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. F.No.198/207-221/12-RA/4929 Date of Issue: 2/11/19

ORDER NO. 70-84/2019-CX (WZ) /ASRA/Mumbai DATED 7.10.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner, Central Excise, Customs and Service Tax, Vadodara-I.

Respondent : M/s Alembic Limited, Alembic Road, Vadodara.

Subject :Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. Commr.(A)/210-224/VDR-I/2010 dated 07.09.2010 passed by the Commissioner (Appeals) Central Excise & Customs, Vadodara.

ORDER

These Revision Applications (15 Nos.) have been filed by Commissioner, Central Excise, Customs and Service Tax, Vadodara-I (hereinafter referred to as "the applicant") against the Order-in-Appeal Commr.(A)/210-224/VDR-I/2010 dated 07.09.2010 passed by the Commissioner (Appeals) Central Excise & Customs, Vadodara.

2. The issue in brief is that the M/s Alembic Limited, Alembic Road, Vadodara (hereinafter referred to as "the respondent") had exported pharmaceutical products manufactured by M/s. Elysium Pharmaceuticals Ltd., Vadodara under claim of rebate. The respective rebate claims (15 Nos.) were sanctioned by the original authority vide 15 different Orders in Original **subject to submission of BRC within 160 days from the date of sanction of these rebate claims.**

3. Being aggrieved by the above mentioned Orders-in-Original the respondent filed an Appeal before the Commissioner (Appeals) Central Excise & Customs, Vadodara, challenging the condition (submission of BRC within 160 days from the date of sanction of rebate claims) imposed by the sanctioning authority. The Commissioner (Appeals) while allowing the appeal of the respondent vide Order-in-Appeal No. Commr.(A)/210-224 / VDR-I/2010 dated 07.09.2010 observed as under :

> 3.1 *The issue of the condition imposed by the sanctioning authority in the impugned orders are to be examined as to whether it is permissible under the Central Excise law or otherwise.*
>
> 3.2 *First of all the condition of BRC is applicable to the consignments which were exported through Inland Container Depots / Customs Freight Stations and such special procedure is laid down under Circular No.354/70/97- CX dated 13.11.97.*
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> 3.3 *The matter was referred to the JAC and who vide his letter F.No: V(Misc)19-6/Stats/08-09 dated 30.08.2010 has reported that the*

circular dated 13.11.97 is not applicable to the appellant, as the consignments of export were exported through JNPT, Navhasheva Mumbai and Aircargo complex, Sahar, Mumbai. The copy of the Shipping Bills were submitted by the JAC, it is revealed from the said Shipping Bills that the goods were exported through Navhasheva Mumbai / Air cargo complex, Sahar, Mumbai and the date of Bank Realization was also mentioned on the body of the respective shipping bill. In the present appeal, the Appellant had exported the excisable goods on behalf of manufacturer exporter (i.e M/s.Elysium Pharmaceuticals Ltd., Plot No.1175, at & Post Dabhasa, Tal. Padra, Dist. Vadodara) through JNPT Navhasheva and Air cargo complex Mumbai.

3.4 *Thus, the condition imposed by the adjudicating authority in the impugned orders was neither correct nor legally required as per law. The consignments were exported through other than ICD/CFS and the condition as stipulated in the Circular dated 13.11.97 is not applicable to the present issue.*

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

4.1. the impugned judgement and order of the Commissioner (Appeals) to the extent i.e non-submission of BRC remittances as post rebate/refund condition is improper, erroneous, invalid, bad in law, and contrary to the fiscal requirement provided in law.

4.2 Para 2.3.2 of the Circular No. 354/70/97-CX dated 13.11.1997 issued by the Central Board of Customs and Central Excise, New Delhi from F.No. 209/54/97-CX. 6 direct the department to initiate action for recovery of rebate.

The para is reproduced below:-

"If TR Copy or bank Realisation certificate is not received within 160 days of the date of sanction of rebate, action for recovery of rebate shall be initiated well within the limitation period".

