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GOVERNMENT OF INDIA
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Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 195/72-106/15-RA /3281 Date of Issue: 01.08.2022

ORDER NO. 714-748 /2022-CX (WZ) /ASRA/MUMBAI DATED 27.07.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant: M/s. Advance Surfactants India Ltd.,
Survey No. 380/1/1,
Village:- Galonda,
Jaripada, Silvassa.

Respondent :The Commissioner of C.Ex, Customs & Service Tax
Daman

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. VAD-EXCUS-003-APP-21 TO 55/30.01.2015 dated 30.01.2015 passed by the Commissioner, Central Excise, Customs & Service Tax, Vadodara, Appeals-III

ORDER

The Revision Application has been filed by M/s. Advance Surfactants India Ltd., Survey No. 380/1/1, Village Galonda, Jaripada, Silvassa (hereinafter referred to as the 'applicant') against the Orders-in-Appeal Nos. VAD-EXCUS-003-APP-21 to 55/30.01.2015 dated 30.01.2015 passed by the Commissioner, Central Excise, Customs & Service Tax, Vadodara, Appeals-III.

2. The facts of the cases in brief are that the applicant is engaged in the manufacture of excisable goods falling under Chapter 28 and 34 of CETA, 1985. The applicant had filed 35 rebate claims totally involving an amount of Rs. 80,52,932/- in respect of finished goods viz. Linear Alkyl Benzene Sulphonic Acid cleared for export out of India on payment of duty under Rule 18 of Central Excise Rules 2002. These exports were made under Advance Authorization Scheme governed by Customs Notification No. 99/2009-CUS Dated 11.09.2009. The department sought to reject the said rebate claims on the ground that there is absolute bar in the said Notification regarding availment of rebate of duty paid on the goods exported under Rule 18 of Central Excise Rules, 2002. Further the department also sought to reject six rebate claims (OIO No. 335 to 340/DC/SLV-IV/rebate/2014-15 dated 28.04.2014) on the grounds that the claims were filed after the expiry of period of one year time period, as stipulated in Section 11B of the Central Excise Act, 1944. After following due process of law, the Original Authority rejected all the thirty five rebate claims on merits vide the impugned Orders-in-Original No. 306 to 340/DC/SLV-IV/rebate/2014-15 dated 28.04.2014.

3. Being aggrieved with the impugned order, the applicant filed an appeal before Commissioner, Central Excise, Customs & Service Tax, Appeals-III, Vadodara. The Appellate Authority vide Orders-in-Appeal Nos VAD-EXCUS-003-APP-21 TO 55/30.01.2015 dated 30.01.2015 upheld the impugned orders and rejected the appeals filed by the applicant. The Appellate Authority made the following observations.

3.1 As regards six claims rejected under Orders-in-Original Nos. 335 to 340/DC/SLV-IV/rebate/2014-15 dated 28.04.2014 which were also rejected as being time barred, there is no dispute that there was delay in filing of these 06

claims ranging from 08 to 11 days beyond prescribed period of one year from the relevant date in terms of section 11B of Central Excise Act and regarding the request of the applicant that the delay of filing these claims be condoned, there is no such provision in section 11B of Central Excise Act for condonation and instead. the mandatory requirement of Section 11B has not been complied with by the applicant. The Appellate Authority placed reliance on the decision of the Hon'ble High Court of Bombay in the case of Everest Flavours Ltd. [2012-TIOL-285 HC-MUM-CX] and the decision in case of Exclusive Steels Pvt Ltd [2011 (267) ELT 586 (Guj)] by the Hon'ble High Court Gujarat which was (upheld by the Hon'ble Supreme Court [2011 (268) ELT A76(SC)] and also on the following cases

i) Ashwin Fasteners [2010 (258) ELT 174 (Guj)]

ii) B B Chemicals [2012 (280) ELT 581 (GOI)]

iii) Positive Packaging Ind. Ltd [2012 (280) ELT 313 (GOI)]

