 27.06.2011 / 21.07.2011 and letter dated 18.08.2011 (regarding fixing of input output ratio in respect of Druck Teller 6675330 and 6612090 resp.) which was communicated to the applicant vide letter dated 10.08.2011 and 21.12.2011 respectively, by informing the applicant that *"Input output ratio should be strictly adhered to while claiming rebate of duty paid on material used in manufacture of finished goods for export. Rebate of duty paid on material used for export goods shall be excluding recoverable waste and scrap....."* in an unambiguous manner and the applicant was aware of the input / output ratio fixed and the quantum of the rebate that could be sanctioned in these cases. Therefore, the said Assistant Commissioner became *functus officio* after passing his decision and therefore, he had no authority to review his own decision

communicated vide letters dated 10.08.2011 and 21.12.2011. Therefore, the question of taking decision by the same Assistant Commissioner on the applicant's letter dated 17.08.2011 and 14.02.2012 did not arise. No useful purpose was served by making repeated correspondences. The recourse open to the applicant if he was aggrieved by the said decisions, was to file appeal before the Commissioner (Appeals) under Section 35 of the Central Excise Act, 1944. The applicant had already mentioned their contentions for grant of rebate on recoverable waste and scrap and the Assistant Commissioner of Central Excise Division-II, Rajkot categorically stated vide letters dated 10.08.2011 and 21.12.2011 that rebate sanctionable would exclude duty paid on recoverable scrap. As such the said Assistant Commissioner had already adjudicated on this aspect.

14. The notification no. 21/2004-CE (NT) dated 06.09.2004 stipulates that rebate of whole of the duty paid on excisable goods (i.e. materials) used in the manufacture or processing of export goods shall, on exportation out of India, to any country except Nepal and Bhutan, be paid subject to conditions and the procedure specified therein. Further, para 1.4 of Part V of Chapter 8 of the CBEC Manual of Supplementary Instructions, defines the term 'material' for the purpose of rebate, as follows:

> *"1.4. The expression 'material' shall mean all raw materials, consumables, components, semi-finished goods, assemblies, sub-assemblies, intermediate goods, accessories, parts and packing materials required for manufacture or processing of export goods. Rebate of Central Excise duty paid on equipment and machinery in the nature of capital goods used in relation to manufacture or process of finished goods shall »a! be allowed."*

Reading of these provisions makes it is clear that "material" should either be physically contained in the export goods or should have been consumed during the manufacturing of the export goods and therefore it is clear that the waste and scrap arising from the processing of materials, which are not being exported and are recoverable, are not entitled for rebate of duty.

15. Government observes that the issue of Consumption of raw material as per Input-Output Norms essential for computing rebate of duty has been duly discussed by in GOI Order Nos. 436-448/2011-CX., dated 3-5-2011 [(2012(276)ELT 141(GOI)] In : Re Tuffware Industries wherein this authority held as under:-

> *As per conditions contained under Notification No. 41/2001-C.E. (N.T.), dated 26-6-01 or Notification No. 21/2004-C.E. (N.T.), dated 6-9-04 and para of Part-V of Chapter 8 of CBEC Manual of Supplementary Instructions, any waste arising from*

the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of manufacturer or processor. These instructions are nowhere in contravention of said Board's Circular, Here, Government feels that the said Board's Circular provides a mode of calculation as given therein basically taking into consideration the quantum of inputs procured as per (genuine) requirements and in terms of approved input/output ratio (as per para 3.1 of Part V of Chapter 8 of CBEC Manual). The above statutory provisions should not be interpreted in such a manner that anybody can procure any quantum of material and then clear wastage/cut pcs. etc. on payment of duty at will. As per these Notifications, the manufacture of goods exported is required to follow the procedure and comply with the condition laid therein. He has to file declaration with Asstt. Commissioner, Central Excise describing finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing and processing formula with particular reference to quantity or proportion in which materials are actually used as well as the quantity. The Asstt. Commissioner Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods. The permission is granted for manufacture or processing and export of finished goods after verification of input and output ratio/norms. The rebate of duty paid on materials will be admissible as per verified input output norms. The contention of the applicant that the approved formula of manufacture/input-output ratio is for the purpose of procurement of raw materials and has nothing to do with sanction of rebate claim is not legally sustainable in view of the above said provision of notification. The consumption of raw materials as per approved/declared input-output norms is required to be taken for computing rebate of duty involved in the materials used in the manufacturing of export goods. Government notes here that lower authorities have correctly followed the prescribed/laid down conditions in respect of export goods herein and sanctioned the rebate claims as per laid down guidelines. Government finds no infirmity in the impugned orders-in-appeal and therefore upholds the same for being perfectly legal and proper.

9. Revision applications are thus rejected being devoid of merit.

16. Relying on the aforesaid case law and also in view of the above discussion, Government holds that the rebate sanctioning authority has rightly sanctioned admissible rebate taking into account input-output ratio allowed vide letter dated 10.08.2011 & 21.12.2011.

17. The applicant has also contended that during manufacture of Druck Teller out of duty paid forgings, two products come into existence one is Druck Teller which is exported and other is waste and scrap. The adjudicating authority has allowed rebate on steel portion of export goods and have not allowed rebate on steel portion of waste and scrap and as they have admitted to clear the waste and scrap with payment of duty, the balance amount of rebate which pertains to steel portion of waste and scrap should have been allowed at least by credit in Cenvat Credit account.

18. Government observes that in the present case, the applicant has already cleared the excisable waste & scrap on payment of duty. The said duty has also been recovered by the applicant from their buyer. Therefore, the applicant's plea to refund the same duty as rebate/re-credit in their Cenvat Account tantamounts to unjust enrichment. The very ethos of the scheme of rebate is to ensure that duties are not exported whereas in the present case the plea raised by the applicant is for grant of rebate on recoverable waste & Scrap cleared in the domestic market. Government also observes that the applicant has already obtained the admissible input rebate in terms of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 by declaring that they have not availed facility of Cenvat Credit under Cenvat Credit Rules, 2002 in ARE-2.

19. Government therefore, finds no infirmity in the impugned Orders-in-Appeal and therefore uphold the same.

20. The revision applications are rejected being devoid of merit.

21. So, ordered.

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

ORDER No.583/2020-CX (WZ) /ASRA/Mumbai DATED 10.08.2020

To,

M/s Ayushi Engineering Company,
Survey No.26, Plot No. 6,7 & 10,
Shapar Village Road,
Shapar (Veraval)-360 024, District : Rajkot (Gujarat).

Copy to :-

1. The Commissioner of CGST, Rajkot, Central GST Bhavan, Race Course Ring Road, Rajkot.
2. The Commissioner of CGST, (Appeals), 2nd Floor, Central GST Bhavan, Race Course Ring Road, Rajkot.
3. Assistant Commissioner (RRA) CGST, HQ, Rajkot, Central GST Bhavan, Race Course Ring Road, Rajkot.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

ATTESTED

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