REGISTERED SPEED POST

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
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F NO. 198/06/14-RA/5550 Date of Issue: 07.10.2020

ORDER NO. 646/2020-CX (WZ) /ASRA/MUMBAI DATED 13.09.2020 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 CENTRAL EXCISE ACT,1944.

Applicant : Commissioner, Central Excise & Customs, Rajkot.

Respondent : M/s Welspun Corp Limited, Kutch, Gujarat.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. 517/2013(RAJ)CE/AK/ Commr(A) / Ahd dated 08.11.2013 passed by the Commissioner (Appeals-I), Central Excise, Rajkot.

ORDER

This Revision Application has been filed by the Commissioner, Central Excise & Customs, Rajkot (hereinafter referred to as the "applicant") against the Order-in-Appeal No. 517/2013(RAJ)CE/AK/ Commr(A) / Ahd dated 08.11.2013 passed by the Commissioner (Appeals-I), Central Excise, Rajkot.

2. The brief facts of the case are that M/s. Welspun Corp. India Ltd., Village-Varsamedi. Taluka-Anjar (previously known as M/s Welspun Gujarat Stahl Rohren Ltd.) (hereinafter referred to as the 'respondent') had filed rebate claim of Rs.50,86,955/-(Rupees Fifty Lakh Eighty Six Thousand Nine Hundred Fifty Five only) on 16.05.2008 for the amount of duty paid on the goods cleared and subsequently exported under various ARE-Is issued during the period from April-2008 to May-2008. The original adjudicating authority noticed that the export goods were manufactured by using plant and machinery installed upto prescribed cut-off date i.e 31.12.2005, which made the exported goods eligible for exemption under Notification No.39/2001-CE dated 31.07.2001. Therefore, the adjudicating authority held that since the said party was availing the exemption under Notification No.39/2001-CE dated 31.07.2001, they were not eligible for rebate of duty paid on the goods exported after 16.09.2007 in view of the Notification No.19/2004-CE dated 06.09.2004 as amended.

3. In view of the above observation, Show Cause Notice No.186 dated 04.12.2008 from F. No. V.34(10)147/Reb/2005 was issued to the respondent asking them as to why their rebate claims for Rs.50,86,955/- should not be rejected under rule 18 of the Central Excise Rules,2002, read with para (1) of Notification No.39/2001-CE dated 31.07.2001 and Section 11 B of the Central Excise Act,1944.

4. After due process of law, the original adjudicating authority, i.e. Deputy Commissioner, Central Excise Division, Gandhidham vide Order-in-Original No. 467/2011-2012 dated 19.05.2011 rejected the aforesaid rebate claim of the respondent.

5. Being aggrieved with the said Order in Original, the respondent filed appeal before Commissioner (Appeals-I), Rajkot, who vide impugned Order dated 08.11.2013 allowed the appeal of the respondent by setting aside Order-in-Original No. 467/2011-2012 dated 19.05.2011.

6. Being aggrieved with the impugned Order-in-Appeal, the applicant department has filed this Revision Application mainly on the following grounds :

6.1 The said party (respondent) vide letter dated 16.05.2008 informed the department that they will not claim the benefit of Notification No.39/2001-CE dated 31.07.2001 for the products which they started manufacturing after the cut off date i.e. 31.12.2005. The Board vide letter No.110/21/2006-CX dated 10.07.2008 clarified that benefit of Notification No.39/2001-CE dated 31.07.2001 is admissible to product manufactured after 31.12.2005 from the machinery installed before 31.12.2005. Now the question that arises is, in a situation where the products are eligible for benefit under Notification No.39/2001-CE dated 31.07.2001, can the said party (respondent) selectively choose to opt for benefit under the said notification for few products and under some other notification for others. In the instant case, by deliberately opting out of Notification No. 39/2001-CE dated 31.07.2001 selectively for few products, the said party is availing rebate of duty paid on exports under rule 18 of Cenvat Credit Rules, 2002 and notification issued thereunder, for Cenvat Credit corresponding to these product which should have actually been deducted from the PLA amount paid for clearance done under Notification No. 39/2001-CE dated 31.07.2001, as under the notification the said party should have first utilized entire Cenvat credit for the eligible product, before paying through PLA. This does not appear to be position in law as, as per Notification No.19/2004- CE (NT) dated 06.09.2004 as amended by Notification No. 37/2007- CE dated 17.09.2007, the benefit under rule 18 of Cenvat Excise Rules, 2002 is not admissible to the units operating under the Notification No. 39/2001-CE dated 31.07.2001. By selectively doing so, the amount of credit which should have been utilized in the clearance of goods eligible for exemption under Notification No. 39/2001-CE dated 31.07.2001 gets utilized in the export clearances thus benefiting the said party illegally against the provisions in Notification No. 19/2004-CE (NT) dated 06.09.2004 as amended by Notification No.37/2007-CE dated 17.09.2007. The Appellate Authority has not considered this point in the order.

7. In their reply to show cause notice issued under Section 35EE of the Central Excise Act,1944, the respondent mainly contended that :-

7.1 The only issue before this Hon'ble Authority is as to whether the rebate is to be sanctioned on the goods exported by them under the Notification No. 19/2004-CE (NT) dated 06.09.2004 on which they have not availed the benefit of the said Area Based Exemption Notification No. 39/2001-CE dated 31.07.2001.

