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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. 195/124/14-RA Date of Issue:

ORDER NO. 596 /2020-CX (WZ) /ASRA/Mumbai DATED 26 · 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 TMVT Industries Pvt. Ltd., Ahmedabad.

Respondent : The Commissioner, Central Excise, Ahmedabad-I.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.AHM-EXCUS-001-APP-061-13-14 dated 18.12.2013 passed by the Commissioner (Appeals-V), Central Excise, Ahmedabad.

ORDER

This revision application has been filed by M/s TMVT Industries Pvt. Ltd., Ahmedabad (herein after referred as 'Applicant') against the Order-in-Appeal No.AHM-EXCUS-001-APP-061-13-14 dated 18.12.2013 passed by the Commissioner (Appeals-V), Central Excise, Ahmedabad.

2. The brief facts of the case is that the Applicant had filed a rebate claim of Rs. 40,704/- (Rupees Forty Thousand Seven Hundred and Four only) before the Deputy Commissioner, Central Excise, Division-II, Ahmedabad-I on 11.09.2012 for the amount paid on the goods namely Tracer Head Nr. 15 with Electric Solenoid 24 V for retract-motion (Model Nr. R 15-18-0 Serien Nr. 1086 0310) , and Hydraulic Motor Model LM (Model Nr. LM Serien Nr 316878-1002) cleared vide ARE I No. 01/12-13 dtd. 27.07.2012 and exported under Shipping Bill No. 1069240 dtd. 28/07/2012 for repairing purpose, in terms of the provisions of Rule 18 of Central Excise Rules, 2002 , read with Section 11 B of Central Excise Act,1944. The said goods had been imported vide Bill of entry No. 691973 dtd. 17.3.2010. The said rebate claim of Rs. 40,704/- was sanctioned by the Deputy Commissioner, Central Excise, Division-II, Ahmedabad-I vide sanctioning letter F. No. Ch. 84/18-716/12-Reb dtd. 02/11/2012.

3. As per Rule 18 of the Central Excise Rules, 2002, "where any goods are exported, the Central Government may grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods". In the instant case, the goods in question were imported vide Bill of Entry No.691973 dated 17.03.2010 and the same have been exported vide Shipping Bill No.1069240 dated 28.04.2012 for repairing purpose and therefore the said export was not an export of excisable goods, but export of imported goods for repairs and also that there is no foreign exchange involved in the said export. Also, Rule 3(5) of the Cenvat Credit Rules, 2004 stipulates that when inputs or capital goods on which Cenvat credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods. In this case it was noticed that on removal of the imported goods for export for repairs, the applicant has paid an amount equal to the credit taken at the time of import of the said goods. However, rebate is granted of duty paid on the imported goods exported for repairs.

4. It thus appeared that the rebate of an amount of Rs. 40,704/- paid on export of imported goods for repairs had been granted erroneously vide letter dtd. 02/11/2012 and therefore, the same was required to be recovered under section 11A of the Central Excise Act,1944 along with interest on the said amount under section 11AA of the Central Excise Act,1944.

5. In view thereof, the applicant was issued SCN No. Ch.84/18-716/12-Rcb dtd. 29/4/2013 for recovery of the amount of Rs.40,704/- erroneously sanctioned as rebate alongwith interest under Section 11A and Section 11 AA of the Central Excise Act,1944 respectively. After due process of law, the Deputy Commissioner, Central Excise, Division-II, Ahmedabad-I vide Order in Original No.DC/01/DVN-II/2013 dated 03.09.2013 ordered recovery of erroneously sanctioned rebate of Rs.40,704/- alongwith interest from the applicant.

6. Being aggrieved with the above Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No.AHM-EXCUS-001-APP-061-13-14 dated 18.12.2013 upheld the Order in Original and rejected the appeal filed by the applicant.

7. Being aggrieved by the aforesaid Order in Appeal the applicant has filed the instant revision application under Section 35EE of Central Excise Act, 1944 before Central Government mainly on the following grounds:

7.1 It is admitted fact that the goods has been exported on payment of duty and proof of export had been submitted which were found in order by the concerned authority and granted the rebate on the said exported consignment. Therefore, the department cannot take different ground for recovery of the so called rebate. Therefore, on this ground, the said Order is not legal, proper and correct.