3.2 On merit of the case, the basic fact that the final products were exported in fulfillment of export-obligations under Notification 99/2009-Cus dated 11.09.2009 The plain reading of the provision of said condition (ix) of Notification No 99/2009-Cus dated 11.09.2009 reveals that export obligation is to be discharged within specified period, by exporting resultant products manufactured and in respect of such exports, facility under Rule 18 or Rule 19(2) of Central Excise Rules, 2002 has not been availed. The facility under Rule 18 includes rebate of duty paid on export goods as well as rebate of duty paid on materials used in the manufacture of such exported goods. The said customs notification debars the applicant from availing complete facility under Rule 18.

3.3 Regarding the applicants' contention about Notification No 93/2004-Cus dated 10.09.2004 and corrigendum dated 17.05.2005, Notification No.93/9004-Cus dated 10.09.2004 governs imports under normal Advance Authorization scheme relating to Para 4.1.3 of Foreign Trade Policy and the Notification No.99/2009-Cus dated 11.09.2009 relates to para 4.1.10 of the Foreign Trade Policy, which deals with Advance Authorization for annual requirement with actual user condition. This shows that the said two different notifications operate on two different fields even though both of them deal with Advance Authorization. The fact remains that Notification No.93/2004-Cus has been amended as contended by the appellant, similar amendment has not been made in the case of Notification

No.99/2009-Cus. Each Notification has to be construed within its precincts and while interpreting notifications, no word can be added to the Notification and the plain reading and meaning should be resorted to.

3.4 That it is settled law that there is no room for intent while interpreting a statute and the words contained therein are to be given clear meaning as held in the case of Trutuf Safety Glass Ind. [2007 (215) ELT 14 (SC)] Ponds India Ltd [2008 (227) ELT 497 (SC)] and Bhalla Enterprises 2004 (173) ELT 225 (SC) and hence the amendment carried out in Notification No 93/2004-Cus cannot be extended to Notification No 99/2009-Cus. and in the instant case the same has not been disputed by the applicant.

3.5 The Appellate Authority has, among others, relied on the following case laws

i) Excon Bldg Material Mfg Co. [2005(186)ELT 263 (SC)]

ii) Parle Exports (P) Ltd [1988 (38) E.L.T. 741 (S.C.)]

iii) Dharmendra Textile Processors [2008 (231) ELT 3 (SC)]

iv) Steel Strips Ltd [2011 (269) E.L.T. 257 (Tri. - LB)]

v) Sonal Garments India Pvt. Ltd., [2012 (280) ELT 305 (GOI)]

3.6 Regarding the plea of the applicant that if the rebate is not allowed to them, they may be allowed to take re-credit of the duty paid on export goods and they would not claim refund under rule 5 of Cenvat Credit Rules, this plea was not raised before the lower authority and the same has not been determined by the adjudicating authority and so does not find merit for consideration of this plea at the Appellate level.

4. Aggrieved by the Order-in-Appeal, the applicant has filed the Revision Applicant on the following grounds

a) That the only ground for denial of rebate claims is that since the applicants have availed the benefit of Notification No. 99/2009-Cus dated 11.09.2009, the Applicants are not eligible for rebate in as much as condition No. (ix) of the said Notification has been contravened is incorrect

b) That there has been never an intention of the Government to bar claiming of rebate of duty paid on export of finished goods where Advance

Authorization/Advance License scheme has been availed and there is no double benefit involved in such a case.

c) That the notification No 99/2009-Cus dated 11.09.2009 is conditional in nature and contained condition that rebate is not to be claimed on the input used to manufacture final product and restricts rebate claim on the input and not on the final product whereas in the instant case the rebate was claimed of the duty paid on the final product. Therefore, no condition laid down under notification No. 99/2009 custom is violated.

d) That the rebate of duty paid on final products exported under Rule 18 and export of products without payment of duty in terms of Rule 19(1) are mutually exclusive. Similarly, rebate of duty paid on materials used in manufacture of export products in terms Rule 18 and procurement of materials for manufacture of export products in terms of Rule 19(2) are mutually exclusive..

