F.No.380/52/DBK/14-RA
380/52A/DBK/14-RA

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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.380/52/DBK/14-RA 380/52A/DBK/14-RA | 1686(a) Date of Issue: 12.10.2018

ORDER NO.705-706 /2018-CX (WZ)/ASRA/MUMBAI DATED 03.09. 2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise and Customs & Service Tax Surat-II.

Respondent : M/s Reshmika Minerals & Chemicals (P) Limited.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.SUR/EXCUS-002-APP-262-13-14 and No. SUR/EXCUS-002-APP-263-13-14 both dated 13.12.2013 passed Commissioner (Appeals) Central Excise, Customs & Service Tax, Surat-II.

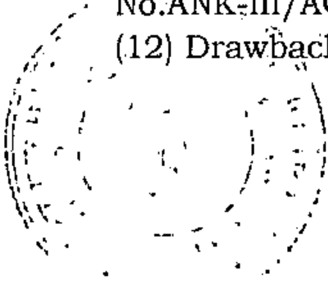
ORDER

These Revision Applications are filed by Commissioner of Central Excise and Customs & Service Tax Surat-II (hereinafter referred to as "the applicant") against the Orders-in-Appeal SUR/EXCUS-002-APP-262-13-14 and No. SUR/EXCUS-002-APP-263-13-14 both dated 13.12.2013 passed Commissioner (Appeals) Central Excise, Customs & Service Tax, Surat-II.

2. The brief facts of the case are that M/s Reshmika Minerals & Chemicals Pvt. Ltd. Plot No.23, Phase -IV, G1DC Panoli, Dist. Bharuch (herein after to be referred as the 'respondent') filed 06/06 (total 12) different applications for sanction of Drawback as per Circular no.43/2007-CUS. Dated 06.12.2007 with the Assistant Commissioner, Central Excise & Customs, Division-III, Ankleshwar on 03.09.2012 and 12.04.2013 under All industry Rate for their export product "Manganese Sulphate Solution" falling under tariff item no.28332940, exported to M/s Indofil Industries Ltd, a unit at SEZ, Dahej (Distt. Bharuch) under Rule 3 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. As per Public Notice No.01/2012-13 (SEZ/DBK) dated 18.09.2012 issued by Commissioner, Customs & Central Excise, Surat-II, all the applications were within the competency of Assistant Commissioner, Central Excise & Customs, Division-III, Ankleshwar under whose jurisdiction, the respondent's factory; from where goods were exported, fell and was registered as Central Excise assessee.

3. The above mentioned Drawback claims were got verified by the Superintendent, Central Excise & Customs, Range-II, Ankleshwar and on the basis of report submitted by them, a show cause notices, dated 14.12.2012 and 04.07.2013 were issued to the arespondent for rejection of the subject 12 Drawback claims applications on the ground of delayed filing as per Public Notice no.01/2012-13 (SEZJDBK) dated 18.09.2012 issued by Commissioner of Central Excise and Customs, Surat-II and not exporting the goods as per tariff heading (i.e. the respondent had 'exported goods namely "Manganese Sulphate Solution' under chapter heading no.28332940 which was for the product Manganese Sulphate Monohydrate").

4. The adjudicating authority vide Order in Original No. No.ANK-III/AC/01/DBK12013-14 dated 27.08.2013 and Order in Original No. No.ANK-III/AC/02/DBK12013-14 dated 12.09.2013 rejected all the subject (12) Drawback claims.



5. Being aggrieved, the respondent filed an appeal before the Commissioner (Appeals) Central Excise, Customs & Service Tax, Surat-II. The Commissioner (Appeals) Central Excise, Customs & Service Tax, Surat-II vide Order in Appeal No.SUR-EXCUS-002-APP-262-13-14 and No.SUR-EXCUS-002-APP-263-13-14 both dated 13.12.2013 held that subject Drawback claims were not time barred under Rule 13 of said Rules and the classification under Drawback Schedule Tariff Entry is 28332940 was proper attracting appropriate and applicable Drawback rate from time to time. Accordingly, the Commissioner (Appeals) vide his impugned orders set aside both the Orders in Original and allowed the appeal filed by the respondent.