7.2 The concerned authority after satisfying with the documents submitted by them had granted/sanctioned the rebate and after going through the Rule 18 of CER, 2002 and the notification under Rule 18 of the CER, 2002 for rebate. Therefore. the ground taken in the notice with respect to recover of the rebate like it is imported goods for repair and there is no foreign exchange involved does not arise. Further in the notification, there is no condition that foreign exchange should be involved in export transaction. Therefore, in absence of any condition like foreign exchange must be received, the rebate claim should not be denied. Reliance is placed judgment reported in 2013 (289) ELT 321. Therefore. their case is squarely covered by the above judgment and therefore, the rebate is not deniable.

7.3 There is no dispute that they have not followed the procedure prescribed under the Notification for rebate,. There is no dispute that they have not paid the duty, on exported consignment. Therefore, the rebate cannot be denied. Therefore, on this count, the said Order requires to be dropped. Kind attention is invited to Rule 18 of the CER,2002 wherein the Rule says that - Where any goods are exported the Central Government may, by Notification, grant rebate of duty paid on such excisable goods or duty on material used in the manufacturer or processing of such goods" i.e. imported goods are any goods and which is covered under the Rule 18 of CER,2002. Therefore, the rebate so granted cannot be recovered.

7.4 They rely on following judgment reported in 2012 (285) ELT 469 wherein Hon'ble Joint Secretary held that applicants supplied the inputs as such to SEZ unit by debiting Cenvat Credit account under Rules 3(4) and 3 (5) of Credit Rules, 2004. 'The Original Adjudicating authority granted the rebate which was denied by Commissioner (Appeals) on the ground that debit under Rule 3(5) of the said Rule is not payment of duty in terms of Notification No. 19/2014-C.E. (NT.). dated 6-9-2004 and the impugned inputs/goods were not cleared directly from the factory or warehouse. In terms of the provision of sub-rule (5) of Rule 3 of the Cenvat Credit Rules. 2004, an amount equal to Cenvat Credit availed on the input is liable to be reversed at the time of their clearance from the factory and in terms of explanation to sub-rule (4) of Rule 8 of the Central Excise Rules, 2002, the same is to be treated as duty. C.B.E. C. has clarified in Circular No. 6/2010 -Cus., dated 19-3-2010 rebate under Rule 18 of Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ. In this case there is no dispute that goods are supplied to SEZ. The dispute is whether the Cenvat Credit reversed under Rule 3(4)(5) of Cenvat Credit Rules, 2004 is to be treated on payment of duty in terms of Notification No. 19/2004-C.E. (NT) dated 6-9-2004. Appeal of assessee allowed. Other decision reported in 2013 (292) ELT 140 wherein Hon'ble Joint Secretary held that Amount paid in terms of erstwhile Rule 6(3)(b) of the Cenvat Credit Rules,2002 has to be treated simply a voluntary deposit with the Government which is required to be returned to the applicants in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. In present case they have cleared the goods for export on payment of duty. Therefore, the payment made for export of goods ought to be refunded. Apart from that the issue is covered by the judgment reported in 2012 (282) ELT 137 & 2012 (282) ELT 149.

7.5 The goods imported vide Bill of Entry No. 691973 which was part of capital goods for them and said goods had not been properly functioning. Therefore, being the imported parts of capital goods, the said parts were required to send back for repair purpose outside India

otherwise they were not in a position to operate the same for manufacture of final excisable goods. Therefore, they had cleared the said consignment on payment of duty. Therefore, when the goods are exported on payment of duty, rebate is not deniable or rebate so granted cannot be recovered.

7.6 While filing the rebate claim no BRC is required which is mentioned in the procedure required in CBEC manual. Therefore, the ground taken that no foreign exchange is involved is not proper and legal. That as per Rule 3(5) of CCR, 2004 - When Inputs or Capital goods, on which Cenvat credit has been taken are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service , as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9 the applicant has reversed Cenvat credit i.e. duty for sending the capital goods out side Inida. Therefore, while making the invoice as per Rule 3(5) of CCR they have debited the amount of duty which is not disputed in OIO and OIA. Therefore, the rebate cannot be denied as denied by lower authority. Reliance is placed on the judgment reported in 2007 (218) ELT 174.