7.2 However, the Notification No. 19/2004-CE (NT) dated 06.09.2004 came to be amended by Notification No 37/2007-CE(NT) dated 17.09.2007 which provided that rebate claim under Notification No 19/2004-CE (NT) dated 06.09.2004 will not be available in case of goods which are manufactured by a manufacturer availing the said notification. Thus it is clear that benefit of the rebate will not be given in case of goods which are cleared by availing the benefit of said Notification.

7.4 The exported goods are not cleared under the benefit of Notification No. 39/2001-CE dated 31.07.2001. It is clear from the above that the only condition in the said notification is that the goods on which the rebate is claimed are not cleared under the benefit of the said notification. This is for the reason that allowing the exemption as well as rebate on the same goods will amount to double benefit. However, once it is established that the assessee has not availed the benefit of the said area based exemption notification on the exported goods, rebate claim cannot be denied.

7.5 The Ld. Commissioner (Appeals) has given an unequivocal finding that goods on which the rebate is claimed by them are not cleared under the benefit of the said Notification. In view of the above, it is respectfully submitted the Ld. Commissioner (Appeals) have correctly held that once it is observed by the competent authority that no export benefit has been claimed and / or granted under the Notification No. 39/2001-CE on the said products / machinery exported, there is no justifiable reason to deny the benefit of rebate on the said goods exported by the department. The Appellant Department has not contested the said finding in the present Revision Application Thus, the present Revision Application is liable to be set aside on this ground alone and no interference is required in the Order dated 08.11.2013 passed by the Ld. Commissioner (Appeals).

7.6 The benefit of the Notification No.39/2001-CE dated 31.07.2001 is denied by Appellant Department itself. In the Instant Revision Application, the Department has contended that by deliberately opting out of the said Notification selectively the Respondent is availing rebate of duty paid on exports as in the event the Cenvat Credit corresponding to these product which should have actually been deducted from PLA amount paid for clearance done under the said Notification the Respondent should have first utilized entire Cenvat credit for the eligible product before paying through PLA. The Appellant Department has referred to Board Circular No 110/21/2006-CX dated 10.07.2008 wherein it was clarified that benefit of the said Notification is admissible to products manufactured after 31.12.2005 from the machinery installed before 31.12.2005. The said contention is totally misconceived and incorrect. In fact, the Appellant department itself has denied the benefit of the said notification to them which is clear from a brief narration of

the facts. The Jurisdictional Range Superintendent vide his letter F. No. C.Ex/GIM/REFUND-22/2006-07 dated 15.05.2008 sought the following information as under from them -

"1. Name of the new product line / plant and machinery installed after 31.12 2005 in respect of production of the new items after 31.12.2005;

2. Production capacity of the machine installed for the products added after 31.12. 2005,

3. Name of items manufactured/ added after 31.12.2005 along with their respective date of commencement of production of new items added after 31.12.2005,

4. The details of Cenvat Credit taken and utilized in respect of input / input services / capital goods used for new items added after 31.12.2005;

5. Whether the separate records/ registers have been maintained or otherwise, in respect of the Cenvat credit taken/ utilized/ finished goods produced/ cleared and duty payment thereon,

6. Whether the Cenvat credit taken, if any, in respect of input/ input services/ capital goods used for new items added after 31.12.2005. has been utilized only for the items newly added after 31.12.2005, or has been utilized for discharging the duty in respect of the items produced on or before 31.12 2005,

7. Any other information."

7.7 They vide their letter dated 16.05 2008 had informed the jurisdictional Range Superintendent about the facts of the said case and also informed the jurisdictional Range Superintendent about the facts of the said case and also informed the JRS that they would not avail the benefit of the said Notification No 39/2001-CE The extract of the said letter reads as under:

"1. We have not added new product line after 31.12.05 We have produced following items of machinery after 31.12.05 falling under chapter 84, out of the Product Line which existed on 31 Dec, 05.

Chapter Heading No.	*Description*
84669390	*Machinery Part (Cylinder Pin)*
84798930	*Mechanical Shifting Machine Parts*
84559000	*Base Frame Unit/ Metal Rolling Mills & rolls thereof*

2. The goods so manufactured under chapter 84 are from existing machinery that was installed before 31.12.05 at our workshop

3. Please refer reply point no 1 & 2 above

4. We have not availed Cenvat Credit in respect of capital goods received before or after 31.12.05 We have not taken any utilized Cenvat Credit on inputs and input services use for items manufactured after 31.12.05 and till 11th March 2008.

5. Since we have not availed Cenvat Credit till 31.03.08, no separate records were maintained. We have started maintaining separate record for input credit with effect from 1 April 2008.

6. Please refer reply point no 4 & 5 above

7. We are giving list of machinery and machinery Spares/ pans cleared from our factory under chapter 84 from January 06 to March 08.

In our opinion mere change of heading and sub heading will not tantamount to different product. We have not made different product other than machinery and machinery spares / parts hence there is no new product made after 31.12.05 from existing machinery installed. We hereby confirm that we have not availed and shall not avail any benefit under Notification No 39 dated 31.07.01 for the machinery items produced after 31.03.08.

From 01.04.08 we are clearing our goods for export under claim of rebate for which we are keeping for input credit for machinery spares / parts manufactured in our workshop

[Emphasis supplied]

7.8 They vide their letter dated 23.05.2007 had made a request to the jurisdictional Assistant Commissioner to incorporate the new product lines in their Central Excise Registration. The extract of the aforesaid letter reads as under -

"Please refer to our letter WGSR/Commr/Cex/04-05/02013 dt. 30.09.04 and WGSRL/Commr/Cee04-05/02017 dt 05.10.04, wherein we have submitted list of goods to be manufactured under Central Excise Chapter heeding No 7201, 7204, 7206, 7207, 7208, 7209, 7210, 7211, 7212, 7213, 7304, 7305, 7307, 8459, 8460, 8461, 8462, 8466, 7218, 7221 and 7222.