e) That the judgement of the Hon'ble Supreme Court in the case of HPCL vs. CCE [1995(77) ELT 256 (SC)] it was held that Rule 13 is to be read in conjunction with Rule 12 and as complementary to Rule 12, and the same was relevant to the instant case.

f) That Historically also, schemes relating to Advance License/ Advance Authorization have been allowing rebate of duty paid on final products exported in addition to Advance License, under various notifications.

g) That since the applicant has neither availed rebate of duty paid on inputs used in the manufacture of export products not the Applicants have obtained duty free inputs under Rule 19(2), the rebate of duty paid on the export of finished products has been correctly claimed.

h) That anamolies pertaining to allowing rebate on finished goods and restricting the bar only in respect of input rebate were corrected by issue of corrigendum's eg. Notification No.43/2002-Cus dated 19.4.2002 (Corrigendum dated 29.11.2002), 93/2004-Cus dated 10.09.2004 (Corrigendum dated 17.05.2005) and or in the original notifications itself eg Notification No. 40/2006

Cus dated 1.5.2006, 96/2009-Cus dated 11.09.2009 and 98/2009-Cus dated 11.09.2009. Somehow, this anomaly/ slip could not be corrected in the present Notification No. 99/2009-Cus.

i) That the intention of the Government is clear from the Circular No. 26/2009-Cus., dated 30-9-2009, wherein there has been no intention of the revenue to put a bar of rebate of duty paid on final product exported and has been a bar only in respect of duty paid on inputs used in the manufacture of export products.

j) That the issue has been decided by the Hon'ble Tribunal vide Final Order No. A/1536-1538/13/CSTB/C-1 dated 30.05.2013 and pronounced on 17.07.2013 in the case of Indorama Synthetics (1) Pvt. Ltd. vs. CCE Nagpur wherein the revenue contented that two Notifications No. 93/2004-Cus and 94/2004-Cus. Despite noting the contention of the revenue, the Hon'ble Tribunal has held in favour of the exporter assessee. That the same would be equally apply to present Notification No. 99/2009-Cus also since it is identical to Notification No. 94/2004-Cus. By applying the reasoning of the Hon'ble Tribunal, nothing remains in the case of the Department and the rebate is liable to be granted to the Applicants with interest.

k) That in the case of Unilink Pharma Private Limited, the department has accepted the order of the Commissioner (Appeals) Chennai with regard to Notification No. 94/2004-Cus (identical to Notification No. 99/2009-Cus) and thus the issue stands settled. The law is well settled that there cannot be any discrimination between the assessees similarly placed.

The applicant has placed reliance on the following case laws in support of their contention

i) Damodar J. Malpani vs. CCE [2002 (146) ELT 483 (SC)]
ii) Mallur Siddeswara Spg. & Wvg. Mills Vs CCE [2004 (166) ELT 154 (SC)]
iii) Quinn India Ltd. vs. CCE [2006 (198) ELT 326 (SC)]
iv) SPL Siddhartha Ltd. vs. CCE [2006 (204) E.L.T. 135 (Tri. - Del.)]
v) Vishnu Traders Vs. State of Haryana [1995 Supp (1) SCC 461]
vi) Fitwell Fastner (India) Pvt. Ltd. vs. CC [1993 (68) E.L.T. 50 (Cal.)]
vii) Unipatch Rubber Ltd. vs. CCE [2011 (272) E.L.T. 340 (S.C.)]
viii) Steel Authority of India vs. CC [2000 (115) E.L.T. 42 (S.C.)]

ix) Faridabad CT Scan Centre vs. DGHS [1997 (95) E.L.T. 161 (S.C.)]
x) Darshan Boardlam Ltd. Vs. U.O.I. [2013 (287) E.L.T. 401 (Guj.)]