4.3 The South Zonal Bench of the CESTAT, Bangalore in the case of Commissoner of Customs ,Mangalore V/s. Shine Petroleum Pvt. Ltd. reported in 2008(224)E.L.T. 143(Tri.Bang) and Larger bench of CESTAT, New Delhi has held that the Board's Circular is binding on the Departmental authorities and has to be given effect to. Therefore, the Board's Circular dated 25.04.2005 is binding on the subject:

4.4 no refund / rebate has been held up for want of Bank Realization Certificate (BRC). However, post rebate / refund Bank Realization Certificate (BRC) needs to be submitted and there cannot be blanket permission as held by the Commissioner (Appeals) in respect of non submission of Bank Realization Certificate (BRC) in such a situation after sufficient time. The Public Account Committee (PAC) of Hon'ble Lok-sabha has also expressed such views number of times based upon C&AG reports. Moreover, Board's Circular on the issue needs to be followed;

Under the circumstances, the judgement and decision of the Commissioner (Appeals) of allowing the appeal of the Respondent and setting aside condition of BRC imposed by the sanctioning authority in the present case, is contrary to express statutory provisions and hence the same is unsustainable in law and deserves to be quashed.

5. A personal hearing held on 18.09.2019 was attended by Shri Sunil Jagtiani , AGM, Taxation and Shri Paras Bhat, Manager on behalf of the respondent. They filed written submisions and iterated that all shipments were through direct port. No one appeared on behalf of the applicant department.

6. In their written submissions filed on the date of personal hearing, respondent contended as under:-

6.1 That the short issue involved in the subject revision applications is whether in order to claim rebate, post facto condition of providing BRC for the export consignments is mandatory and can the rebate claimed be sanctioned subject to the condition of providing such BRC within 160 days from the date of sanction of the rebate claims or such post facto condition need not be fulfilled.

6.2 Before proceeding further, it must be appreciated that the revenue department had at first preferred appeal before Hon'ble CESTAT vide appeal No.E/1830/11 against the impugned OIA dt.7.9.10which was dismissed as not maintainable vide final order dt.20.7.12 by the Hon'ble CESTAT. It appears that the revenue department hereafter preferred the Revision Application before the RA, New Delhi somewhere in Oct'12, however, no Condonation of Delay application appears to have been filed in this regard. While it is the discretion on part of the RA to condone delay or otherwise, however, the delay should be sought to be condoned by the Applicant nonetheless.

6.3 Be that as it may, the adjudicating authority had originally sanctioned the rebate claim upon being satisfied that the goods have been exported out of India and were duty paid, however such rebate was sanctioned subject to the condition of providing BRC within 160 days from the date of sanction of the rebate claims. Such condition was extra legal in nature inasmuch as the same was not provided for at all either in Rule 18 of the Central Excise Rules 2002 or the relevant Notification issued thereunder governing the procedural conditions for sanction of the rebate as also there is no such condition at Para 8.3 of Chapter 7 of CBEC Central Excise manual of supplementary instructions as well.

6.4 Accordingly the Respondent had challenged such wrongful and extra-legal conditions imposed by the adjudicating authority while sanctioning rebate before the first Appellate authority and vide the order impugned in the present revision applications, the first Appellate authority held that as per the settled legal position, since there is no such legal condition to produce any BRC, the said condition is required to be quashed and the rebate has to be allowed to exporters simplictur without providing copy of BRC within 160 days from the date of sanction of the rebate.

6.5 The sole basis of filing the present revision applications as evident from the grounds of application appears to be on basis of CBEC Circular No. 354/70/97-Cx dated 13.11.1997. The Revenue Authorities have reproduced portion of the said circular dated 13.11.1997 as grounds of revision application and assumed that it is mandatory to provide copy of BRC otherwise the rebate cannot be sanctioned/requires to be recovered, even though on post-facto basis. With respect, the Revenue Authorities, for reasons best known to them have either wrongly read and/or reproduced only a portion of the said circular without understanding in which context the board circular so requires.

6.6 That Para 2.2 to 2.3.4 of the said circular are reproduced herein below:

"2.2 Under the present procedure, the Transference Copies of the Shipping Bill (TR-I & TR-II) move along with the goods from ICD/CFS to the port of shipment and are endorsed with the details of Mate Receipt No., name of the issuing person, details of the cases/cartons/packages/containers, name of the ship, date of sailing and the port of sailing - by the officer of Customs (Preventive Officer) who supervises the shipment. One copy of TR is received back in ICD/CFS on the basis of which the officers of Customs at ICD/CFS complete the Part-B of AR-4/AR-5. This TR copy is required at ICDs/CFSs for logging the DEEC Book, in the cases where the exports are effected under the Duty Exemption Scheme.

