F. No. 195/954/13-RA
F. No. 195/345-364/14-RA
F. No. 195/159-179/14-RA
REGISTERED SPEED POST AD

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. 195/954/13-RA
F. No. 195/345-364/14-RA
F. No. 195/159-179/14-RA / 5241

Date of Issue: 18.11.19

ORDER NO. 85-126 /2019-CX (WZ) /ASRA/MUMBAI DATED 11.10.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Advance Surfactants India Ltd.
Survey No. 380/1/1,
Village Galonda, Jaripada,
Silvassa – 396 230

Respondent : Commissioner of C. Ex., Customs
& Service Tax, Daman,
2nd Floor, Hani's Landmark,
Vapi-Daman Road, Chala,
Vapi – 396 191

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the OIA No. SRP/212 to 221/VAPI/2013-14 dated 06.08.2013, OIA No. VAP-EXCUS-000-APP-183 to 202-14-15 dated 01.08.2014 & OIA No. VAP-EXCUS-000-APP-510 to 530-13-14 dated 25.02.2014 passed by the Commissioner(Appeals), Central Excise & Customs, Vapi.

ORDER

These revision applications have been filed by M/s Advance Surfactants India Ltd., Survey No. 380/1/1, Village Galonda, Jaripada, Silvassa – 396 230(hereinafter referred to as "the applicant") against OIA No. SRP/212 to 221/VAPI/2013-14 dated 06.08.2013, OIA No. VAP-EXCUS-000-APP-183 to 202-14-15 dated 01.08.2014 & OIA No. VAP-EXCUS-000-APP-510 to 530-13-14 dated 25.02.2014 passed by the Commissioner(Appeals), Central Excise & Customs, Vapi.

2.1 The applicants are engaged in the manufacture of excisable goods falling under chapter 28 and chapter 34 of the CETA, 1985. The applicant filed rebate claims in respect of finished goods cleared for export on payment of duty under Rule 18 of the CER, 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 the CER, 2002. Accordingly, separate SCN's were issued to the applicant. After following due process of law, the adjudicating authority rejected all the rebate claims.

2.2 Aggrieved by the rejection of the rebate claims filed by them, the applicant filed appeals before the Commissioner(Appeals). The applicant filed appeal on the following grounds.

(i) Notification No. 93/2004-Cus dated 10.09.2004 was for advance licence for import consignmentwise and Notification No. 99/2009-Cus dated 11.09.2009 is for import under Advance Authorization for annual requirement with actual user condition. They stated that corrigendum was issued to Notification No. 93/2004-Cus dated 10.09.2004 vide M.F.(D.R.) Corrigendum F. No. 605/50/2005-DBK, dated 17.05.2005 correcting the words and figures "under rule 18"

to be read as "under rule 18(rebate of duty paid on materials used in the manufacture of resultant product)" and that this amendment was applicable to Notification No. 99/2009-Cus dated 11.09.2009.

(ii) that they had exported the finished goods under ARE-1 after payment of duty at the time of clearance and that they had not claimed any rebate on inputs used in the manufacture of finished goods.

(iii) that the provisions of Rule 18 with respect to "material used in the manufacture of or processing of such goods" and Rule 19(2) "for use in the manufacture or processing of goods which are exported" are on par. They claimed that as per Notification No. 99/2009-Cus dated 11.09.2009, it was stipulated that no rebate should be claimed of the materials used in the manufacture or processing of finished goods exported and that this category of goods finds reference both in Rule 18 and Rule 19. They averred that there cannot be any difference or ambiguity between the two rules since both rules are meant for export; one for export on payment of duty and the other for export under bond whereas the remaining conditions and procedures remain the same. They therefore claimed that the corrigendum vide M.F.(D.R.) Corrigendum F. No. 605/50/2005-DBK, dated 17.05.2005 issued to Notification No. 93/2004-Cus dated 10.09.2004 was applicable here.

(iv) that the duty on finished goods has nothing to do with the raw materials whether imported or exempted or dutiable, that when the finished goods manufactured out of goods procured under advance licence are dutiable, it is the option of the exporter either to export under bond or to pay duty and claim rebate.

(v) that the Notification No. 99/2009-Cus dated 11.09.2009 does not bar rebate of duty paid on finished goods but bars the rebate of duty paid on inputs/raw materials used in the manufacture of finished goods because the input is received under exemption under the notification as followed in respect of indigenous goods under Rule 19(2) of the CER, 2002.

(vi) they placed reliance upon the case law of Jubilant Organosys Ltd.[2011(273)ELT 447(GOI)] and Shubada Polymers[2009(237)ELT 623(GOI)] in this regard.

(vii) that rebate is not any kind of incentive but only a reimbursement in keeping with the policy of the Government that not duty should be exported alongwith the goods. They further submitted that procedural mistakes if any need to be condoned in the interest of export so long as there is no loss to revenue.