6. Aggrieved by the aforesaid order the applicant Department filed Revision Applications against the impugned Order in Appeal No.SUR-EXCUS-002-APP-262-13-14 and No.SUR-EXCUS-002-APP-263-13-14 both dated 13.12.2013dated 28.09.2012 on the following grounds that:

6.1 the judgment and order of the Commissioner (Appeals) is contrary to the law, proven facts & evidence on record & thus improper, invalid, bad in law, and contrary to the statutory provisions and legislative intent contained in the statutory provisions of the Act and the Rules framed there under and therefore, the same deserves to be quashed and set aside.

6.2 the Commissioner (Appeals) has not assigned cogent and valid reasons and justification for the impugned decision in allowing the appeal filed by the claimant.

6.3 the order passed by the Commissioner (Appeals) on and observations made there under, are based on inadequate or absence of facts.

6.4 The Commissioner (A), Central Excise, Customs & Service Tax, Surat-II vide OIA No. SUR-EXCUS-002-APP-263-13-14 dated 13/12/2013 has delivered the decision in favour of the claimant and accordingly set aside the impugned order-in-original as "not-sustainable" is not acceptable and deserves to be set aside.

6.5 The original adjudicating authority passed the Order-in-Original with specific findings that the claimant has not filed the drawback claim within time limit prescribed in the Public Notice No. 01/2012-13 (SEZ/DBK) dated 18/09/2012 issued by the Commissioner under F. No. VIII/9-1/CUS/T/2012 which is mandatory and power relating to the grant of Drawback to DTA supplier of the unit has been delegated to the Divisional Deputy/Assistant Commissioner, having jurisdiction over the DTA

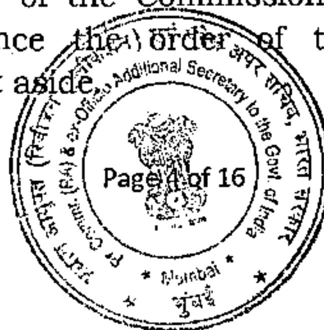
unit, supplying to the goods SEZ units, are authorized to examine the claims and sanction Drawback to DTA unit, wherever admissible in term of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

6.6 Similar to the regular Drawback claim, triplicate copy of shipping bill shall be treated as drawback claims, and processed by the office of Deputy/Assistant Commissioner, under whose jurisdiction the unit falls. The unit claiming the drawback is required to file a Drawback claim application to Deputy/Assistant Commissioner within a period of 2 months from the date of receipt of goods by unit in SEZ. The said public notice further prescribed other incidental and procedural matters in line with the Board's Circular No. 43/2007-Cus. Dated 05/12/2007.

6.7 The Drawback claims filed by the assessee beyond 1 year is not admissible in the present case as the time limit has been fixed by the Commissioner in Public by the Commissioner in Public Notice 01/2012-13 (SEZ/DBK) dated 18/09/2012 for filing of drawback claims to the jurisdictional Deputy/Assistant Commissioner within 2 month from the date of receipt of goods by unit in SEZ.

6.8 Commissioner (Appeals) finding that the adjudicating authority has totally ignored the statutory Chapter Note 1 to 28 of central Excise Tariff Act and there are no findings recorded on it and conclusion that the "Manganese Sulphate Solution" and "Manganese Sulphate Monophydrate" are chemically same and covered under the Tariff Entry No. 28332940 is not acceptable as both these items differ in their basic physical appearance as one is in liquid from and other is in solid granular form and are being traded as distinguished from each other. Moreover the issue is related to Drawback claim and not of Classification and therefore Drawback entry heading 28332040 covering specific item description "Manganese Sulphate Monohydrate" is more relevant that the goods actually exported with description as Manganese Sulphate Solution" . The said export item "Manganese Sulphate Solution". The said export item Manganese Sulphate Solution" is not at all listed in the Drawback Schedule and therefore Drawback is not available to said item actually exported.

6.9 The Commissioner (A) has erred in allowing the claimant's appeal such an order of the Commissioner (A) is full of infirmity & erroneous. Hence the order of the commissioner (appeals) deserves to be set aside.