We wish to inform you that we intend to manufacture additional finished goods as listed in Annexure-A, at our registered premises, Village; Versamede, Taluka Anjar, District Kutch.

We are enclosing herewith Annexure-A. You are requested to make the necessary endorsement in our above Central Excise Registration Certificate."

In reply to the said, the jurisdictional Assistant Commissioner vide their letter dated 29.09.2008, affirmed their view regarding non-availment of

the benefit of the said Notification. The relevant extracts of the aforesaid letter reads as under.-

"The Deputy Commissioner (Audit), Central Excise, HQ, Rajkot had observed as under:

The benefit of Notification No. 39/2001-CE dt. 31.07.2001 is not admissible to the items viz. (i) Machinery Parts (ii) Mechanical Shifting Machine parts (iii) Base frame unit / Metal Rolling mills and rolls thereof and (iv) Crimping press machine as they have been manufactured after 31.12.2005.

Submit the list of machineries installed after 31.12.2005."

[Emphasis Supplied]

7.9 Thus, it is clear from the above narration of fact that during the relevant period they were not entitled for the benefit of the said notification as affirmed by the Ld. Jurisdictional Assistant Commissioner itself. Thus, the allegation contained in the present Revision Application is completely incorrect. The Appellant Department cannot be allowed to blow hot and cold in the same breath. The Ld. Jurisdiction Assistant Commissioner vide its letter dated 29.09.2008 have unequivocally confirmed that they are not entitled for exemption on (i) Machinery Parts, (ii) Mechanical Shifting Machine parts (iii) Base frame unit / Metal Rolling thereof and (iv) Crimping press machine. The duty was paid on the impugned Goods only with an understanding that the impugned Goods are not entitled for exemption of the Notification. Thus the doctrine of estoppel must apply to Appellant Department and the Department must be precluded from contesting the claim for rebate on goods on which duty was paid at the time of clearance.

7.10 The law to this regard is well settled that the department cannot be permitted to take advantage of its own wrong. Thus even if it is assumed for the sake of argument that the conclusion arrived at by the Ld. Jurisdiction Assistant Commissioner in his letter dated 29.09.2008 was wrong, still no adverse inference can be drawn against them as they being a law abiding citizen have only followed the decision of the concerned departmental official which had the requisite jurisdiction to this effect. They place reliance interalia upon the following decisions to the effect that the Department cannot take advantage of its own wrong;

Priyanka Overseas Pvt Ltd v UOI 1991 (51) ELT 185 (SC)
Northen Plastics Ltd. Vs CC&CE 1999 (113) ELT 3(SC)
Anuma Precision Tools Pvt. Ltd. V CC, Madras 2000 (121) ELT 309 (Mad)
Esser Steel Ltd. V CCE, Surat-I 2008 (222) ELT 154 (T)
Rail Tech v. CCE, Chandigarh 2000 (120)ELT 393(T)

7.11 CBEC has issued circular No.110/21/2006-CX3 dated 10.07.2008 whereas the Ld, Asst. Commissioner confirmed vide their letter dated 29.09.2008 that they were not entitled to the benefit of the said Area based notification. Thus, the Jurisdiction of Asistant Commissioner is presumed to have appreciated the contents of the said Circular and granted them the benefit of the said notification. The said Circular, since it was issued prior to the order passed by the Ld. Assistant Commissioner does not hold good in view of the categorical direction passed by the Ld. Assistant Commissioner which has since then attained finality, the same not having been appealed against. Thus the department cannot take a contrary view in these proceedings.

7.12 The case of the Department that they have selectively availed the benefit of the said Notification is incorrect. This issue is no longer res integra and it is now a well settled legal position that when a manufacturer is entitled to two beneficial notifications, he has the option to choose the notification which is more beneficial to him. Thus the fact which has not been disputed in the entire proceedings as also in the instant application filed by the Department, that the Respondent was indeed entitled to two alternate mechanism i.e. (either of exemption or of rebate), the Department is precluded from challenging the stand adopted by them. They rely on para 16 of judgment of the Hon'ble Supreme Court in the case of Share Medical Care Vs Union of India-2007(209) ELT 321(SC) in this regard. They also rely on CCE V Indian Petrochemicals -1997(92) ELT 13 (SC) and HCL Ltd 2001(130)ELT 405 (SC) to support the submission that they have choice of Notification when two notifications are operative. In the present case they have taken benefit of rebate Notification which is more beneficial to them. This submission is without prejudice to the submissions that they are not entitled to the benefit of the said Notification.

7.13 The issue sought to be canvassed by the applicant department in the instant appeal has been decided by the Hon'ble Delhi High Court in their favour. In Commissioner of Central Excise v. Green Card Industries [2014 TIOL 496 HC DEL CX] the Hon'ble High Court has declared the legal position that the Department cannot insist that a manufacturer claims exemption and not utilize Cenvat credit to pay duty at the time of removal even if the goods may be exempted from duty. The Hon'ble High Court in that decision inter alia explained the legal position at para 22 of its Decision.

7.14 It is submitted that the above decision of the Hon'ble High Court is applicable with on all fours in the present situation. The stand of the Department in the instant application is that they should not have paid duty by way of Cenvat credit and instead must have availed the exemption such that the claim for rebate would not have been filed. The said stand of the Department has directly been answered, with disapproval, by the Hon'ble High Court in as much as it has been

declared that the assessee cannot be forced to claim exemption and the Cenvat credit utilization cannot be denied even if an exemption exists.