2.2.1. Under the modified procedure, the Customs formations (ICDs/CFSs), immediately after completing the DEEC Book logging, wherever applicable, will forward this Transference Copy to the same postal address where they had forwarded the corresponding AR-4/AR-5. To facilitate this, the exporters are required to indicate on the TR copies the same postal address of the concerned Central Excise formations, as mention in the corresponding AR-4/AR-5 and this requirement should be duly reiterated and impressed upon, in the Trade Notice/ Public Notice. This TR copy should be used as the corroborative evidence for acceptance of proof of export outside India.

2.3. Where the TR copy is not received from the Port of Shipment within 30 days of the Let Export Order, the exporter may present the relevant Mates Receipt issued by the shipping line at the time of loading of containers on board the ships and Bill of Lading, to the Jurisdictional Assistant Commissioner of Central Excise or the Maritime Commissioner, as the case may be. These should be accepted for the purpose of verifying the shipment of the goods at the Gateway port. After verification, that goods have actually been exported, the rebate claims should be sanctioned or the bond should be discharged, as the case may be.

2.3.1. A post facto verification shall be done by the Central Excise Divisions. The file for acceptance of proof of export shall be closed, once TR copy is received from ICD/CFS within 120 days of the Let Export Order containing details of actual export. ***In case TR copy is not received within 120 days, the exporter may submit the Bank Realisation Certificate of export receipts in Original along with certified copy of this certificate.*** *The Original will be returned to exporter after verification, and the certified copy will be retained in the Central Excise Division. If found in order, file regarding acceptance of proof of export will be closed.*

2.3.2. ***If TR copy or Bank Realisation Certificate is not received within 160 days of the date of sanction of rebate, action for recovery of rebate shall be initiated well within the limitation period.***

2.3.3. If TR copy or Bank Realisation Certificate is not received within 180 days of clearance for exports, where exports are effected under bond, action for recovery should be taken in terms of Rule 14A of the Central Excise Rules, 1944.
2.3.4. In the interest of export promotion, it is imperative that full advantage of modern means of communication, which are not only speedy but also economical is taken by the offices of Customs (Docks) and the Central Excise Divisions. They are already computerised upto Range level. Verification on E-mail with the help of TR copy retained at the Gateway Port should be encouraged. The hard copies (printouts) can be retained for official records."

6.7 It is evident from the above contents of the circular that firstly only where the exports are taking place from ICD/CFS and from there the goods are transferred to port of shipment and eventually exported, that only in such circumstances the TR copy is required to be produced for ensuring the factum of export having taken place, more in the nature of proof of export for verification purposes.

6.8 It is only in case where TR copy is not received within specified period, in lieu thereof, the exporter may submit BRC of export receipts to substantiate the factum of export. The contents of Para 2.3.2 of the said circular which are reproduced in the grounds of revision application filed, have to be understood in this context that if the TR copy is produced, the proof of export substantially stands established and only in absence of TR copy that BRC can be insisted upon.

6.9 The question of TR copy will arise again only if the export is through ICD/CFS only. Admittedly these facts do not exist in the present case at all since the export was directly made from the port of export itself

without routing the same through ICD/CFS at all. This being the case, the precautionary conditions mentioned in the said circular dated 13.11.1997 are not applicable to the present case at all. In fact this is the specific finding of the lower Appellate authority which is not contradicted in the grounds of revision application at all by the Revenue Authorities. It is not understood as to without disputing the distinguishing feature of the said circular dated 13.11.1997 already appreciated by the lower Appellate authority in his order, how the Revenue has simply filed the revision application in a routine manner by merely reproducing an irrelevant condition of the said circular dated 13.11.1997. Such casual and callous revision applications therefore deserve to be dismissed in limine.