In view of the above it is requested to allow the Revision Application and by setting aside impugned Order in Appeal.

8. A personal hearing was held in this case on 09.01.2020. Shri N.K. Oza, Advocate and Shri D. Joshi, Manager appeared for hearing on behalf of the applicant and reiterated the grounds of the Revision Application and also submitted written brief along with compendium of relied upon case laws. They pleaded that the Order-in-Appeal be set aside and the Revision Application be allowed.

9. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

10. Government observes that the issue to be decided in the instant case is whether the rebate of duty can be granted in case of reversal of Cenvat credit while exporting imported capital goods for repairs.

11. Commissioner (Appeals) while rejecting the appeal filed by the applicant vide impugned order, observed that :

"I find that Rule 18 of Central Excise Rules, 2002 mentions the word "duty paid on such excisable goods". In the instant case an amount has been

paid on clearance of imported goods for export for repairs as per Rule 3(5) of the Cenvat Credit Rules, 2004 and is not an excise duty. The export also does not involve foreign exchange. It is also possible that the rebate will be claimed on the same goods again and again whenever the said imported goods are exported for repairs. I, therefore, find that the said rebate amount erroneously sanctioned is required to be recovered under Section 11A of the Central Excise Act, 1944.1nterest on the erroneously sanctioned amount under Section 11AA of the Central Excise Act, 1944 is also required to be recovered.

12. In their written submissions dated 09.01.2020 filed on the date of hearing, the applicant contended that:-

- The SCN was issued to them for recovery of the rebate claim on the ground that as per Rule 18 of CER, 2002 "where any goods are exported. The Central Government may grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods. In the instant case, the goods in question were imported vide B/E No. 691973 dtd. 17/03/010 and the same have been exported vide shipping Bill No. 1069240 dtd. 28/07/2012 for repairing purpose. Therefore, it appears that said export is not an export of excisable goods, but export of imported goods for repairs.
- Further as per Rule 3(5) of CCR. 2004 stipulates that when inputs or capital goods on which cenvat credit has been taken are removed as such from the factory or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods. In this case. it appears that on removal of the imported goods for export repairs, the noticee has paid an amount equal to the credit taken at the time of import of the said goods.
- From the SCN, it appears that as per Rule 3(5) of CCR,2004 that the said goods has been removed as such but in their case, they have sent parts of capital goods for export for repair purpose on payment of duty and not the goods which were imported. This is the difference of facts.
- Further as per Rule 18 of CER, 2002, where any goods are exported, the Central Government may by notification, grant rebate of duty paid on such excisable goods or duty on material used in the manufacturer or processing of such goods. Here in present case, imported goods are any goods and it is duty paid goods and it is covered under Rule 18 of CER, 2002. Further they rely on the judgments reported in 2015 (322) ELT 743, 2015 (326) ELT 611, 2012 (282) ELT 137 (GOI), 2012 (285) ELT 469 (G0I), 2013 (292) ELT 140, 2013 (289) ELT 321.
- For not producing BRC, the applicant relies on judgment reported in 2016 (341) ELT 0044 (All.), 2013 (294) ELT 0604 (Tri. - Del.).

In view of the above submissions and grounds mentioned in application may kindly be taken on record and allow the application.

13. Government observes that the applicant in its reply dated 27th May 2013 to SCN No. Ch.84/18-716/12-Reb/42 dated 29.04.2013 had submitted as under:-

> *"That the goods imported vide Bill of entry No. 691973 which were parts of capital goods for the noticee and the said goods had not been properly functioning. Therefore, being the imported parts of capital goods, the said parts were required to send back for repair purpose outside India otherwise, the noticee was not in a position to operate the same for manufacture of final excisable goods. Therefore, the noticee had cleared the said consignment on payment of duty. Therefore, when the goods are exported on payment of duty, rebate is not deniable or rebate so granted cannot be recovered.*

From the above it is clear that the applicant had re-exported goods, i.e. parts of the capital goods, for repairs which were imported vide Bill of Entry No. 691973 dtd. 17.03.2010. Therefore, the exported goods, Tracer Head Nr.15 with Electric Solenoid 24 V for retract-motion (Model No. Nr. R15-18-0 Serien Nr. 10860310) and Hydraulic Motor Model LM (Model Nr. LM Serien Nr 316878-1002) cleared vide ARE-1 No.01/2012-13 dated 27.07.2012 and exported under Shipping Bill No.1069240 dated 28.07.2012 were not manufactured goods by the applicant and they were imported goods.