l) That Rule 19(1) allows them to clear the finished excisable goods without payment of duty for exports and the fact that the goods were exported in the present case is not disputed. In such a scenario, the duty paid by the applicants is otherwise was not payable by the applicants. Department cannot collect the duty on exports and thus the same is otherwise refundable to the applicants.

m) That violation of condition of Notification No. 99/2009-Cus disentitles assesses of exemption from customs duty. It does not mean that rebate of duty paid on export of finished goods would be disentitled as there is no provision under Rule 18 of the Central Excise Rules, 2002 or any other Central Excise Provision that rebate of duty paid on export of finished products would not be available.

n) That they submitted that the case law of Alcobex Metals Ltd. [2013 (291)ELT 129(GOI)] wherein the Revisionary Authority had rejected the rebate claim of the applicant on the same issue, had been cited before the Tribunal in the case of Indorama Synthetics (1) Ltd. However, the Tribunal still held the case in favour of the appellant.

(o) That Circular No. 26/2009-Cus dated 30.09.2009 had not been cited before the Revisionary Authority in the case of Sonal Garments India Pvt. Ltd. [2012 (280)ELT 305(GOI)] & Alcobex Metals Ltd. [2013(291)ELT 129(GOI)]. For these reasons and also that the Department had accepted other decisions which were in favour of assessees, these two decisions are distinguishable.

(p) That they submitted that they were also entitled for interest on the rebate claims under Section 11BB of the CEA, 1944

5. Personal hearing was scheduled in this case on 12.10.2021, 20.10.2021, 18.11.2021, 25.11.2021 and 16.12.2021. However, no one appeared before the Revision Authority for personal hearing on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

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

6.1 Government notes that in the instant case the admissibility of rebate claims filed under Rule 18 of the CER, 2002 of excise duty paid on finished goods exported in discharge of export obligation under Advance Authorization Scheme for annual requirement and whether six rebate claims are hit by limitation of time is in question. On merits the issue involved in the present case is whether rebate claim of central excise duty paid on export goods would be admissible when the condition (ix) of Notification No. 99/2009-Cus dated 11.09.2009 providing for exemption to raw materials imported against Advance Authorization specifically bars the availment of facility of rebate of duty paid on goods exported under Rule 18 of the CER, 2002

6.2 Government notes that six claims filed by the applicant under ARE 1 No 137/12-13 dated 31.12.2012, 138/12-13 dated 02.01.2013, 139/12-13 dated 02.01.2013, 140/12-13 dated 02.01.2013, 141/12-13 dated 02.01.2013 and 142/12-13 dated 02.01.2013 were rejected by the adjudicating authority vide Orders in original No 335 to 340/DC/SLV-IV/rebate/2014-15 dated 28.04.2014 as being time barred. The said orders were upheld by the Appellate Authority.

6.3 Government notes that Section 11B of the Central Excise Act, 1944 prescribes time limit of one year to make an application for refund which includes rebate of any duty of excise on excisable goods exported out of India. The relevant portions of Section 11 B of the Central Excise Act, 1944 are as under

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or

paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

"Explanation. *- For the purposes of this section, -*

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India

B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) .....;

6.4 Government notes that the in the case of the six ARE1's there is a delay in filing the claims and the rebate claims have been filed beyond stipulated period of one year from the date of shipment as envisaged under Section 11B of the Central Excise Act, 1944 and the same were hit by time limitation.

6.5 Government also notes that the applicant in the revision application has not filed any arguments against the rejection of the rebate claims on account of limitation of time but has contested the rejection of the rebate claims on merit.

6.6 Government finds the decision of the Appellate Authority to hold these six claims to be inadmissible as they were filed after more than one year from the date of export and hence hit by limitation, to be legal and proper.

7. As regards the question of admissibility of rebate claims filed under Rule 18 of the CER, 2002 of excise duty paid on finished goods exported in discharge of

export obligation under Advance Authorization Scheme for annual requirement The issue involved in the present case is whether rebate claim of central excise duty paid on export goods would be admissible when the condition (ix) of Notification No. 99/2009-Cus dated 11.09.2009 providing for exemption to raw materials imported against Advance Authorization specifically bars the availment of facility of rebate of duty paid on goods exported under Rule 18 of the CER, 2002. The text of condition (ix) is reproduced below for reference.