6.10 In fact the specific findings at Para 5.3 of the order impugned in the present revisions applications categorically states that the matter was referred to the Jurisdictional Assistant Commissioner who vide his letter F. No. V(Misc) 19-6/Stats/08-09 dated 30.08.2010 had reported that the said circular dated 13.11.1997 was not applicable to the present Respondent as the consignments of exports were exported through JNPT NhavaSheva, Mumbai and Air Cargo Complex Sahar, Mumbai.

6.11 That for some strange reasons, the revision applications filed by the Revenue is silent about this factual development wherein the jurisdictional authorities themselves have stated that the said circular is not applicable to the present case at all and on basis of such report the lower Appellate authority had concluded that irrelevant circular cannot be made basis to impose condition or producing BRC which is not applicable in the present case at all and the rebates have to be sanctioned without such condition of producing post facto BRC, and nothing wrong can be found in such findings of the lower Appellate authority.

6.12 It is indeed deplorable on part of the Revenue Authorities to have not dealt with this crucial aspect. So much so, even this aspect is not disputed in the present Revenue applications that the said conditions of producing BRC being applicable only when exports are through ICD/CFS and in the present case the export are not through ICD/CFS at all. This being the factual basis which is not in dispute, the irrelevant circular relied upon in the present revision applications cannot result in artificially introducing any such condition to produce BRC on post facto basis and the revision applications therefore

deserve to be dismissed with appropriate strictures against the Revenue Authorities in this regard.

6.13 Be that as it may, it has to be also appreciated that when the rebate is being sanctioned based on Rule 18 of the Central Excise Rules 2002 and the relevant Notification thereunder and when no such condition or producing BRC is mentioned therein, the same cannot be artificially introduced by the Revenue Authorities, much less on basis of circular dated 13.11.1997 which anyway cannot overreach the actual statutory provisions enacted by the Central government. That it is trite law that nothing can be added and/or removed from the statutory language of the provisions/Notification No. which is sought to be done by the Revenue Authorities in present case. That we crave leave to refer to and rely upon the following decisions in support of this contention.

a. *CCE, Chennai* v. *Cheslind Textiles Ltd.* - 2007 (209) E.L.T. 99 (Tri.-Chennai)
b. *M/s. Novapan India Ltd.* v. *CCE, Hyderabad* - 1994 (73) E.L.T. 769 (S.C.).
c. *CCE* v. *Sunder Steels Ltd.*-2005 (181) E.L.T. 154 (S.C.)
d. *Thyssenkrupp Industries Pvt. Ltd.* v. *CCE, Pune* reported as [2014 (310) E.L.T. 317 (Tri.-Mumbai)

6.14 Be that as it may, the various judicial authorities have consistently held that in order to claim rebate under Rule 18 of the Central Excise rules 2002 there is no post facto requirement of producing BRC at all and rebate cannot be denied/restricted on such grounds at all. That we crave leave to refer to and rely upon the following decisions in support of this contention:

a. Polyplex Corporation Ltd. 2014(306) ELT 24 (All)
b. Jubiliant Life Sciences Ltd. 201(341) ELT 44(All)
c. In Re: Salsar Techno Engineering P. Ltd. 2018(364) ELT 1143(GOI)

6.15 It may be appreciated that when the Hon'ble High Court has taken a consistent view to the above effect as also the revisionary authority, government of India has also taken the same view, there is no reason to deviate from such view even in the present case at all. In fact, the very same Board Circular dt.13.11.97 was considered in the case of Polyplex (supra) by Hon'ble Allahabad High Court and it was held that Circular cannot travel beyond the basic legal provisions anyway. Accordingly the revision applications deserve to be dismissed as being contrary to the correct facto legal position involved in the matter as stated supra.

6.16 In any case, the Constitutional Bench of Supreme Court of India in the case of Ratan Melting & Wire Industries 2008 (231) E.L.T. 22 (S.C.) at Para thereof, has held as follows:

*"6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, **but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court**. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. **Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law**."*

6.17 Be that as it may, even otherwise one needs to appreciate that while the said circular dated 13.11.1997 operates in a very different field inasmuch as it restricts this application only where exports are taking place from ICD/CFS only, nonetheless, even otherwise the Para reproduced as grounds of revision in the present applications, does not speak about denying rebate claim at all. It merely talks about recovery of rebate already sanctioned.