14. Government in this regard places its reliance on GOI Order Nos. 362-363/2017-CX, dated 7-12-2017 In :Re Groz Beckert Asia Pvt. Ltd.[2019 (370) E.L.T. 1487 (G.O.I.)] which upheld the Orders of the lower authorities rejecting rebate claims of the applicant. In this case the rebate claims were rejected on the ground that the goods exported were imported goods and not manufactured in India, hence were not excisable goods and that no duty of excise has been paid and Cenvat credit has been reversed at the time of clearance from the factory as required under the Cenvat Credit Rules, 2004. The GOI in the said order observed as under :

> *5. There is no dispute that under Rule 18 and Notification No. 19/2004 rebate of duty can be granted only if duty has been paid on the excisable exported goods or duty paid on materials used in the manufacture of exported goods. Therefore, the main issue in this case is whether the applicant has exported the excisable goods after payment of Central Excise duty? But on the basis of the facts discussed above, it is evident that the applicant had earlier imported the generator and knitting machines and after using them for some period these were exported by them by reversing the Cenvat credit which they had availed earlier against CVD paid thereon. Thus there is no doubt in this case that the generator and knitting machines exported by them are an imported goods and these were not manufactured in India. Hence, it is beyond*

any doubt that the goods are not excisable goods and, accordingly, the question of payment of any Central Excise duty never arose and it is never paid. Even the applicant has not claimed that the generator and knitting machines are excisable goods and Excise duty is paid on the clearance of these goods. Reversal of Cenvat credit at the time of export of these goods is not an Excise duty at all and it is just a payment of an amount in accordance with Rules 3(5) and 3(5A) of the Cenvat Credit Rules, 2004 in lieu of the Cenvat credit taken earlier in respect of these goods which were initially procured for being used for manufacturing of goods. Under Rule 3 of Cenvat Credit Rules, credit is admissible on the condition that inputs or capital goods etc., will be used for manufacturing of final products and if these were not used ultimately for the aforesaid purpose, the manufacturer is liable to reverse the Cenvat credit. Accordingly, in this case the applicant earlier availed the Cenvat credit in respect of CVD paid on the imported generator and knitting machines since they intended to use them for manufacturing of final products in their factory. But later on when they exported these goods, the applicant was not eligible to enjoy the benefit of Cenvat credit at the same time and consequently they were required to reverse the credit. The applicant was fully aware about this liability and accordingly they reversed the Cenvat credit at the time of the export of above goods. Thus the reversal of credit is just in compliance of Rule 3 of Cenvat Credit Rules and it is not a payment of Central Excise duty at all. In fact, as discussed above Central Excise was not leviable at all as the aforesaid goods are not manufactured by them and accordingly no duty of excise could be levied or paid.

6. From the above discussed facts, it is manifest that the applicant has not paid any Excise duty on the generator and knitting machines and there is no export of excisable goods. Consequently, the primary condition of export of duty paid excisable goods is not established in this case and thus the orders of Commissioner (Appeals) cannot be faulted on this ground. As regards the applicant's argument that they could export the above goods under Bond as per para 3 of Chapter 5 of the C.B.E. & C. Manual, this proceeding does not have any such issue and the subject matter of the Revision Applications is only whether rebate of duty is admissible in this case or not. Further such reversal of credit was mandatory even if the goods were exported under Bond and, therefore, this issue is of no relevance here. The case laws relied upon by the applicant, as mentioned in Para 3 above, are also not found relevant to the present proceeding as all these decisions have been passed by Hon'ble High Court and the Tribunals mainly on the premise that the duty was paid on the export of the imported capital goods. But in the instant case it is evident that no Excise duty has been paid and it could not be paid as imported goods are not excisable goods and incidence of levy of Excise duty which is manufacturing of a goods in India is not attracted in this case.

