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GOVERNMENT OF INDIA
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DEPARTMENT OF REVENUE

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

F.No.195/170/2015-RA/3930 Date of Issue: 05.09.2022

ORDER NO. 844/2022-CX (WZ)/ASRA/MUMBAI DATED 30.08.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicants : M/s DCM Bearings Pvt Ltd ,
Survey No 166, Plot No 18,
Santidham Main Road, NH 27,
Veraval (Shapar) Rajkot

Respondents : Commissioner, Central Excise, Rajkot

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No: RAJ-EXCUS-000-APP-283-14-15 dated 13.03.2015 passed by the Commissioner (Appeals-III), Central Excise, Rajkot.

ORDER

This Revision Application is filed by M/s DCM Bearings Pvt Ltd , Survey No 166, Plot No 18, Santidham Main Road, NH 27, Veraval (Shapar) Rajkot (hereinafter referred to as "the applicant") against the Order-in-Appeal No. RAJ-EXCUS-000-APP-283-14-15 dated 13.03.2015 passed by the Commissioner (Appeals-III), Central Excise, Rajkot

2. The facts of the case briefly stated are that the applicant who was registered with Central Excise had cleared 1392 nos. of bearings valued at Rs. 5,65,738/-, under ARE-1 No.16/2013-14 dated 18.06.2013 through merchant exporter M/s. B. K. Exports and filed a rebate claim for Rs.69,926/-, on 01.05.2014. The lower adjudicating authority vide letter F. No. V/18 - 01/ REF/ 2014-15 dated 18.06.2014 communicated to the applicant that on scrutiny of documents, it was observed that the goods were removed from the factory for export on 18.06.2013 and as per the endorsement made by the Customs Authority in Part-B of the ARE-1, the goods were exported on 19.12.2013. As the goods had been exported beyond six months from the date of removal from the factory, the same was hit by limitation prescribed under Rule 18 of the Central Excise Rules, 2002 and the rebate claim was inadmissible.

3. Being aggrieved, the applicant filed an appeal before the Commissioner (Appeals –III), Central Excise, Rajkot on the following grounds

3.1 That the goods were cleared for export under ARE 1 No.16/2013-14 dated 18.06.2013, shipping bill No.8765535 dated 03.12.2013 was filed and 'Let Export Order' was given on 04.12.2013 and goods were sealed by the Customs Authorities on 08.12.2013. As per the endorsement by the Customs authorities on reverse side of ARE-1, vessel left on 19.12.2013 and they filed the claim on 01.05.2014.

3.2 That the adjudicating authority failed to appreciate that shipping bill was filed within 6 months the 'Let Export Order' was issued on 04.12.2013 and container was sealed on 08.12.2013, both which were within six months and considering the date of export as 19.12.2013 was not correct as after examination and loading of cargo, custody of goods lies with the Department and the applicant had no control over the sailing of vessel. That as the time taken for sailing of vessel by its owner is beyond

the control of the applicant it could be stated that goods had been exported well within the statutory time limit prescribed under rule 18 of the Central Excise Rules, 2002.

3.3 That the rejection of rebate claim on the ground of limitation was not correct.

3.4 That limitation prescribed under Section 11B of the Central Excise Act, 1944 cannot always be made applicable when the claim was filed under Notification No.19/2014-CE.

3.5 That there was no dispute about export of goods and duty payment and all the procedures had been followed as prescribed under relevant notification and since the same had not been challenged by the adjudicating authority the rebate claim was admissible to them.

The applicant relied upon the following case laws in support of their contention

i) Collector Land Acquisition, Anantnag & Another Vs. MST Katiji & Others [1987 (28) ELT 185 (SC)]

ii) Dorcas Market Makers Pvt. Ltd. [2012 (281) ELT 227 (Mad-HC))

4. The Appellate Authority vide Order-in-Appeal No. RAJ-EXCUS-000-APP-283-14-15 dated 13.03.2015 rejected the appeal and made the following observations

4.1 That based on ratio of the judgements in the case of Raghunandan Syntex [2010(01)LCX 0451], Ramlaks Exports Pvt Ltd [2010(10) LCX 0274], Rajasthan Spg, and Wvg Mills Ltd [1995(05) LCX 0105] and Eagle Flask Industries Ltd [2004(09) LCX 0235] it could be concluded that the exportation of goods was required to be made within stipulated time limit prescribed under the provisions of the Central Excise Rules, 2002 and relevant Notification and this being a statutory requirement, it could not be equated as a procedural lapse, which could be condoned. The ratio of aforesaid judgments being applicable in the present case, the applicant had not complied with the provisions of relevant Rule and Notification and were not eligible for rebate.