> *"(ix) that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed:*
>
> *Provided that an Advance Intermediate authorization holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.1.3 (ii) of the Foreign Trade Policy;"*

7.1 The Notification No. 99/2009-Cus dated 11.09.2009 has been issued in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 to exempt the materials imported into India against an Advance Authorization from the whole of the duty of customs and the whole of the additional duty subject to specified conditions. A cursory reading of the condition would reveal that the facility of rebate under Rule 18 would not be available to a holder of Advance Authorization availing the benefit of Notification No. 99/2009-Cus dated 11.09.2009. The arguments of the applicant regarding the bar applying only to raw materials, that the condition should be equated with Rule 19(2) in so far as the embargo in respect of rebate under Rule 18 is concerned are not based on correct appreciation of law. The applicant has also asserted that the Advance Licence Scheme and the Advance Authorization Scheme are both similar and therefore they cannot have different conditions is again an assumption. It is now settled law that exemption notifications are to be construed strictly. Once the applicant has opted for the benefit of an exemption notification, strict interpretation is to be given to the

words contained therein. The contentions of the applicant that the bar on claim of rebate applies only to raw materials and that the bar is limited to only the part of Rule 18 which runs parallel to Rule 19(2) are at best speculative interpretation. The words contained in the notification belie these assertions. The assertions of the applicant with regard to the notifications historically having allowed rebate on finished goods and therefore cannot bar such rebate now is again presumptive.

7.2 It is interesting to note that the grounds for revision filed by the applicant take note of the corrigendums and amendments effected in various other exemption notifications for Advance Licence and Advance Authorization holders. The applicant has then gone on to state that somehow this "anamoly/slip" could not be corrected in Notification No. 99/2009 Cus dated 11.09.2009. This submission is virtually an admission that they are in the knowledge of the fact that they cannot claim rebate of duty paid on finished goods. These facts bear out that the applicant is fully aware that they are not entitled to claim rebate of duty paid on finished goods. However, inspite of being in the knowledge of the fact that no corrigendum had been issued in respect of Notification No. 99/2009-Cus dated 11.09.2009, the applicant has chosen to file rebate claims for refund of duty paid on finished goods exported by them.

7.3 The applicant has placed reliance upon the decision of the Hon'ble CESTAT in the case of Indorama Synthetics (I) Ltd. vs. CCE & C. Nagpur [2013(296)ELT 411 (Tri-Mum)] vide CESTAT Final Order No. A/1536-1538/13/CSTB/C-I dated 17.07.2013. In that case, the Tribunal had after applying the principle of ejusdem generis concluded that Rule 18 and Rule 19(2) have to be read in conjunction to arrive at a contextual understanding of the condition no. 8 and that the bar under condition no. 8 is to be understood as relating to bar of rebate on inputs used and not rebate of duty on final products exported. It is observed that the said decision of the CESTAT has been appealed against before the Hon'ble Supreme Court and the Civil Appeal No. 3343 of 2014 filed by the Commissioner of Central Excise & Customs has been admitted by the Apex court. In this regard, the Government seeks to place reliance upon the judgment of the Hon'ble Supreme Court in the case of Union of India vs. West Coast Paper Mills Ltd. [2004(164)ELT 375(SC)]. The relevant portions of the judgment are reproduced below.

"14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.

15. Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the Court of Appeal."

"38. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit."

7.4 In the case of M/s Indorama Synthetics (1) Ltd., the Hon'ble Supreme Court has admitted the Civil Appeal filed by the Commissioner of Central Excise & Customs against CESTAT. The decision of the Tribunal is clearly in jeopardy and its correctness is in doubt. Therefore, the decision of the Tribunal can no longer be followed as a binding precedent.