7.15 It is submitted that the Order of the Ld. Commissioner (Appeals) has specifically adverted to this aspect on which count it has been observed that they are not claiming double benefit and therefore they cannot be penalized by denying both the benefits. The said order, in the respectful submission of the Respondent, is in line with the law declared by the Hon'ble High Court as stated above and for this reason as well the instant application is liable to be dismissed.

7.16 Assuming without admitting that they are eligible for the benefit under the said Notification, it is humbly submitted that even in such a scenario the Rebate sanctioning authority has no jurisdiction to examine the assessment of the goods on which the rebate is claimed by an assessee and only the admissibility of Rebate claim must be examined. Reliance is also placed on Circular No. 510/06/2000-CX dated 03.02.2000 issued by the Central Board of Excise & Customs (CBEC) which provides that rebate has to be allowed equivalent to the duty paid on the exported goods. It is also clarified in the said circular that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim.

7.17 In view of the above, it is clear that as per the scheme of rebate as formulated by the Government under Rule 18 read with Notification No. 19/2004-CE (NT), dated 06.09.2004 that whatever duty is paid by an assessee in relation to export goods shall be liable to be refunded. Admittedly, in the present case the excise duty claimed for refund has actually been deposited by the assessee and the entire duty paid in relation to the exported goods must be allowed to be rebated.

7.18 Without prejudice to the submission made herein above that the entire duty paid at the time of clearance of goods is liable to be refunded, it is humbly submitted that any excess duty paid by them must be treated as excess duty paid to the department and they are entitled to get a refund of excess duty paid as per the provisions of Section 11 B of the Act. In this regard, reliance is placed on the judgment of Punjab & Haryana High Court in the case of MIs Nahar Industrial Enterprises Ltd. v. UOI - 2009 (235) ELT 22 (P&H) and the judgment of Sri Bhagirath Textiles Ltd. 2006 (202) ELT 147 (GOI).

7.19 It is humbly submitted that the government has no authority to retain the amount which was erroneously paid by the assessee. It is submitted that in terms of the constitutional stipulations the amount is liable to be returned to the Respondent, which has been rightly so done by the Ld. Commissioner (Appeals). It is submitted that Article 265 of the Constitution of India prescribes that no tax shall be levied or collected without the authority of law. Thus in as much as the amount of duty paid by the Respondent has been notified to be refunded by way of

rebate, in terms of the relevant statutory rule statutory notification to this effect as stated above, the retention of the amount by the Department and denial of rebate is violation of the constitution stipulation and thus cannot be countenanced by this Hon'ble Authority.

7.20 In view of the above submissions, it is clear that they are entitled for rebate of entire duty paid at the time of removal of goods for export. However, without prejudice to the above, in case Hon'ble Revisionary Authority is of the view that they are not entitled for rebate on the amount, then the Respondent must be allowed to take self-credit of excess amount paid at the time of clearance of goods.

7.21 Without prejudice, it is further submitted that this issue is already concluded in their favour in terms of the Order-in-Appeal No. 306-307(303-304-Raj)/Commr(A)/RAJ dated 25.03.2009 in the case of M/s Welspun Stahl Rehlon Ltd., Varasmedi by the Ld. Commissioner (Appeals) and thus there is no reason to take a contrary view in their case, which would amount to they being discriminated against. It is therefore submitted that no interference is warranted in the instant proceedings by the Revision Authority.

8. A Personal Hearing in this matter was held on 22.01.2020. Shri Dinesh Kalantri, Vice President, Indirect Tax and Shri Jitendra Motwani, Advocate appeared for the said hearing on behalf of the respondent company and reiterated written submissions made earlier in reply to show cause notice and also submitted that they maintained separate accounts for input credit during the relevant period. They also submitted compilation of relied upon documents/Provisions of related law /Notifications/Case laws in support of their case.

9. Government has carefully gone through the relevant case records & written submissions and the impugned Order-in-Original and Order-in-Appeal. The issue to be decided in the instant Revision Application is whether the respondent company is eligible for rebate claims on the goods exported by them during the period from April-2008 to May-2008 under Notification No 19/2004-CE (NT) dated 06.09.2004, as at the relevant point of time the respondent company were also availing the benefit of Notification No. 39/2001-CE. Notification No. 19/2004-C.E. (N.T.) had been amended by Notification No. 37/2007-C.E. (N.T.), dated 17-9-2007 and by virtue of condition (h) in paragraph 2 inserted therein, rebate was made inadmissible in case of export of goods by manufacturers availing benefits under various notifications, including Notification No. 39/2001-C.E.

10. On perusal of records, Government observes that initially the original authority rejected the rebate claim of Rs. 50,86,955/- on the ground that the respondent had manufactured the export goods by using the plant and machinery installed before 31.12.2005 as these products were eligible for exemption under a Notification No.39/2001-CE dated 31.07.2001.

11. The respondent has mainly pleaded that the exported goods were not cleared under the benefit of Notification No. 39/2001-CE dated 31.07.2001; that the Notification No. 19/2004-CE (NT) dated 06.09.2004 came to be amended by Notification No 37/2007-CE(NT) dated 17.09.2007 which provided that rebate claim under Notification No 19/2004-CE (NT) dated 06.09.2004 will not be available in case of goods which are manufactured by a manufacturer availing the said notification; thus it is clear that benefit of the rebate would not be given in case the goods which are cleared by availing the benefit of said Notification; that it is clear from the above that the only condition in the said notification is that the goods on which the rebate is claimed are not cleared under the benefit of the said notification; that this is for the reason that allowing the exemption as well as rebate on the same goods will amount to double benefit; that, once it is established that the assessee has not availed the benefit of the said area based exemption notification on the exported goods, rebate claim cannot be denied.