7. In their Cross objections to the Revision Applications filed by the Department, the respondent submitted as under :

7.1 this issue relating to the limitation has been discussed at length in Para 7.2 and 7.3 of the OIA by considering all the legal provisions, Circulars, Trade notices and their validity and after a careful consideration it has been concluded that the said drawback claim are not time barred.

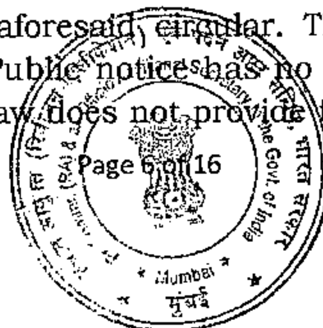
7.2 In view of cogent reasoning given by the learned Commissioner (Appeals) the revision application filed by the Department is liable to be rejected. Neither the Customs and Central Excise Duties Drawback Rules, 1995 nor the SEZ Rules, 2006 requires the exporter for filing separate drawback claims for all industry rate shall be submitted in specified period of time. On the contrary both the said rules provide that triplicate copy of the assessed Bill of Export shall be treated as the drawback claim. Thus the rules itself has the built-in mechanism for sanction of DBK Claim. It is important to note that when the Bill of Export is assessed, the assessing officer keeps with him extra copies of assessed Bill of Export, which should be send to the jurisdictional Commissioner of Central Excise for automatic sanction of DBK Claims as it happens automatically in EDI system. The proviso to rule 6(1)(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 is applicable for the Cases where amount or rate of drawback has not been determined, i.e. the said rule is applicable for Brand Rates and not for the all Industry Rates. The adjudicating authority while passing the OIO failed to appreciate that the time limit prescribed under the above rule is for "fixation of Brand Rates" and the said rule does not provide for any time limit for filing Drawback Claim.

7.3 It is well settled law that substantive benefit cannot be denied to an assessee on ground of procedural lapse. RMCPL are entitled to the drawback on merits and the only ground for denial of this substantive export benefit is procedural laps of filing drawback claim late by RMCPL. Such procedural lapse should not result in denial of substantive export benefits. In this regard RMCPL relies on the following case law:

IN RE : LEIGHTON CONTRACTORS (INDIA) PVT. LTD. 2011 (267) E.L.T. 422 (G.O.I.) it was held that:

"9.6 In UOI v. Suksha International, 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu, 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on restrictive interpretations and technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise, 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. V. Dy. Commissioner, 1991 (55) E.L.T. 437 (S.C.). In fact, as regards Drawback rebate specifically, it is now a trite law that the procedural infraction of Notifications, circulars, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. This view of condoning procedural infractions in favour of actual export having been established has been taken by tribunal/Government of India in a catena of orders, including Birla VXL Ltd., 1998 (99) E.L.T. 387 (Tri.); Alpha Garments, 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles, 1993 (66) E.L.T. 497 (Tri.), Atma Tube Products, 1998 (103) E.L.T. 270 (Trib.), Creative Mobus, 2003 (58) RLT 111 (Government of India), Ikea Trading India Ltd., 2003 (157) E.L.T. 359 (Government of India) and a host of other decisions on this issue.".

7.4 The said Public Notice 01/2012-13(SEZ/DBK) dated 18.09.2012 has been issued on the basis of Board's Circular No. 43/2007 dated 5.12.2007. However, the same public notice prescribes the time limit of 2 months for filing drawback applications is beyond the Government's aforesaid circular. Thus, the limitation aspect prescribed in the Public notice has no authority of law. It is well settled law that if law does not provide for any time limit, then, no



subordinate authority can introduce any time limit for such action covered under the said law.