7.5 The question that precedes all else is whether the bar on claiming rebate under Notification No. 99/2009-Cus dated 11.09.2009 would have bearing on the rebate claim filed by the applicant. Government notes that the exporter is very well aware of the fact that they are exporting the goods in discharge of export obligation of advance authorization. The applicant has accounted for the said exports towards discharge of export obligation under advance authorization and therefore allowing them rebate would clearly be in the nature of allowing double benefit. Needless to say, the intention of the Government while instituting a scheme cannot be to allow double benefit. Since the Rule 18 and Rule 19(2) are specifically mentioned in Notification No. 99/2009-Cus dated 11.09.2009, the benefit available under these

rules is to be read in conjunction with the said Notification. There being a specific embargo on Rule 18 in condition (ix) of Notification No. 99/2009-Cus dated 11.09.2009 and since the benefit of the said notification is also being availed in terms of completing the export obligation, it would follow that rebate would not be admissible. The mention of Rule 18 in the notification without any caveat and the knowledge of the fact that no corrigendum had been issued to narrow down the embargo on Rule 18 under Notification No. 99/2009-Cus dated 11.09.2009 leaves no scope for interpretation.

7.6 Notification No. 99/2009-Cus dated 11.09.2009 has an exacting reference to Rule 18 which is undoubtedly conscious and deliberate. Pertinently, various other notifications issued to grant exemption for import of raw materials for the benefit of Advance Licence holders and Advance Authorization holders have been corrected by issue of corrigendum and in some others amendments have been effected. However, there are some notifications like Notification No. 99/2009-Cus dated 11.09.2009 which refers to Rule 18 in its entirety by completely barring rebate, i.e. rebate of duty paid on finished goods as well as duty paid on materials used in the manufacture of final product. It would be going beyond the scope of notification to give credence to the submissions of the applicant and presume that the change required to remove the bar on rebate of duty paid on finished products has not been carried out due to oversight. Needless to say, there is no scope for any hypothesis in the interpretation of an exemption notification. The words contained in the exemption notification are to be given full effect without adding or deleting anything.

8. The objective of Rule 18 is to grant rebate on payment of excise duty whereas the objective Notification No. 99/2009-Cus dated 11.09.2009 is to grant exemption from payment of duties on materials imported. The applicant seeks to canvas as permissible the use of the same export transaction for seeking discharge of advance authorization issued under the Customs Act, 1962 as well as for seeking rebate of excise duty. As such, the condition no. (ix) in Notification No. 99/2009-Cus dated 11.09.2009 cannot be viewed in isolation. On a conjoint reading of Rule 18 and the Notification No. 99/2009-Cus dated 11.09.2009, the applicants right to claim rebate of central excise duty is negated by condition no. (ix) of the notification.

8.1 The decision in the case of M/s Sonal Garments India Pvt. Ltd. [2012(280) ELT 305(GOI)] which has been relied upon by the Commissioner (Appeals) while passing the impugned order is squarely applicable to the facts of the case. The decision of the Revisionary Authority in the case of International Tractors Ltd. [2011(267)ELT 429(GOI)] which involved interpretation of condition no. (v) in Notification No. 93/2004-Cus dated 10.09.2004 is another binding precedent. Government further observes that the issue has received the attention of the Hon'ble Delhi High Court in International Tractors Ltd. vs. CCE & ST [2017 (354)ELT 311(Del)].

The relevant text is reproduced.