12. The respondent further contended that impugned goods are not cleared under the benefit of the said Notification; that the Ld. Commissioner (Appeals) has given an unequivocal finding that goods on which the rebate is claimed by them are not cleared under the benefit of the said Notification; that Ld. Commissioner (Appeals) have correctly held that once it is observed by the competent authority that no export benefit has been claimed and / or granted under the Notification No. 39/2001-CE on the said products / machinery exported, there is no justifiable reason to deny the benefit of rebate on the said goods exported by the department; that the Appellant Department has not contested the said finding in the present Revision Application, thus, the present Revision Application is liable to be set aside on this ground alone and no interference is required in the Order dated 08.11.2013 passed by the Ld. Commissioner (Appeals).

13. The respondent has also interalia stressed that Jurisdictional Assistant Commissioner vide its letter dated 29.09.2008 had unequivocally confirmed that they

are not entitled for exemption on (i) Machinery Parts, (ii) Mechanical Shifting Machine parts (iii) Base frame unit / Metal Rolling and rolls thereof and (iv) Crimping press machine; that the duty was paid on the impugned Goods only with an understanding that the impugned Goods are not entitled for exemption of the Notification. Thus the doctrine of estoppel must apply to Appellant Department and the Department must be precluded from contesting the claim for rebate on goods on which duty was paid at the time of clearance; that the law in this regard is well settled that the department cannot be permitted to take advantage of its own wrong, that even if it is assumed for the sake of argument that the conclusion arrived at by the Ld. Jurisdiction Assistant Commissioner in his letter dated 29.09.2008 was wrong, still no adverse inference can be drawn against them as they being a law abiding citizen have only followed the decision of the concerned departmental official which had the requisite jurisdiction to this effect.

14. Amidst the aforesaid arguments, the issue to be decided in this case is when the respondent were availing the exemption benefit of Notification No. 39/2001-C.E. during the relevant period, they shall be also be entitled to claim the rebate on the exported goods manufactured on the plant and machinery installed before 31-12-2005 under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. While considering the aforesaid issue/question the relevant notifications are required to be first considered. Notification No. 39/2001-C.E., dated 31-7-2001 provides for exempting the goods to the Central Excise Tariff Act cleared from a unit located in Kutch District of Gujarat from so much of the duty of excise or the additional duty of excise, as the case may be, leviable thereon under any of the said Acts as is equivalent to the duty payable on value addition undertaken in the manufacture of the said goods by the said unit. The exemption contained in the said notification shall be subject to the conditions mentioned in clause 3 of the said exemption notification more particularly, it shall apply only to new industrial units i.e. to say units which are set up on or after the date of publication of the said notification in the Official Gazette but not later than 31st day of December, 2005 and that the exemption shall apply for a period not exceeding 5 years from the date of commencement of commercial production by the unit. Therefore, for availing the exemption benefit under Notification No. 39/2001, the industrial unit ought to have been set up on or before the cut-off date i.e. 31-12-2005 and the exemption shall be

applied for a period not exceeding 5 years from the date of commencement of commercial production by such unit.

15. The respondent in their reply to show cause notice issued under Section 35EE of the Central Excise Act,1944, have nowhere mentioned that the impugned goods on which they claimed rebate of duty had been manufactured by them on the additional machinery installed after 31-12-2005 or that they had completed 5 years period from the commencement of commercial production after starting up the unit for availing exemption benefit under Notification No. 39/2001-CE, as in both the eventualities referred above, the respondent would have been automatically be ruled out for exemption under Notification No. 39/2001-C.E., dated 31-7-2001. Incidentally, the applicant during the relevant time was admittedly availing benefits of notification number 39/2001-CE dated 31.07.2001 at the same time for other items of manufacture for steel pipes.

16. Government observes that many units which were availing the benefit of different area based Notifications all over the country where the duty paid from PLA after exhausting the cenvat credit was refunded to them by way of re-credit in their PLA account. Further, if the goods were exported on payment of duty, then rebate of duty was also admissible to such units under Rule 18 of the Central Excise Rules. Thus, dual benefit was available to such units availing area based exemptions who started exporting their goods on payment of duty and started availing the rebate under Rule 18 of Central Excise Rules as well as also re-credit under respective area based exemption Notifications.

17. An amendment was made vide Notification No. 37/2007-CE (NT) dated 17-9-2007 in Notification No. 19/2004-C.E. (N.T.) dated 6.9.2004 issued under Rule 18 of Central Excise Rules, 2002 wherein it was provided that in case of export of goods which are manufactured by a manufacturer availing the area based notifications mentioned therein, including Notification No. 39/2001-CE dated 31.07.2001, the rebate shall not be admissible under this Notification. Thus, the Government banned the dual benefit of seeking rebate under Rule 18 of Central Excise Rules, 2002 on those goods which have already availed the benefit of area based exemptions.