7.5 As regards the issue of classification is concerned, it is submitted that the Commissioner (Appeals), Surat II has passed a reasoned order on the issue of classification after duly considering the legal interpretations adopted by RMCPL, the Chartered Engineer's certificate produced by the RMCPL and the case law cited in regard to the classification issue. However, in the OIO, the adjudicating authority failed to consider that Manganese Sulphate Solution contains 70% - 72% of water whereas Manganese Sulphate Monohydrate contains 0.01% of water. To get the Manganese Sulphate Monohydrate, evaporation and drying process is carried out, without adding any inputs (only electricity and equipments are required). As a thumb rule if 3000 kg of Manganese Sulphate Solution is required to get 1000 kg of Manganese Sulphate Monohydrate and price of Manganese Sulphate Monohydrate is approximately 3.15 (approx) times of the price of Manganese Sulphate Solution, thus it can be seen that DBK in both situations would be approximately same or bit extra in case of Manganese Sulphate Monohydrate.

7.6 It is further submitted that the OIO travels beyond SCN in as much as we have not been asked to show cause on the classification issue of "Manganese Sulphate Solution" and "Manganese Sulphate Monohydrate" falling under Ch. No. 28332940 and hence the original adjudicating authority had no power to decide on the stated matter. As the present matter contains the issue of classification, the same should have been appealed by the Department to the Custom Excise and Service Tax Appellate Tribunal Western Zone, Bench . It is important to note that on remand by the Commissioner (Appeals), Surat –II, the Assistant Commissioner, Central Excise & Customs, Division III, Surat II has vide Order-in-Original No. 02/SRT-II/ANK-III/DBK/14-15 dated 01.04.14 has allowed the said refund claims of RMCPL. (Copy of the said orders is attached as **annexure "A"**).

7.7 However, the said DBK has been granted to the respondents as per assessed Bill of Export @ 1%. Vide Letter dated 5/7/2013 they had submitted that the assessment Bill of Export should have been @ 3% to which the Learned Commissioner (Appeals) had agreed to. We refer to the operative part of OIA at par 8 which as under:

7.8 *"In view of the above discussion, points of determination, findings and reasons, and case laws, I conclude and decide that subject draw back claims are not time barred under Rule 13 of the said Rules. Its proper classification under draw back schedule tariff entry is 28332940 attracting appropriate and applicable draw back rate* from time to time."

7.9 The Learned Commissioner (Appeals) finally ordered that: *"Consequently the order in original passed by the Assistant Commissioner is erroneous and legally not sustainable and required to be set aside by allowing appeal, with prescribed consequential relief with in prescribed time frame."*

7.10 Thus, they are entitled to be paid differential draw back as per Annexure-1 to this reply along with applicable rate of interest. The Adjudicating authority has not granted us any interest on delayed payment of DBK which was sanctioned to us @1% vide OIO No.02/SRT-II/ANK-III/DBK/14-15 dated 1-04-14 referred above. Therefore, the said interest be directed to be paid to us.

8 A personal hearing in the case was held on 01.03.2018. None was present for the applicant Department. Shri Vikas Khare, Company Secretary, and Shri Raghunath Natu, GM appeared on behalf of the respondent. The applicant reiterated the submissions filed in the cross objection and Order of Commissioner (Appeals). It was prayed that Order in Appeal be upheld and Revision Applications be dismissed.

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

10. Government, on perusal of records observes that the Adjudicating Authority, vide Orders in Original observed that the respondent failed to submit their all drawback claims within stipulated time from 'Let Export date'. Government also observes that the Public Notice No. 01/2012-13 (SEZ/DBK) dated 18.09.2012 issued by Commissioner of Central Excise and Customs, Surat-II, the respondent was required to as the respondent file the drawback claims beyond the prescribed limits of two months from the date of receipt of goods by unit in SEZ and in some cases is more than one year which is beyond the limit of power of delay condonation by the Assistant Commissioner, as per Notification No. 17/96-Cus. & Central Excise (NT) dated 20.03.1996 and Circular No. 13/2010-Cus dated 26.06.2010.

11. Government observes that Commissioner (Appeals) in his impugned Orders observed that Public Notice No. 1/2012-13(SEZ/DBK) dated 19.09.2012 vide F.No. VIII/9-1/Customs-T-2012 had been issued on the basis of Board Circular No. 43/2007 dated 05.12.2007.