> *"15. The submission of the petitioner, that availing of the benefit under Rule 18 of CER is not dependent or contingent upon any other notification or obligation, is incorrect. Rule 18 is a rebate, which is subject to such conditions or limitations, as may be stipulated.*
>
> *16. In the present case, there is a categorical reference to Rule 18 in Notification No. 93. It is a conscious and deliberate inclusion, inasmuch as, the policies envisaged in Rule 18 of the CER and Notification No. 93 is grant of rebate on payment of excise and exemption from payment of customs duty respectively. A party cannot be allowed to avail of both the exemptions when clearly, the intention seems to be to permit only one exemption.*
>
> *17. The reference to Rules 18 and 19(2) in Notification No. 93 clearly reveals that non-payment/rebate of either excise duty or customs duty is being granted to encourage exports. Once an export transaction has been used for seeking discharge of Advance Authorizations issued under the CA, the same export transaction cannot be used for seeking rebate of duty under CER, as the rebate, in this case, is subject to the conditions and limitations, as specified in Notification No. 93, which clearly requires that 'the facility under Rule 18 or sub-rule (2) of 19 of CER, 2002' ought not to have been availed. The petitioner's right to seek rebate is clearly limited by this condition and hence it is not entitled to rebate under Rule 18 CER*

Conclusion

18. In view of the above, we find no error in the order dated 24th February, 2014 of the RA. The petitioner is not entitled to the relief prayed for.

19. The writ petition is dismissed, with no order as to costs."

8.2 The judgment of the Hon'ble Delhi High Court has been rendered in context of condition (v) of Notification No. 93/2004-Cus dated 10.09.2004 which provided exemption for import of materials under Advance Licence Scheme. The said condition which is virtually identical to condition (ix) of Notification No. 99/2009-Cus dated 11.09.2009 is reproduced below.

"(v) that the export obligation as specified in the said licence (both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the Licensing Authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002' has not been availed:

Provided that an Advance Intermediate Licence holder shall discharge export obligation by supplying the resultant products to ultimate exporter in terms of Paragraph 4.1.3 (b) of the Foreign Trade Policy;"

It would therefore follow that the interpretation of the condition (v) of Notification No. 93/2004-Cus dated 10.09.2004 and the condition (ix) of Notification No. 99/2009-Cus dated 11.09.2009 would have to be interpreted in a similar manner. The construal of the condition which received the attention of their Lordships can be directly applied to the case of the applicants to deduce that the applicants are not eligible for rebate.

9. In the case of International Tractors Ltd., the High Court has very categorically held that once a transaction has been used for seeking discharge of Advance Authorizations issued under the Customs Act, 1962, the same transaction cannot be used for seeking rebate of duty under Rule 18 of the CER, 2002. It has further been held that the condition under the notification that rebate under Rule 18 ought

not to be availed would disentitle them from making any claim for rebate. The Special Leave Petitions filed by M/s International Tractors Ltd., before the Supreme Court against the judgment of Hon'ble Delhi High Court have also been dismissed on 11.09.2019. By virtue of the dismissal of the SLP's filed by International Tractors Ltd. before the Hon'ble Supreme Court on 11.09.2019, the issue has attained finality. The judgment of the Hon'ble High Court having been upheld by the Hon'ble Supreme Court is a contemporaneous exposition of the law and hence is a binding precedent. Thus in view of the discussions above the rebate claims filed by the respondent are held to be inadmissible.

10. In view of the above discussions, Government holds that the Appellate Authority has rightly rejected the appeals filed by the applicant. Government does not find any infirmity in the Orders-in-Appeal Nos. VAD-EXCUS-003-APP-21 to 55/30.01.2015 dated 30.01.2015 passed by the Commissioner, Central Excise, Customs & Service Tax, Vadodara, Appeals-III and therefore upholds the impugned Orders-in-Appeal.

11. The Revision Applications filed by the applicant are rejected being devoid of merits.

Shrawan 27/7/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER NO. 714-748 /2022-CX (WZ) /ASRA/MUMBAI DATED 27.07.2022

To,

M/s. Advance Surfactants India Ltd.,
Survey No. 380/1/1,
Village:- Galonda,
Jaripada, Silvassa.

Copy to :

1. The Commissioner of CGST & Central Excise, Daman, GST Bhavan, RCP Compound. VAPI-396191.
2. The Commissioner of GST & CX, Surat Appeals, 3rd floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat- 395 017.

3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.
5. Spare copy.