18. Government in this regard relies in GOI Order Nos. 1353-1382/2012-CX., dated 3-10-2012 in Re: Plastene India Ltd. 2013 (289) E.L.T. 215 (G.O.I.) wherein

while holding that rebate of duty under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.) was not admissible on goods supplied to SEZ by a unit availing exemption under Notification No. 39/2001-C.E., as condition 2(h) of Notification No. 19/2004-C.E. (N.T.) prohibited grant of rebate in such cases, the GOI in its aforesaid Order observed as under:-

9.1 In order to understand the issue, the provisions of condition 2(h) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 may be perused which are extracted as under :-

"(h) that in case of export of goods which are manufactured by a manufacturer availing the notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99-C.E., dated 8th July, 1999 [GSR 508(E), dated 8th July, 1999] or No. 33/99-C.E., dated 8th July, 1999 [GSR 509(E) dated the 8th July, 1999] or No. 39/2001-C.E., dated the 31st July, 2001 [GSR 565(E), dated the 31st July, 2001] or notification the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 56/2002-C.E., dated 14th November, 2002 [GSR 764(E), dated 14th November, 2002] or No. 57/2002-C.E., dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-C.E., dated the 25th June 2003 [GSR 513(E), dated the 25th June, 2003] or 71/2003-C.E., dated the 9th September 2003 [GSR 717(E), dated the 9th September 2003] or No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007], the rebate shall not be admissible under this notification."

The plain reading of said provisions reveals that in case of export of goods which are manufactured by a manufacturer availing Notification No. 39/2001-C.E., dated 31-7-2001, the rebate of duty paid on exported goods shall not be admissible under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The language of said Notification is quite clear and there is no ambiguity in it.

9.2 Commissioner (Appeals) has allowed the rebate claim on the ground that exported goods have been manufactured from plant and machinery after 31-12-2005 on which benefit of Notification No. 39/2001-C.E., dated 31-7-2001 as amended have not been availed and therefore the condition 2(h) of Notification No. 19/2004-C.E. (N.T.) as amended is not applicable. In this regard, Government notes that prior to amendment of Notification No. 19/2004-C.E. (N.T.), vide Notification No. 37/2007-C.E. (N.T.), dated 17-9-2007, there was no such restriction on grant of rebate to unit availing area based exemption Notification. The said condition does not say anything about the availment or non-availment of benefit of Notification No. 39/2001-C.E. on the exported goods. Respondent has admitted himself that they are availing benefit of said

area based exemption Notification. At the same time they claimed rebate on the ground that benefit of Notification No. 39/2001-C.E. has not been availed on exported goods manufactured by plant and machinery installed after 31-12-2005. Respondent has tried to justify their claim citing the general provision of Notification No. 19/2004-C.E. (N.T.) where under rebate of duty paid on exported goods is granted. Such interpretation is not legally correct since the language and spirit of condition 2(h) is quite clear and it puts embargo on grant of rebate in case of export of goods manufactured by manufacturers availing Notification No. 39/2001-C.E.

9.3 .....

9.4 Government observes that it is a settled law that a notification has to be construed strictly. The Hon'ble Supreme Court in the case of *CCE* v. *Modi Rubber* - 2001 (131) E.L.T. 515 (S.C.) has held that an exemption notification cannot be unduly stretched to produce unintended results in derogation of plain language employed therein. Similarly, Apex Court has held in the case of *CCE* v. *Mahaan Dairies* - 2004 (166) E.L.T. 23 (S.C.) as under :-

"8. It is settled law that in order to claim benefit of a notification a party must strictly comply with the terms of the Notification. If on wordings of the Notification the benefit is not available then by stretching the words of the Notification or by adding words to the Notification benefit cannot be conferred."

Hon'ble Supreme Court has also categorically held in the case of *ITC Ltd.* v. *CCE Delhi* - 2004 (171) E.L.T. 433 (S.C.) that while interpreting statutes, ordinary and natural meaning of words has to be given effect as legislature is deemed to intend and mean what it says. However, in case of ambiguity in language, a reference can be made to legislative intent and object to resolve it. Addition or amendment of words is not permissible and words would be construed as they stand. The statute shall have to be interpreted strictly within terms and language of statute and without intendments. The statute has to be read in simple unambiguous words and no liberal interpretation is permissible.

10. Government notes that the language of condition 2(h) of Notification No. 19/2004-C.E. (N.T.) is quite clear and there is no ambiguity in it. As such, the provisions of notification have to be interpreted as per ordinary and natural meaning of its words and there is no scope of any liberal interpretation. The case laws cited by respondent cannot be made applicable here in view of case laws referred in para 9 above. It has been held by Apex Court that in case of ambiguity in language, a reference can be made to legislative intent and object. In the present case there is no ambiguity in the language of condition 2(h) of Notification No. 19/2004-C.E. (N.T.) so it has to be interpreted as per its terms and language.

11. In view of position explained above. Government is of considered view that Commissioner (Appeals) has erred in upholding the impugned order-in-original and granting rebate ignoring plain and clear provisions of condition 2(h) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 which prohibits the

sanction of rebate claim in case of export of goods which are manufactured by manufacturer availing benefit of Notification No. 39/2001-C.E. Government therefore holds that in the instant case rebate claim is not admissible to the respondent under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The impugned orders are therefore set aside and revision application is allowed.