15. Similar stand is taken again by GOI vide Order No. 51/2019-CX, dated 18-9-2019 also in respect of the same applicant i.e. M/s Groz Beckert Asia Pvt. Ltd.[2019 (370) E.L.T. 1713 (G.O.I.)] involving similar issue. While deciding issue

whether the rebate of duty can be granted in case of reversal of Cenvat credit of CVD paid on imported capital goods at time of their export subsequently GOI in its aforesaid Order observed as under:-

> *"In the present case it appears that the applicant has claimed depreciation under Section 32 of the Income-tax Act, 1961 (43 of 1961). Therefore he has reversed proportionate Cenvat credit as provided under Rule 4(4) of Cenvat Credit Rules, 2004. The reversal of Cenvat credit by the applicant is not on account of payment of Central Excise duty, which was not payable in the present case.*
>
> ***Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 allows rebate claim only in those cases where the goods are manufactured in India and are liable to Central Excise duty and the same has been paid at the time of export. Since the imported goods are not liable for Central Excise duty under the Central Excise Act, 1944 no rebate claim can be filed in respect of such goods which are not excisable under Central Excise Act, 1944.***
>
> *In the present case the applicant could have availed duty drawback under Section 74 of the Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. Section 74 states that any goods which were earlier imported and then re-exported (whether used or unused), the importer can claim the duty paid at the time of import as Drawback on the fulfilment of certain condition as specified under Section 74 of Customs Act 1962. Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 have been formulated in exercise of the powers conferred by Section 74 of the Customs Act, 1962".*
>
> *It is observed that the applicant has not exercised this option which was available to him.*
>
> *The revision application cannot be considered in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.*

16. In the instant case also no manufacturing activity on the exported goods was carried out by the applicant. It is also admitted by the applicant that as per Rule 3(5) of CCR, 2004 it has reversed the proportionate Cenvat credit in respect of such Capital goods for sending them out side India. Therefore, Government holds that the proportionate amount paid to the tune of Rs. 40,704/- while re-exporting the imported goods was not excise duty but was an amount paid/reversed of the credit taken on imported goods as per Rule 3(5) of CCR, 2004 discussed above.

17. Government observes that the reliance placed by the applicant on Case laws M/s AMD Industries Ltd. Vs CCE [2015 (322) ELT 743] as well as M/S Bharat Heavy Electricals Ltd. Vs CCE [2015 (326) ELT 611] is misplaced as both these cases relate to taking of Cenvat credit on goods on re-import after repairs which was allowed by the Hon'ble Tribunal. Further in case laws M/s Positive Packaging Industries Ltd.[2012 (282) ELT 137 (GOI)] and M/s Divi's Laboratories Ltd. [2012 (285) ELT 469(GOI)] the main issue decided by GOI is reversal of equal amount of cenvat credit availed on inputs/capital goods under Rule 3(4) of Cenvat Credit Rules, 2002 is to be treated as payment of duty for the purpose of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. However in both these cases the goods exported were manufactured in India and hence excisable which is not the case in the instant Revision Application. Hence, applicability of these case laws to the present case is also misplaced. As regards reliance placed by the applicant on M/s Waves Foods Pvt. Ltd. [2013(292)ELT 140 GOI] it is also of no avail to the applicant in as much as in that case the applicant had paid duty even though the goods were exempted goods. Therefore, GOI in the said Order observed that the rebate claim of duty paid on such goods was rightly disallowed by the lower authorities. However, amount paid by the applicant in that case has to be treated simply a voluntary deposit with the Government and is required to be returned to the applicants in the manner in which it was paid. However, in the instant case the applicant reversed the Cenvat credit in respect of imported Capital goods for sending/exporting them out side India in terms of Rule 3(5) of CCR, 2004. The applicant in this could have availed duty drawback under Section 74 of the Customs Act, 1962, however, he failed to exercise this option, as held by GOI in its Order Order No. 51/2019-CX, dated 18-9-2019 (para 15 Supra).