After going through the Board Circular No. 43/2007 dated 05.12.2007 issued from F.No. 602/2/2002 DBK, the Commissioner (Appeals) in his impugned Orders observed that

"(v) In the light of above circular it is very clear there is no time limit fixed for filing Drawback claims on supplies made by Domestic Tariff Area (DTA) units to units located in Special Economic Zone (SEZ).

(vi) It is a matter of concern that, the subject Public Notice No. 01/2012-13 (SEZ/DBK) issued under F.No. VIII/9-1/CUS/T/2012 on 18.09.2012 based on Ministry Circular No. 43/2007-Cus. dated 05.12.2007 as referred above, has been issued nearly after 5 years from the issue date of Ministry's Circular.

(vii) in the said public notice issued by the Commissioner, power relating to the grant of Drawback to DTA supplier of the unit has been delegated to the Divisional Deputy/Assistant Commissioner, having jurisdiction over the DTA unit, supplying to the goods SEZ units, are authorized to examine the claims and sanction Drawback to DTA unit, wherever admissible in term of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. Similar to the regular Drawback claim, triplicate copy of shipping bill shall be treated as drawback claims, and processed by the office of Deputy/Assistant Commissioner, under whose jurisdiction the unit falls. The details of the other documents required to the submitted along with triplicate copy of Shipping Bill is given in the Annexure — A of public notice, The unit claiming drawback is required to file a Drawback claim application to Deputy/Assistant Commissioner within a period of 2 month from date of receipt of goods by unit in SEZ. The said public notice further prescribed other incidental and procedural matters in line with the Board Circular No. 43/2007 dated 05.12.2007. However, the same Public Notice prescribes the time limit of 2 months for filing drawback applications, is beyond the scope of government's aforesaid circular, and it is arbitrary and unauthorizedly fixed at local level, which does not have any sanction of authority of law.

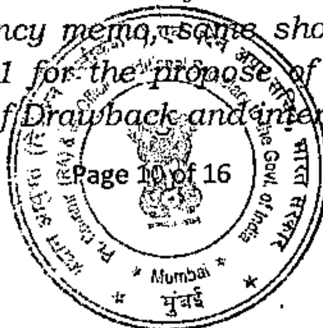
(viii) It is this time limit prescribed in the said public notice becomes the base for subject order-in-original issued by the Divisional Assistant

Commissioner, to reject the subject 06 Drawback applications as time barred. Therefore, the finding of the Assistant Commissioner and rejection of the subject Drawback claim as time barred, legally erroneous and "non sustainable". These findings are based on the perception on the individual officer and his interpretation.

(ix) Further, even in Customs Act, 1962, there is no time limit prescribed for claiming Drawback on exported material used in the manufacture of goods under export. This is relevant, since supply from DTA unit, to SEZ unit is deem to be exported. Even further, goods which have been entered to the export and in respect of which, order permitting the clearance and loading thereof for exportation have been made by a proper officer, a Drawback should be allowed. Therefore, under Section 75 of the 1962, there is no time limit prescribed for filing Drawback claim application.

(x) Even Rule 13 of the Customs, Central Excise & Service Tax Drawback Rules 1995 prescribed Triplicate copy of the Shipping Bill for export of goods under a claim for drawback, shall be deemed to be a claim for drawback filed, on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51, and said claim for drawback shall be retained by the proper officer making such order. If such claim is accompanied with the documents specified under Rule 13(2), then it is clear that, application of time limit is entirely irrelevant, or not authorized by law, and there is no time limit prescribed for filing a Drawback application even under Rule 13.

(xi) On other hand Section 75 A of Customs Act, 1962, provides that where, any Drawback payable to claimant under Section 74 or under Section 75, is not paid within a period of one month from filing a claim for payment or such Drawback, then such claimant shall be entitled, in addition to amount of Drawback, an interest at rate fixed under Section 27 of the Customs Act, 1962 calculated from the date of expiring of said period of one month of filing till the date of payment of such Drawback. Similar provision is made under Rule 13(3)(b) that, in case of any deficiency memo is issued, in respect of Drawback application, except non-compliance of deficiency memo within 10 days, and where the exporter resubmit the claim of Drawback after compiling the requirement of deficiency memo, same should be treated as a claim filed under Sub-Rule 1 for the propose of Section 75A. Rule 14 also provides for payment of Drawback and interest, if any.