4.2 That the applicant was aware of date(s) of assessment, examination, loading etc., and that the time limit for exportation of goods was approaching and could have applied before the Competent Authority for extension of time limit with the correct

and factual position. That these lapses could not be considered to be procedural lapse and the requirements / safeguards / procedure / time limit mentioned in the relevant Rule and Notification are required to be followed strictly. Non compliance thereof clearly made the applicant ineligible for rebate claim.

5. Aggrieved by the said Order-in-Appeal, the applicant filed the instant Revision Application on the following grounds

5.1 That the appeal has been rejected without going into the facts for not applying for the extension from the Commissioner of Central Excise beyond the six months period and only on procedural grounds.

5.2 That in the present case the applicant was under reasonable belief that the goods cleared from the factory on 18.06.2013 and same were loaded and sealed on 08.12.2013 by the customs officer were within six months period and hence not applied for extension and hence it was a procedural lapse. Also the vessel left the port on 19.12.2013 which was not within their control and hence the claims were not time barred

5.3. Limitation prescribed under Section 11B cannot always be made applicable when the claim is filed under Notification No. 19/2004-CE(NT).
Reliance has been placed on the judgement dated 23.12.2011 of the Hon'ble High court of Madras passed in the case of Dorcas Market Makers Pvt. Ltd., Chennai, reported in 2012 (281) ELT 227 (Mad-HC).

5.4. That there was no dispute about the export of the goods or duty payment thereof and the procedure was followed as prescribed under the relevant notification and the documents or procedure were not been challenged by the Appellate Authority

6. Personal hearing in this case was scheduled for 11.08.2021, 18.08.2021, 15.12.2021 and 21.12.2021. However, no one appeared for the hearings on any of the scheduled dates. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the records available.

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

7.1 On perusal of records, Government observes that the applicant had cleared goods for export under ARE-1 No.16/2013-14 dated 18.06.2013 through merchant exporter and filed a rebate claim for Rs.69,926/-, on 01.05.2014. The rebate claim was returned back by the lower adjudicating authority as it was observed that the goods were removed from the factory for export on 18.06.2013 and as per the endorsement made by the Customs authority in Part-B of the ARE-1, the goods were exported on 19.12.2013 and were hit by limitation prescribed under Rule 18 of the Central Excise Rules, 2002, as the goods were exported beyond six months from the date of removal from the factory. The Appellate Authority rejected the appeal of the applicant.

7.2 Government notes that the applicant has reasoned that the basic condition of Rule 18 of the Central Excise Rules, 2002 was satisfied as the goods were actually exported on payment of duty and non adherence to the time stipulation was a procedural infraction and the rebate claim should not be rejected on technical grounds or for procedural lapses. The applicant has also averred that limitation under Section 11B of CEA, 1944 cannot be made applicable when the claim is filed under Notification No 19/2004 – CE (NT) dated 06.09.2004 and has relied upon the judgement of the Hon'ble High Court , Chennai in the case of Dorcas Market Makers Pvt Ltd [2012(281) ELT (Mad-HC)

7.3 Government notes that there are many orders of Government of India wherein it is held that the limiting condition of goods to be exported within six months of clearance from the factory and requirement of permission by authority for extension of time, is a statutory and mandatory condition under Notification No. 19/2004-C.E. dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 and as a result, rebate is not allowed for violation of the said mandatory conditions.

7.4 In Order No. 1228/2011-CX, dated 20-9-2011 of Kosmos Healthcare Pvt. Ltd.[2013 (297) E.L.T. 465 (G.O.I.)], Government notes that the rebate claim was denied on the grounds that *"Clause 2(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 stipulates that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture, which has been violated by the applicant; that they had not made any application for extension of time-limit before proper authority; that they had not produced any permission*

granting extension of time limit from competent authority till date; that the non-compliance of a substantive condition of Notification cannot be treated as a procedural lapse to be condoned". This Order No. 1228/2011-CX, dated 20-9-2011 was challenged by Kosmos Healthcare Pvt. Ltd. before Hon'ble High Court Calcutta vide Writ Petition No. 12337(W) of 2012.