6.18 It is trite law that such recovery can be made only in terms of Section 11A of the Central Excise Act 1944 where the Revenue Authorities of a view that any refund/rebate stands wrongly granted/allowed to an exporter. Admittedly the Revenue Authorities have not initiated any action under Section 11A of the Central Excise Act 1944 in order to recover the rebates already sanctioned which are the subject matter of the present revision applications. That as such the present revision applications are otherwise infructuous inasmuch even if the revision applications are allowed to the Revenue Authorities no recoveries can be made anyway from the respondent since no show cause notice stands issued to the respondent till date and the demand has anyway become horribly time-barred as on date.

6.19 In fact in the following cases, the Higher Appellate authorities have held that it is not sufficient for the Revenue Authorities to merely challenge an erroneous refund order but they must simultaneously also initiate action under Section 11A to recover the erroneously sanctioned refund and in absence of such recovery measure being initiated, the appeal challenging the refund order is liable to be

dismissed.The said views are also duly supported by the CBEC CircularNo. 423/56/98-CX dated 22-9-1998. That we crave leave to refer to and rely upon the following in this regard:

a. James Robinson India P. Ltd. 2009 (234) E.L.T. 297 (Tri. –Ahmd).
b. SreeDigvijay Cement Ltd. 1991 (52) E.L.T. 631 (Tribunal)
c. Doodhat Tea Estate Kanoi Plantation P. Ltd. 2001 (135) E.L.T. 386 (Tri. – Kolkata)
d. Tuticorin Alkali Chemicals & Fertilizers Ltd. 2007 (220) E.L.T. 965 (Tri. – Chennai)
e. Rajrathnam Matches P. Ltd. 2009 (240) E.L.T. 442 (Tri. – Chennai)
f. Andhra Sugars Ltd. 2007 (212) E.L.T. 48 (Tri. – Bang)
g. Golden Plast Rigid Pvc Pipes 2018 (13) G.S.T.L. 321 (Tri. - Chennai)

6.20 Notwithstanding and without prejudice to the above, in any case, there is no question of even recovery of the rebate claim since the condition of producing BRC is not applicable to the present exports at all since the factum of export is not in dispute. One can ask for copy of BRC to ensure whether the export was genuine or not which is any case not disputed in the present proceedings at all. That as such it would be a futile condition to follow and/or examine in the present case since exports duty paid nature of goods being exported are categorically admitted by the Revenue Authorities. As such the revision applications being contrary to the correct facto legal position, deserve to be dismissed.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that after being aggrieved by the said Order-in-Appeal which set aside the condition of BRC imposed by the sanctioning (adjudicating) authority in each Order in Original, the applicant initially filed appeal before Tribunal, which vide order dated A/1061/WZB/AHD/12 dated 20.07.2012 dismissed the same on the ground of non-maintainability and lack of jurisdictions. On receipt of the said CESTAT order, Department filed the instant Revision Application and subsequently filed Misc. Application for condonation of delay stating therein the aforesaid factual position and requesting to condone the delay in filing revision application.

9. Government first proceeds to discuss issue of time bar in filing this revision application. The chronological history of events is as under.

(a)	Date of receipt of impugned Order-in-Appeal dated 7-9-2010	8-9-2010
(b)	Date of filing of appeal before Tribunal	3-12-2010
(c)	Time taken in filing appeal before Tribunal	2 months & 25 days
(d)	Date of receipt of Tribunal order dated 20.07.2012	01.08.2012
(e)	Date of filing of revision application	21.09.2012
(f)	Time taken between date of receipt of Tribunal order to date of filing of revision application	1 month & 20 days

From the above factual position, it is clear that applicant has filed this revision application after 3 months and 45 days when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay.

10. Government notes that Hon'ble High Court of Gujarat in W.P. No. 9585/11 in the case of M/s. Choice Laboratory vide order dated 15-9-2011, Hon'ble High Court of Delhi vide order dated 4-8-2011 in W.P. No. 5529/2011 in the case of M/s. High Polymers Ltd. and Hon'ble High Court of Bombay in the case of M/s. EPCOS India Pvt. Ltd. in W.P. No. 10102/2011 [2013 (290) E.L.T. 364 (Bom.)] vide order dated 25-4-2012, have held that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. The ratio of above said judgment is squarely applicable to this case. Government therefore keeping in view the above cited judgments, considers that revision application is filed after a delay of 45 days which is within condonable limit. Government, in exercise of power under Section 35EE of Central Excise Act,

1944 condones the said delay and takes up revision application for decision on merit.