(xii) Even the rejecting the subject claims of reliance place by Ld. Adjudicating Authority on case law of M/s. Sarda Energy and Mineral Ltd. is incorrect, in this context, it needs to be appreciate that, the Ld. R.A. Government of India, in M/s. Sarda Energy and Mineral Ltd. 212(286)ELT 451 (GOI) in para 8 of the order, decided that Rule 13 of the Customs Central Excise Service Tax Drawback Rules does not prescribed time limit for filing Drawback claim, as contended by the department. It is in this context, appellant have placed the reliance on this case law, which is squarely applicable to the subject case.

(xiii) It is well settled case law that, if law does not prescribe any time limit, then, no subordinate authority can introduce any time limit for such action covered under said law. Further, Hon'ble Supreme Court has decided that, Trade Notice issued by the CCE, s binding on Revenue as well as assessee, only to the extent, they are in consonance with law, (2012)1 -SCC-226(2011) (273) ELT-321.

By applying said ruling to the subject case it is concluded that the subject Trade Notice / Public Notice issued by the Commissioner, Central Excise & Customs, Surat-II prescribing 2 months time limit for filing Drawback claim application is not in consonance with the law. Hence it is not binding on revenue as well as assessee.

12. Government observes that in the present case, the respondent had supplied goods to a unit is Special Economic Zone and therefore finds it is pertinent to look into what the SEZ Act and SEZ Rules states about drawback.

13. Government observes that Section 26(d) of the SEZ Act, 2005 provides that every Developer and entrepreneur shall be entitled to drawback on goods brought from the DTA into an SEZ. Rule 24 of the SEZ Rules, 2006 provides that the triplicate copy of the assessed Bill of Export shall be treated as the drawback claim and processed in the Customs section of the Special Economic Zone and the Specified Officer shall be the disbursing authority for the said claims.

14. Government further observes that Rule 13 of Drawback Rules, 1995 clearly specifies the time and manner for claiming drawback. It provides that the triplicate copy of the Shipping Bill shall be deemed to be a claim for drawback. The relevant provision in Rule 13 is noticed as under :

> ***"Rule 13. Manner and time for claiming drawback on goods exported other than by post.*** *- (1) Triplicate copy of the Shipping Bill for export of goods under a claim for drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order".*

15. Government therefore, observes that neither the Customs and Central Excise Duties Drawback Rules, 1995 nor the SEZ Rules, 2006 requires for filing separate drawback claims. On the contrary both the said rules provide that triplicate copy of the assessed Bill of Export shall be treated as the drawback claim. In view of the above provisions

16. Government has perused Board Circular No. 43/2007-Cus., dated 15-12-2007 as well as Public Notice No. 01/2012-13 (SEZ/DBK) issued under F.No. VIII/9-1/CUS/T/2012 on 18.09.2012 which is based on para 4 Board Circular No. 43/2007-Cus., dated 15-12-2007. It is clear from the said Board Circular No. 43/2007-Cus., dated 15-12-2007 that there is no time limit fixed for filing Drawback claims on supplies made by Domestic Tariff Area(DTA) units to units located in SEZ.

17. Moreover, Government has also observed that the Public Notices issued by the other Commissionerates, viz. Central Excise & Customs Vadodara –II as well as by Jawaharlal Nehru Customs House Nhava Sheva, on the subject of *"Appropriate authority for sanction and disbursement of drawback claims on supplies made by domestic Tariff Area (DTA) units to units located in Special Economic Zone (SEZ)"* which are in turn based on Board Circular No. 43/2007-Cus., dated 15-12-2007 do not prescribe any time limit for filing of Drawback applications.

18. In view of the above, Government is in full agreement with the findings of the Commissioner (Appeals) that the Public Notice No. 01/2012-13 (SEZ/DBK) issued under F.No. VIII/9-1/CUS/T/2012 on 18.09.2012 which prescribes time limit of two months for filing Drawback claims is beyond the scope of the Board Circular No. 43/2007-Cus., dated 15-12-2007 and it is arbitrary and unauhorizedly fixed at local level, which does not have any sanction of authority of law. Therefore, Government upholds Commissioner (Appeals) findings reproduced at para 8 supra and holds that the subject 12 Drawback claims filed by the respondent are not time barred.