18. Government also observes that the applicant has contended that while filing the rebate claim no BRC is required which is mentioned in the procedure required in CBEC manual. Therefore, the ground taken that no foreign exchange is involved is not proper and legal. Government in this regard refers to and rely on GOI Order Nos. 17-19/2016-CX, dated 28-1-2016 in Re: Globe Technologies [2016 (344) E.L.T. 677 (G.O.I.)] wherein GOI held that exports are entitled to rebate benefit only if export realization is received. GOI in its aforesaid order also discussed C.B.E. & C.'s Circular No. 354/70/97-CX, dated 13-11-1997 at length and observed that :

"Government notes that this circular deals with speedy acceptance of proof of exports in respect of goods exported though Inland Container Depots/Customs Freight Stations. It merely prescribes for furnishing of BRC in lieu of transference copy of Shipping Bill for purpose of proof of export in case of clearance for export from ICDs and if the TR copy or BRC is not received within 160 days from the date of sanction of rebate claim action for recovery is to be initiated. In this case rebate was not sanctioned in the first instance while the provision of said Circular would be applicable to cases where rebate had already been sanctioned and subsequently recovery for non-submission of BRC or TR copy is to be made".

Further at para 13 & 15 of its above referred Order, GOI also observed as under :-

13. Government notes that as per condition at Para 2(g) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, rebate of duty paid on those excisable goods export of which is prohibited under any law for the time being in force, shall not be made. Regulation 3 of Foreign Exchange Management Act (Goods & Services) Regulations, 2000 requires that a declaration in form GR/SDF is to be submitted to the Customs, inter alia, affirming that the full export value of the goods or software has been or will within the specified period (under Regulation 9, ibid) be paid in specified manner. As per Section 8 of Foreign Exchange Management Act, 1999, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all steps to realize and repatriate to India, such foreign exchange within time period prescribed by RBI. Further, Section 13 of Foreign Exchange Management Act stipulates penalty provision for non-realization of foreign exchange. The provisions of Foreign Exchange Management Act make it clear that the export of goods without realization of export proceed is not permitted. So in such cases, the rebate cannot be granted in terms of Para 2(g) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 cannot be said to be complied with and rebate car therefore, not be allowed under Rule 18 ibid.

15. It is a universally known principle that one of the main reasons any export incentive including rebate is allowed is to encourage export-generated foreign exchange earnings for the country. From a harmonious reading of Rule 18 of Central Excise Rules, Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, relevant provisions of Foreign Exchange Management Act, Foreign Trade Policy and RBI guidelines as applicable, it can be concluded that exports are entitled for rebate benefit only if export realization is received, which has not happened in the present case.

In view of the forgoing, reliance placed by the applicant on M/s Jindal Stainless Ltd. Vs CCE 2013 (289) E.L.T. 321 (Tri. - Del.), M/s Jubilant Life

Sciences Ltd. Vs UOI [2016 (341) E.L.T. 44 (All.)] and M/s Maruti Suzuki India Ltd.Vs Commissioner 2013 (294) E.L.T. 604 (Tri. - Del.) is also misplaced.

19. In view of above position, Government finds no infirmity in the Order-in-Appeal No.AHM-EXCUS- 001-APP-061-13-14 dated 18.12.2013 passed by the Commissioner (Appeals-V), Central Excise, Ahmedabad and therefore upholds the same.

20. Revision application is rejected for being devoid of merits.

21. So, ordered.

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

ORDER No. 596 /2020-CX (WZ) /ASRA/Mumbai DATED 26.08.2020.

To,
M/s TMVT Industries Pvt.Ltd.,
Plot No.84/A, 'F' Road, Phase-I,
GIDC, Vatva,
Ahmedabad 382 445.
Gujarat, India.

Copy to:

1. The Principal Commissioner of CGST, Ahmedabad South, 7th Floor, CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad-380015.
2. The Commissioner of CGST, Ahmedabad Appeals, 5th Floor, CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad-380015.
3. The Assistant Commissioner Division II, 2nd Floor, CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad-380015
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.