11. Government in this case observes that the respondents had filed 15 rebate claims which were duly sanctioned and cheques were issued to the party by the Rebate sanctioning authority. However, all these sanction orders contained a clause/condition " ***The above sanction is subject to submission of BRC within 160 days from the date of sanction of these rebate claims***". The respondent, feeling aggrieved with the said condition filed appeal against these 15 Orders in Original and Commissioner (Appeals) who vide impugned Order in Appeal set aside the condition of BRC imposed by the rebate sanctioning authority in said Orders in Original holding that the condition imposed by the adjudicating authority in the impugned orders was neither correct nor legally required as per law. The applicant department have filed the present Revision Application against the impugned order on the grounds mentioned in para 4 supra. Government observes that the limited issue for decision in these Revision Petitions is whether the condition of submission of BRC within 160 days .... imposed in Orders in Original is the one which is in conformity with the statutory provisions or otherwise.

12. Government, from the discussion in foregoing paras observes that the origin of the imposed condition " *The above* sanction is subject to submission of BRC within 160 days from the date of sanction of these rebate claims" is traceable to C.B.E. & C.'s Circular No. 354/70/97-CX, dated 13-11-1997 which reads as under :-

> *"It has been brought to the notice of the Board that there are inordinate delays in acceptance of proof of export where goods are exported through an Inland Container Depots Customs Freight Stations (ICDs/CFSs) because of delayed receipt/non-receipt of the Transference Copies from the Customs formations at the port of exit. This causes delay in getting rebate claims or in fulfilment of conditions of bonds executed for exports without payment of duty. In many cases, rebate claims are rejected or the demands are raised for non-submission of proof of exports within the stipulated period of six months from the date of export.*

2. It has been decided by the Board that for exports through ICDs/CFSs, a revised procedure should be followed in respect of the acceptance of proof of exports which is as follows :-

2.1 The Appraiser/Superintended (Shed) will give a certificate in Part-B of the Original, Duplicate and Sixtuplicate copies of AR-4/AR-5 simultaneously when he gives the Let Export Order on the Shipping Bills in terms of Section 51 of the Customs Act, 1962. This Certificate shall be in the following form in lieu of the format given in Part-B of the AR-4/AR- 5 :-

Certified that the consignment was stuffed in Container No(s) _____ under Shipping Bill No. ___________ dated _______ for which the Let Export Order was given on _________ the day of __________.

The Customs at the ICD/CFS will send the duplicate copy of AR-4/AR-5 to the address given at Sl. No. 1 of the AR-4/AR-5 (the concerned Jurisdictional Assistant Commissioner or the Maritime Commissioner) and hand over the Original and Sixtuplicate copies to the exporter. A provisions has already been made under the instructions of the Board that the duplicate AR-4/AR-5 can be presenting to the rebate *sanctioning authority or the authority before whom the bond is executed.*

(paras 2.2 to 2.3.4 of Circular No. 354/70/97-CX, dated 13-11-1997 are reproduced at para 6.6 supra).

13. On perusal of the Board's Circular No. 354/70/97-CX., dated 13.11.1997 Government observes that, on the face of it, the same is applicable where goods are exported through Inland Container Depots Customs Freight Stations (ICDs/CFSs). This circular provides that in specific circumstances BRC can be used as a collateral evidence for export of goods only in case where T.R. (transference copy) was not received by the customs department within the stipulated period in case of export of goods through ICD/CFS. Basically, this circular prescribes the procedure for acceptance of proof of export in respect of goods exported through ICD/CFS and also directs that if the B.R.C. is not received within 160 days of the date of sanction of rebate claim, action for recovery of rebate shall be initiated. Moreover, from the impugned Order in Appeal, Government observes that the JAC vide his letter F.No. V(Misc)19-6/Stats/08-09 dated 30.08.2010 had reported that the circular dated 13.11.1997 was not applicable to the applicant as the consignments of export

were exported through JNPT Nhava Sheva / Air Cargo Complex, Sahar, Mumbai.