7.5 The Hon'ble High Court Calcutta while remanding back the case to the Revisionary Authority vide its Order dated 19.09.2012 observed as under:

> *"21. On a reading of the Notification No. 40/2001 there is nothing to show that the time stipulation cannot be extended retrospectively, after the export, having regard to the facts of a particular case. The benefit of drawback has, in numerous case, been allowed notwithstanding the delay in export. This in itself shows that the respondent authorities have proceeded on the basis that the time stipulation of six months is not inflexible and the time stipulation can be condoned even at the time of consideration of an application for refund/drawback.*
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> ....
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> ....
>
> *28. When there is proof of export, as in the instant case, the time stipulation of six months to carry out export should not be construed within pedantic rigidity. In this case, the delay is only of about two months. The Commissioner should have considered the reasons for the delay in a liberal manner.*
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> *29. It would perhaps be pertinent to note that an exporter does not ordinarily stand to gain by delaying export. Compelling reasons such as delay in finalization and confirmation of export orders, cancellation of export orders and the time consumed in securing export orders/fresh export orders delay exports.*
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> *30. As observed above, the notification does not require that extension of time to carry out the export should be granted in advance, prior to the export. The Commissioner may post facto grant extension of time.*
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> *31. What is important is, the reason for delay. Even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed. If there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended. In my view, in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports.*
>
> *32. Of course, in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned.*

33. The impugned revisional order is set aside and quashed. The Respondent No. 3 is directed to decide the revisional application afresh in the light of the observations made above."

7.6 Upon perusal of Order Hon'ble High Court Calcutta referred supra, Government observes that Hon'ble High Court has interalia observed that the *"Notification No.40/2001 does not require that extension of time to carry out the export should be granted in advance, prior to the export; that the Commissioner may post facto grant extension of time; that what is important is, the reason for delay; that even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed; that if there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended; that in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports"*. Government further observes that the Hon'ble High Court in the order has further noted that, *"in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned"*.

7.7 In the instant case, Government does not find anything on record indicating that the applicant had applied for extension of time in respect of delayed exports, either before or even after carrying out exports explaining the reasons for the delay to the Competent Authority. Government, taking into account the directions of Hon'ble High Court, Calcutta is of the considered opinion that in the absence any application for extension of time explaining sufficient cause for delay to the Competent Authority by the applicant, before filing the rebate claim or even before filing an appeal before the Appellate Authority, delay cannot be condoned.

8. Further, Government finds it pertinent to reproduce the relevant part of the Order of Hon'ble High Court of Judicature at Bombay dated 15.09.2014 dismissing the Writ Petition No. 3388 of 2013, filed by M/s Cadila Health Care Limited [2015 (320) E.L.T. 287 (Bom.)] and upholding the Order-in-Original dated 23.12.2009 which is as under:-

2. The concurrent orders are challenged on the ground that there was compliance with the notification and particularly the condition therein of export from the factory of manufacturer or warehouse. Though Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6th September, 2004 requires that the excisable goods shall be exported within six months from the date on which it were cleared for export from the factory of manufacture or warehouse, Mr. Shah would submit that the condition is satisfied if the time is extended and it is capable of being extended further by the Commissioner of Central Excise. In the present case, the power to grant extension was in fact invoked. Merely because the extension could not be produced before the authority dealing with the refund/rebate claim does not mean that the claim is liable to be rejected only on such formal ground. The notification itself talks of a condition of this nature as capable of being substantially complied with. The authority dealing with the claim for refund/rebate could have itself invoked the further power and granted reasonable extension.

3. We are unable to agree because in the facts and circumstances of the present case the goods have been cleared for export from the factory on 31st January, 2005. They were not exported within stipulated time limit of six months. The application was filed with the Jurisdictional Deputy Commissioner of Central Excise/Assistant Commissioner of Central Excise much after six months, namely, 17th June, 2005 and extension was prayed for three months upto 31st October, 2005. The goods have been exported not relying upon any such extension but during the pendency of the application for extension. The precise date of export is 9th September, 2005. The Petitioners admitted their lapse and inability to produce the permission or grant of extension for further period of three months.