19. The another issue involved in these Revision Applications is that the respondent had 'exported goods namely "Manganese Sulphate Solution' under chapter heading no.28332940 to the SEZ unit M/s Indofil Industries Ltd., whereas the goods classified under Drawback Schedule entry No. 28332940 under the relevant Drawback schedule is 'Manganese Sulphate Monohydrate" and therefore, the original authority also rejected the Drawback claim applications on this ground also.

20. Government observes from the impugned Order in Appeal that the respondent exported 'Manganese Sulphate Solution in liquid' to the SEZ unit M/s Indofil Industries Ltd. Under the relevant Drawback Schedule, the goods 'Manganese Sulphate Monohydrate' is classified under Drawback Schedule Entry No. 28332940. There also is residual entry in Drawback Schedule entry No. 2833000099, as "other". Both these entries attract different rate of Drawback.

21. Government observes that, goods supplied by the respondent to the SEZ unit were 'Manganese Sulphate Solution in liquid form'. The relevant invoices issued by them also declare description as 'Manganese Sulphate Solution' with tariff classification under heading No. 28332940. Government further observes that the respondent had also submitted Certificate No. CEC/RMCP1.12012/01 dated 05.03.2013 issued by the Chartered Engineer M/s. P. S. Dashputre & Associates wherein it is certified that the 'Manganese Sulphate Solution' ($MnSO_4$) 'Manganese Sulphate Monohydrate' ($MnSO_4$ H_2O) both are same product having similar characteristics and ingredients and that product exported by the respondent and the description in Drawback schedule No. 28332940 are one and the same.

22. From the information about both these products available on the Internet (website of American Elements) Government observes that there is no difference in 'Compound Formula', 'Molecular weight', 'Melting Point', 'Boiling Point', 'Density' , 'Mass' and 'Monoisotopic Mass' of these product. The only difference between the two is in their appearance viz, 'Manganese Sulphate Solution is whitish black to clear liquid whereas Manganese Sulphate Monohydrate' is in Pink Crystal form.

23. Government also observes that Commissioner (Appeals) in his impugned Order has also observed that

> 7.4 *(iii) I have also noticed from the case records that, as per the Notification No. 68/2011-Cus.(NT) , Note-1 which provided that, the tariff item description of goods in said schedule are item and*

description of goods in first schedule in Custom Tariff Act, 1975 at four digit level only. The description of goods gives six or eight digit or ten digits are in several cases not aligned with the description of the goods given in the first schedule of the Customs Tariff Act, 1975. Therefore, the General rule of interpretation of first schedule to Customs Tariff Act, 1975 shall mutatis mutandis apply for classify the export goods listed in the said schedule.

(iv) *Further, from case record, I have noted that Board vide circular No. 48/2011-Cus. Dated 31.10.2011 provides "Certain doubts have been expressed about classification of few erstwhile DEPB items in the drawback schedule wherein it has been pointed out that the classification under drawback schedule does not match with the classification as provided in the Customs Tariff. In this regard attention is invited to the para (1) of the notes and conditions of the notification No. 68/2011-Cus.(N.T.) dated 22,09.2011. It is hereby reiterated that the tariff items and descriptions of goods in the drawback schedule are aligned with the tariff items and descriptions of goods in the Customs Tariff only upto four-digit level. Hence, so long as the alignment is there at the four digit level, there should not be any difficulty for exporters to claim drawback as per the rate specified in the Drawback Schedule, notwithstanding the fact that there may be difference in the classification of the said item at six or more digit level."*

(v) *Keeping in view of above position, it is noticed that the tariff heading of 'Manganese Sulphate Solution' shown in excise invoice is 28332940, which is undisputed and accepted facts. By applying the above principle, I find from the relevant Drawback schedule that 'Manganese Sulphate Monohydrate' is classified under Tariff item 283328940 entry under Drawback schedule. Therefore, there is a perfect alignment of subject goods with Central Excise Tariff and Drawback Tariff items entry.*