19. The aforesaid GOI Order has been affirmed by Hon'ble Gujarat High Court vide judgement dated 05.12.2013 [2014 (314) E.L.T. 14 (Guj.)] observing as under:-

5.2 Now, so far as the reliance placed upon the Circular No. 110/21/2006-CX.3, dated 10-7-2008 by the petitioners is concerned, it is absolutely misplaced. Under the aforesaid clarificatory circular, it is mentioned that in case a unit introduces the new product manufactured from raw material by installing fresh plant and machinery after the cut-off date i.e. 31-12-2005, in such a situation, exemption would not be available to the said new product and the said new product would be cleared on payment of duty as applicable and separate records will be required to be maintained to distinguish production of these products from the products which are eligible for exemption. It also further clarifies that where a unit starts producing some products (after the cut-off date) using the plant and machinery installed up to cut-off date and without any addition to the plant and machinery, in that case, the unit would be eligible for the benefit of exemption notification because the plant and machinery used for manufacturing has remained the same. In the present case, admittedly, there is no new product by installing fresh plant, machinery or capital goods after the cut-off date i.e. 31-12-2005. The same product is manufactured/continued to be manufactured however, some additional machineries have been installed. Under the circumstances, the petitioners shall not be entitled to the benefit of exemption under Notification No. 39/2001-C.E. The further distinction is sought to be canvassed by the petitioners i.e. the goods manufactured on the machinery installed prior to 31-12-2005 and the same product manufactured on the additional machinery installed after 31-12-2005, for the purpose of claiming the exemption under Notification No. 39/2001-C.E. is not permissible. Once the petitioners' unit started and availed the benefit of exemption under Notification No. 39/2001-C.E., considering clause 2(h) of the notification issued under Rule 18 of the Rules, the petitioners shall not be entitled to rebate of the duty on export of the goods manufactured. Under the circumstances, the petitioners are rightly denied the rebate. The impugned order passed by the Revisional Authority does not suffer from any illegality. The same is in consonance with the notifications issued under Rule 18 of the Rules, which is not required to be interfered by this Court.

20. Government also observes that a similar view has been taken by GOI in its Order No. 576/2012-CX., dated 18-5-2012 in respondent's own case (Re:- Welspun Corp. Ltd.) reported in 2012 (285) E.L.T. 138 (G.O.I.) which is also upheld by Hon'ble

Gujarat High Court vide judgement dated 05.12.2013 [2014 (301) E.L.T. 33 (Guj.)]. Relying on the aforesaid case laws Government also notes that spirit of condition 2(h) of Notification No. 19/2004-C.E. (N.T.) dated 6.9.2004, as amended vide Notification No. 37/2007-CE (NT) dated 17-9-2007 is quite clear and it puts embargo on grant of rebate in case of export of goods manufactured by manufacturers availing Notification No. 39/2001-C.E. That is to say that if the assessee is availing any area based exemption under any of the Notifications mentioned at clause (h) in paragraph 2 of Notification No. 19/2004-C.E. (N.T.) dated 6.9.2004, the rebate of duty paid on exported goods shall not be admissible to such assessee under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Therefore, the assessees working under these Area Based Notifications had no option to choose Notification No. 19/2004-C.E. (N.T.) dated 6.9.2004, for export of their goods as long as they were availing exemption under such Area Based Exemptions. Therefore, in the instant case the assessee had no option to choose Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 once he was availing exemption under Notification No. 39/2001-C.E., dated 31-7-2001. Therefore, the contention of the respondent that when a manufacturer is entitled to two beneficial notifications, he has the option to choose the notification which is more beneficial to him has no force in the present case and case laws quoted (para 7.13 and 7.14 supra) by them are therefore not applicable in this case,

21. As regards respondent's contention that 'doctrine of estoppel must apply to Appellant Department and the Department must be precluded from contesting the claim for rebate on goods on which duty was paid at the time of clearance; that the law to this regard is well settled that the department cannot be permitted to take advantage of its own wrong', Government observes that there cannot be an estoppel against the law as held by the Hon'ble Supreme Court in Elson Machines Pvt. Ltd. v. Collector of Central Excise-1988 (38) E.L.T. 571 (SC) = 1988 (19) ECR 449 SC. An issue of law can be raised at any point of time. Further, Government is of the considered opinion that as per condition/clause 2(h) of the Notification No. 19/2004-C.E. (N.T.) as amended vide Notification No. 37/2007-C.E. (N.T.), dated 17.09.2007, the rebate of duty paid on goods exported in April and May 2008 is not admissible to the respondent since the said goods are manufactured by a manufacturer availing Notification No. 39/2001-C.E., dated 31-7-2001. Government following the principle laid down by Hon'ble Supreme Court in cases (i) ITC Ltd. v. C.C.E. - 2004 (171) E.L.T. 433 (S.C.) and (ii) Paper Products Ltd. v. C.C. - 1999 (112) E.L.T. 765 (S.C.) that

simple and plain wording of applicable statutory provisions as elaborated vide relevant Notification/Circular are to be strictly adhered to, holds that as the respondent have not followed the statutory provision of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 as amended by Notification No.37/2007-CE(N.T.) dated 17.09.2007 and therefore rebate claims are rightly held not admissible to them by the original adjudicating authority. Moreover, the respondent by virtue of GOI Order No. 576/2012-CX., dated 18-5-2012 [2012 (285) E.L.T. 138 (G.O.I.)] in their own case were aware that in case of export of goods which are manufactured by a manufacturer availing Notification No. 39/2001-C.E., dated 31-7-2001, the rebate of duty paid on exported goods shall not be admissible under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004; and therefore they cannot take shelter behind Assistant Commissioner letter dated 29.09.2008.