4. In such circumstances and going by the dates alone the rebate claim has been rightly rejected by the Maritime Commissioner (Rebate) Central Excise, Mumbai-III by his order which has been impugned in the writ petition. This order has been upheld throughout, namely, order-in-original dated 23rd December, 2009. The findings for upholding the same and in backdrop of the above admitted facts, cannot be said to be perverse and vitiated by any error of law apparent on the face of the record. There is no merit in the writ petition. It is accordingly dismissed.

8.1 Government observes that in the said case, the Hon'ble High Court of Judicature at Bombay, in order dated 15.09.2014, while interpreting the amplitude of condition 2(b) of Notification No 19/2004 dated 06.09.2004 held that the Maritime Commissioner (Rebate), had rightly rejected the rebate claim where permission granting extension could not be produced by the exporter. Inspite of the fact that the petitioner in that case was on a better footing as they had tried to obtain permission

from the Commissioner for extension of time limit of six months, their Lordships did not extend any relief.

8.2 Government observes that the aforesaid High Court order dated 15.09.2014 is a clear instance of treating Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 as a mandatory condition and certainly not a procedural requirement, and violation of which renders Rebate claims inadmissible.

9. Government also relies on GOI Order No. 390/2013-CX dated 17-5-2013 [2014 (312) E.L.T. 865 (G.O.I.)] in Re: Ind Swift Laboratories Ltd. involving identical issue wherein Government held as under:

> *9. Government notes that the Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002 which reads as under :*
>
> *"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow :"*
>
> *As per the said provision, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The Commissioner has discretionary power to give extension of this period in deserving and genuine cases. In this case in fact such extension was not sought. It is obvious that the applicants have neither exported the goods within prescribed time nor have produced any extension of time limit permitted by competent authority. The said condition is a statutory and mandatory condition which has to be complied with. It cannot be treated as an only procedural requirement.*
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> *10. In light of above position, Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The respondents have categorically admitted that goods were exported after six months' time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-C.E. (N.T.), dated 6-9-2004. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-*

C.E. (N.T.) is not complied with. Government accordingly sets aside the order of Commissioner (Appeals) and restores the impugned Order-in-Original."

10. Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 is not rigid and allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional Commissioner for extension of the prescribed time limit. In the instant case there has been failure on the part of an established manufacturer in not applying for extension of time, leave alone obtaining permission from the Competent Authority for extension of time, which cannot be justified.

11. In view of the foregoing discussion and applying the rationale of case laws referred above, Government holds that the applicant is not entitled to rebate of duty in respect of goods not exported within the period of six months of clearance from the factory, in violation of condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004 issued under Rule 18 of the Central Excise Rules, 2002.

12. Government notes that the applicant has also averred that limitation under Section 11B cannot be made applicable when the claim is filed under Notification No 19/2004 – CE (NT) and has relied upon the judgement of the Hon'ble High Court , Chennai in the case of Dorcas market Makers Pvt Ltd [2012(281) ELT (Mad-HC). Government observes that the contention of the applicant is flawed. In the face of the repeated references to rebate in Section 11B and the period of limitation specified under Section 11B of the CEA, 1944, such an averment would be unreasonable. The statute is sacrosant and is the bedrock on which the rules and other delegated legislations like notifications, circulars, instructions are based. An argument which suggests that a notification/circular can reduce the time limit or does not prescribe a time limit for refund of rebate stipulated by Section 11B of the CEA, 1944 cannot be endured. In a recent judgment in a matter relating to GST, the Hon'ble Gujarat High Court had occasion to deal with the powers that can be given effect through a delegated legislation in its judgment dated 23.01.2020 in the case of Mohit Minerals Pvt. Ltd. vs. UOI [2020(33)GSTL 321(Guj.)]. Para 151 of the said judgment is reproduced below.

151. It is a settled principle of law that if a delegated legislation goes beyond the power conferred by the statute, such delegated legislation has to be declared ultra vires. The delegated legislation derives power from the

parent statute and not without it. The delegated legislation is to supplant the statute and not to supplement it."

12.2 Any delegated legislation which derives its existence from the statute cannot stand by itself, much less override the statute.