24. Government observes that the Department in its Grounds of Appeal have stated that

"both these items viz. 'Manganese Sulphate Solution' and 'Manganese Sulphate Monohydrate' differ in their basic physical appearance as one is in liquid form and other is solid granular and are being traded as distinguished from each other. Moreover the issue is related to Drawback claim and not of classification and therefore Drawback entry heading 28332940 covering specific item description 'Manganese Sulphate Monohydrate' is more relevant than the goods actually exported with description 'Manganese Sulphate Solution'. The

said export item 'Manganese Sulphate Solution' is not at all listed in the Drawback schedule and therefore Drawback is not available to said item actually exported".

25. Therefore, Government observes that the department has neither given any submissions controverting the eligibility of the impugned goods for Drawback claim, in light of above said Notification and circular discussed by the Commissioner (Appeals) above, nor the aforesaid findings of Commissioner (Appeals) have been controverted by department by way of any substantial reasoning.

26. Government also finds that it is rightly pointed out by the Commissioner (Appeals) that the adjudicating authority has totally ignored the Statutory Chapter Note 1 of Chapter 28 of Central Excise Tariff Act, 1985 and there are no findings recorded on it. Chapter Note 1 of Chapter 28 of Central Excise Tariff Act, 1985 reads as under:-

CHAPTER 28

INORGANIC CHEMICALS, ORGANIC OR INORGANIC COMPOUNDS OF PRECIOUS METALS, OF RARE-EARTH METALS, OF RADIOACTIVE ELEMENTS OR OF ISOTOPES

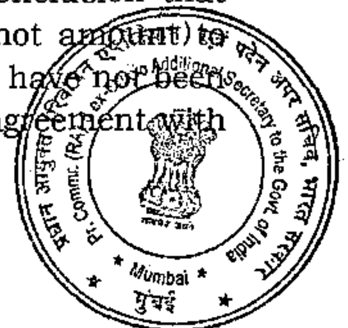
NOTES

1. Except where the context otherwise requires, the headings of this Chapter apply only to:

(a) separate chemical elements and separate chemically defined compounds, whether or not containing impurities;

(b) The products mentioned in (a) above dissolved in water;

27. Government observes that according to these Notes "except where the context otherwise requires, the headings of Chapter 28 apply to separate chemically defined compounds, whether or not containing impurities; and the products dissolved in water." Accordingly, Commissioner (Appeals) in his impugned order has concluded that 'Manganese Sulphate Monohydrate' and 'Manganese Sulphate Solution' are chemically same and covered under the Tariff entry No 28332940. Government further observes that Commissioner (Appeals) by citing applicable case laws has arrived at a conclusion that adding and mixing of water or dilution of a product does not amount to manufacture and again these contentions as well as case laws have not been challenged by the department. Therefore, Government is in agreement with



the observations and findings of the Commissioner (Appeals) mentioned supra.

28. In view of the detailed discussion and interpretation of the relevant provisions of law made in the preceding paragraphs and the reasoning thereon, Government finds no infirmity in order of Commissioner (Appeals) and hence upholds the same as just and legal.

29. The revision applications are thus rejected being devoid of merits.

30. So, ordered.

03.9.2018
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 705-706 /2018-CX (WZ)/ASRA/Mumbai DATED 03.09.2018.

To,
The Commissioner of Central Goods and Service Tax, Vadodara-II,
GST Bhavan, Subhanpura,
Vadodara-390 023

Copy to:
1. M/s Reshmika Minerals & Chemicals Pvt. Ltd.,Plot No. 23, GIDC Panoli, Tal. Ankleshwar.
2. The Commissioner of Central Goods and Service Tax, (Appeals), Central Excise Building, 1st Floor Annex, Race Course Circle, Vadodara 390007.
3. The Deputy / Assistant Commissioner, Central Goods & Service Tax, Division-XI [Panoli], 2nd Floor, R. K. Casta Building, Near-Taluka Panchayat, Station Road, Bharuch- 392001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

ATTESTED
12/10/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)