22. Moreover, the letter dated 29.09.2008 (copy of which is enclosed in compilation submitted after personal hearing) which is claimed by the respondent as a reply submitted by the Jurisdictional Assistant Commissioner to their letter dated 23.05.2007 (paras 33 & 34 of respondent's reply to SCN issued under 35EE of Central Excise Act,1944) is in fact internal departmental correspondence between Supdt. (Audit), Central Excise & Customs Commissionerate, Rajkot and the Assistant Commissioner, Central Excise Division, Gandhidham in respect of "Pre-Audit of refund claim of M/s Welspun Gujarat Stahl Rohren Ltd. for Rs. 1,94,71,276/-(Month-June 2008)". Besides this letter, there is no other letter dated 29.09.2008 submitted before this authority, written to the respondent by the Jurisdictional Assistant Commissioner informing them that the benefit of Notification 39/2001-CE dated 31.07.2001 is not admissible to them. Therefore, there is nothing to substantiate the authenticity of the claim made by the respondent about the existence of any such letter given by the Department to the respondent, at least in so far as documents submitted before this authority are concerned. This assertion gets support from the fact on record that at para 11 of reply dated 06.03.2009 submitted by the respondent to the Show cause notice No. 186/2008-09 dated 04.12.2008, the respondent has contended as under :-

> *11. We respectfully submitted that when we had inquired as to whether we were eligible for the benefits of the Notification 39/2001-CE after the said clarification by Board dated 10.07.2008, for the machinery parts manufactured using the machinery parts brought in after 1.1.2006, the department has also confirmed vide their letter No. IV/10-208/Pre/IA/2008 dated 29.08.2008 that*

The benefit of Notification No. 39/2001-CE dt. 31.07.2001 is not admissible to the items viz. (i) Machinery Parts (ii) Mechanical Shifting Machine parts (iii) Base frame unit / Metal Rolling mills and rolls thereof and (iv) Crimping press machine as they have been manufactured after 31.12.2005.

It is pertinent to note that in the aforesaid reply the respondent nowhere mentions the letter received from the jurisdictional Assistant Commissioner. Moreover, the respondent has referred to same letter which is sent by Supdt. (Audit), Central Excise & Customs Commissionerate, Rajkot to the Assistant Commissioner, Central Excise Division, Gandhidham in respect of "Pre-Audit of refund claim of M/s Welspun Gujarat Stahl Rohren Ltd. for Rs. 1,94,71,276/-(Month-June 2008)". The said letter is regarding pre-audit of rebate claim for Rs. 1,94,71,276/-of M/s Welspun Gujarat Stahl Rohren Ltd. (the name by which the respondent was previously known) for Month-June 2008 and not addressed or endorsed to them. This letter is certainly not in response to respondent's letter dated 23.05.2007 as claimed by the respondent. Hence, to claim the said letter dated 29.09.2008 as letter of Jurisdictional Assistant Commissioner and to affirm that the said Assistant Commissioner had unequivocally confirmed that they are not entitled for exemption on (i) Machinery Parts, (ii) Mechanical Shifting Machine parts (iii) Base frame unit / Metal Rolling and rolls thereof and (iv) Crimping press machine, before the Appellate Authority and this authority is total misrepresentation of facts on the part of respondent. There is nothing to substantiate the claim made by the respondent that the department had actually informed the respondent vide letter dated 29.09.2008 that they would not be eligible for the exemption under Notification 39/2001-CE dated 31.07.2001. Therefore, the submissions of the respondent at para 7.9 and 7.10 above and the case laws relied upon therein do not merit discussion.

23. The applicant has cited number of case laws in support of his seeking refund of Central Excise duty paid to the department treating the same as deposit. But all the case laws have observed that the rebate of duty is to be allowed of the duty paid on the transaction value of the goods as determined under Section 4 of the Central Excise Act, 1944 and the rebate on the amount of duty paid in respect of post-clearance expenses like freight and insurances may be allowed as re-credit entry in their Cenvat account treating it as payment of additional amount in the nature of deposit with Government. Government observes that the applicant in the instant cases had cleared

the goods on payment of appropriate duty on transaction value of goods exported as determined under Section 4 of Central Excise Act, 1944, under claim of rebate of duty under Rule 18 of Central Excise Rules, 2002. It is not the case that the said duty paid by applicant, was collected without any authority of law so as to be treated as voluntary deposit (as held in case laws cited supra) and therefore required to be returned to the applicant in the manner in which it was paid. As such the ratio of the said case laws cannot be made applicable to these cases.

24. In view of above discussion. Government sets aside Order-in-Appeal No. 517/2013 (RAJ)CE/AK/Commr(A)/Ahd dated 08.11.2013 passed by the Commissioner (Appeals-I), Central Excise, Rajkot, and restores Order-in-Original No. 467/2011-2012 dated 19.05.2011 passed by Deputy Commissioner, Central Excise Division, Gandhidham.

25. Revision Application thus succeeds in the above terms.

26. So, ordered.

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

ORDER No. 646/2020-CX (WZ)/ASRA/Mumbai 15.09.2020

To,
Commissioner of Central Goods & Services Tax,
Kutch (Gandhidham), GST Bhavan,
Plot No. 82, Sector-8,
Kutch (Gandhidham), Gujarat-370201

Copy to:

1. M/s Welspun Corp. Ltd., Welspun City, Village Versamedi, Tal. Anjar, District Kutch, Gujarat 370 110,
2. Commissioner Of Goods & Services Tax, Rajkot Appeals, 2nd Floor, GST Bhavan, Race Course, Ring Road, Rajkot-360001,
3. The Assistant Commissioner, Central Goods & Services Tax, Anjar Bhachau Division: GST Bhavan, Plot No. 82, Sector-8, Gandhidham, Gujarat-370201,
4. Sr. P.S. to AS (RA), Mumbai,
5. Guard file,
6. Spare Copy.