13. The applicant has placed reliance upon the judgment of the Hon'ble Madras High Court in the case of Deputy Commissioner of Central Excise vs Dorcas Market Makers Pvt. Ltd. (2015-TIOL-820-HC-MAD-CX), although the same High Court has reaffirmed the applicability of Section 11B to rebate claims in its later judgment in Hyundai Motors India Ltd. vs. Dept. of Revenue, Ministry. of Finance (2017(355)ELT 342(Mad.)] by relying upon the judgment of the Hon'ble Supreme Court in UOI vs. Uttam Steel Ltd. [2015(319)ELT 598(SC)). Incidentally, the special leave to appeal against the judgment of the Hon'ble High Court of Madras in Dorcas Market Makers Pvt. Ltd. has been dismissed *in limine* by the Apex Court whereas the judgment in the case of Uttam Steel Ltd. is exhaustive and contains a detailed discussion explaining the reasons for arriving at the conclusions therein.

13.1 Be that as it may, the observations of the Hon'ble High Court of Karnataka in Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru [2020(371)ELT 29(Kar)]] at para 13 of the judgment dated 22.11.2019 made after distinguishing the judgments in the case of Dorcas Market Makers Pvt. Ltd. and by following the judgment in the case of Hyundai Motors India Ltd. reiterate this position.

"13. The reference made by the Learned Counsel for the petitioners to the circular instructions issued by the Central Board of Excise and Customs, New Delhi, is of little assistance to the petitioners since there is no estoppel against a statute. It is well settled principle that the claim for rebate can be made only under section 11B and it is not open to the subordinate legislation to dispense with the requirements of Section 11B Hence, the notification dated 1-3-2016 bringing amendment to the Notification No. 19/2004 inasmuch as the applicability of Section 11B is only clarificatory."

13.2 Similarly, in their judgment dated 27.11.2019 in the case of Orient Micro Abrasives Ltd. vs. UO1|2020(371)ELT 380(Del.)], their Lordships have made categorical observations regarding the applicability of the provisions of Section 11B to rebate claims. Para 14 and 15 of the judgment is reproduced below.

"14. *Section 11B of the Act is clear and categorical. The Explanation thereto states, in unambiguous terms, that Section 11B would also apply to rebate claims. Necessarily, therefore, rebate claim of the petitioner was required to be filed within one year of the export of the goods.*

15. In Everest Flavours Ltd. v. Union of India [2012(282)ELT 481(Bom)], the High Court of Bombay, speaking through Dr. D. Y. Chandrachud, J (as he then was) clearly held that the period of one year, stipulated in Section 11B of the Act, for preferring a claim of rebate, has necessarily to be complied with, as a mandatory requirement. We respectfully agree."

13.3 The Hon'ble High Courts of Karnataka and Delhi have reiterated that limitation specified in Section 11B would be applicable to rebate claims. Government is persuaded by the ratios of judgments of M/s Sansera Engineering Pvt. Ltd. vs. Dy. Commissioner, Bengaluru [2020(371)ELT 29(Kar)] and M/s Orient Micro Abrasives Ltd. vs. UOI[2020(371)ELT 380 (Del.)] which unequivocally hold that the time limit specified in Section 11B of the CEA, 1944 would be applicable to rebate claims.

14. In view of the above discussion, Government holds that the Appellate Authority has rightly rejected the appeal filed by the applicant. Thus, Government does not find any infirmity in the Order-in-Appeal No. RAJ-EXCUS-000-APP-283-14-15 dated 13.03.2015 passed by the Commissioner (Appeals-III), Central Excise, Rajkot and, therefore, upholds the impugned Order-in-Appeal.

15. The Revision Application is dismissed as being devoid of merits.

30/8/22

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

ORDER No. 844/2022-CX (WZ)/ASRA/Mumbai DATED 30.08.2022

To,
M/s DCM Bearings Pvt Ltd ,
Survey No 166, Plot No 18,
Santidham Main Road, NH 27,
Veraval (Shapar) Rajkot

Copy to:

1) The Commissioner of CGST, Rajkot, GST Bhavan, Race Course, Ring Road, Rajkot 360 001
2) The Commissioner (Appeals), Rajkot, 2nd Floor, GST Bhavan, Race Course, Ring Road, Rajkot 360 001
3) ~~Sr. P.~~S. to AS (RA), Mumbai
4) Notice Board
5) Spare Copy.