14. Government also observes that the impugned rebate claims were sanctioned by the rebate sanctioning authority under Rule 18 of Central Excise Rules and Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The condition of BRC is not specified under Rule 18 of Central Excise Rules and Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 for sanctioning of the rebate claim and even C.B.E. & C. has clarified vide Circular No. 510/06/2000-CX, dated 3-2-2000 that if the duty is paid on exported goods rebate of the same has to be rebated/allowed. There is no doubt regarding export of duty paid goods by the respondent, which is the fundamental requirement under Rule 18 and the Notification No. 19/2004 and therefore, the rebate sanctioning authority had sanctioned all the 15 rebate claims filed by the respondent.

15. Government observes that export is a key area of the economy and an important means of earning foreign exchange and therefore the department attaches considerable importance to exports. There are different benefits in respect of duties paid on inputs used in manufacture of goods meant to be exported as well as in respect of duty on finished goods exported under central excise law. It is pertinent to mention that all the benefits attached to the exports are inherently connected with earning of foreign exchange. Therefore the realization of the export proceeds is not just a formality but essentially the raison d'etre behind the stated policy of the government to allow export benefits under various schemes including rebate. The very ethos of the policy for exports is to incentivise exporters for selling their goods in the international market. Towards that end, Government has framed policies to ensure that duties and taxes are not exported. However, in a case where this objective of earning foreign exchange is not achieved, the event of export would be said to have not been effected and consequently the clearance of goods would be on a similar footing as domestic clearances. It would therefore follow that such a person would be liable to discharge duty liabilities on the goods.

16. Government also places its reliance 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 15 of its above referred Order GOI also observed as under :-

> ***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.*

17. The C.B.E. & C.'s Circular No. 354/70/97-CX, dated 13-11-1997 also mandates initiation of recovery of duty in case of non-submission of Bank Realisation Certificate within stipulated period. Therefore, Government is of the considered view that though the BRC is not one of the documents to be filed along with the rebate claim as per Paras 8.1 to 8.5 of Chapter 8 of the C.B.E. & C. Manual of Supplementary Instructions, yet BRC is one of the vital documents to monitor the realization of export proceeds in the case of exports and the rebate sanctioning authority can very well verify the BRC subsequently

also and take necessary action to recover the duty if BRCs are not produced within prescribed time limit. The mere fact that the BRC is not one of the specified documents does not undermine its relevance within the stated policy of the government for exports to garner foreign exchange. The respondents harping on the line of argument that the BRC is not a prescribed document even after they had received the rebate appears to be excessive. In principle, the Government agrees with the respondent that the BRC is not a prescribed document for claim of rebate and the stipulation of the 160 days time limit in the OIO was improper. However, the thrust of the arguments of the respondent seem to be that the BRC as a document is irrelevant insofar as rebate claims are concerned. These assertions are unacceptable. In the instant case the goods were exported through JNPT and Air Cargo (direct port) and not through ICD / CFS. Hence the C.B.E. & C.'s Circular No. 354/70/97-CX, dated 13-11-1997 held not applicable.

18. In view of position explained above, Government does not find any infirmity in the impugned Order-in-Appeal and therefore upholds the same with the observation that the BRC being a crucial document to evidence the receipt of foreign exchange where the exporter has claimed rebate, the Department is entitled to call upon the exporters to submit BRC's on the expiry of the prescribed time limit after the date of export.

19. The revision application is dismissed being devoid of merit.

20. So, ordered.

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

ORDER No. 70-84/2019-CX (WZ)/ASRA/Mumbai DATED 7.10. 2019.

F.No.198/207-221/12-RA

To,
Commissioner of Goods & Service Tax,
Vadodara-I Commissionerate, GST Bhavan,
Race Course Circle,
Vadodara, 390007.

Copy to:

1. M/s Alembic Limited, Alembic Road, Vadodara 390 003.
2. The Commissioner of Central Tax (Appeals), Central Excise Building , 1st Floor Annexe, Race Cource Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissioner, of Goods & Service Tax, Division-II, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
4. Sr.P.S. to AS (RA),Mumbai.
5. Guard file.
6. Spare Copy.