(viii) they placed reliance on the case laws of Sterlite Industries[2009(236)ELT 143(Tri-Chen)], Suncity Alloys P. Ltd.[2007(218)ELT 174(Raj)], Birla VXL[1998(99)ELT 387], T.I. Cycles[1993(66)ELT 497(Trb)], Banner International Order No. 255/07 dated 27.04.2007 and Circular No. 81/81/94-CX. dated 25.11.1994.

2.3 On taking up the appeals for decision, the Commissioner(Appeals) observed that the issue revolved around the interpretation of condition (ix) of Notification No. 99/2009-Cus dated 11.09.2009; that the plain reading of the condition reveals that the facility under Rule 18 and Rule 19(2) of the CER, 2002 cannot be availed by the holder of Advance Authorization. With reference to the Corrigendum No. 605/20/2005-DBK dated 17.05.2005 issued in respect of Notification No. 93/2004-Cus dated 10.09.2004, Commissioner(Appeals) observed that Notification No. 93/2004-Cus dated 10.09.2004 governs imports under Advance Authorization relating to para 4.1.3 of the FTP whereas Notification No. 99/2009-Cus dated 11.09.2009 deals with Advance Authorization for annual requirement with actual user condition; that the notifications operate in different fields; that the Notification No. 93/2004-Cus dated 10.09.2004 has been amended whereas Notification No. 99/2009-Cus dated 11.09.2009 has not been amended. He placed reliance upon the case laws of Excon Bldg. Material Mfg. Co.[2005(186)ELT 263(SC)], Parle Exports (P) Ltd.[1988(38)ELT 741(SC)] and Dharamendra Textile Processors[2008(231)ELT 3(SC)] to infer that when the wording of a notification is clear then the plain language must be given

effect to. The applicant had placed reliance upon the decisions of the Tribunal in Final Order No. A/1536-1538/13/CSTB/C-1 dated 30.05.2013 in the case of Indorama Synthetics (I) Pvt. Ltd. and the case of Unilink Pharma Pvt. Ltd. to contend that since the orders in these cases had been accepted by the Department, the Department cannot take a different stand in this case, that there cannot be discrimination between similarly placed assessees. In this regard, the Commissioner(Appeals) placed reliance upon the decision of the Larger Bench of the Tribunal in the case of Steel Strips Ltd.[2011(269)ELT 257(Tri-LB)] wherein various judgments of the Hon'ble Supreme Court were discussed to arrive at the conclusion that there was no bar on filing appeal even if the Department had accepted certain decisions.

2.4 Commissioner(Appeals) further averred that there was no room for intendment while interpreting a statute and the words contained are to be given clear meaning. He placed reliance upon the case laws 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 held that the amendment carried out in Notification No. 93/2004-Cus dated 10.09.2004 could not be extended to Notification No. 99/2009-Cus dated 11.09.2009 in the absence of any such intention of the legislature. He further observed that the case laws of Jubiliant Organosys Ltd.[2011(273)ELT 447(GOI)] and Shubhada Polymer Products Pvt. Ltd.[2009(237)ELT 623(GOI)] which had been relied upon by the applicant involved Notification No. 43/2002-Cus which was similar to Notification No. 93/2004. Commissioner(Appeals) held that since no similar amendment had been effected in Notification No. 99/2009-Cus, these case laws were not applicable. Commissioner(Appeals) then placed reliance upon the case law of Sonal Garments India Pvt. Ltd.[2012(280)ELT 305(GOI)] which involved the same issue in terms of Notification No. 94/2004-Cus. He held that the ratio of the decision in the case of Sonal Garments India Pvt. Ltd. was applicable as condition of Notification No. 94/2004-Cus & Notification No. 99/2009-Cus were pari materia. With regard to the pleas of the applicant that if the rebate is not allowed, to allow them to take re-credit of duty paid on export goods and to

be allowed refund under Rule 5 of the CCR, 2004, the Commissioner(Appeals) held that since this plea had been raised before the lower authority and the same had not been determined by the adjudicating authority, he did not find merit for consideration of this plea at this stage of the proceedings. The Commissioner(Appeals) therefore dismissed the appeals filed by the applicant and upheld the respective OIO's.

3. Aggrieved by the OIA's, the applicant has now filed revision applications. The revision applications have been filed on the following grounds:

(a) the only ground for denial of rebate claim is the condition (ix) of Notification No. 99/2009-Cus dated 11.09.2009.

(b) the government had no intent to bar the rebate of duty paid on final product exported under Advance Authorization/Advance Licence Scheme.

(c) they submitted that the notification restricts rebate claim only on inputs/raw materials whereas they have claimed rebate of duty paid on final products.

(d) the element in Rule 18 which deals with rebate of duty paid on final products and Rule 19(1) are pari materia. Similarly the element in Rule 18 which deals with rebate of duty on inputs/raw materials used in the manufacture of export goods and Rule 19(2) are pari materia.

(e) the applicant placed reliance on the judgment of the Hon'ble Supreme Court in HPCL vs. CCE[1995(77)ELT 256(SC)] whereby it was held that Rule 13 is to be read in conjunction with Rule 12 and as complementary to Rule 12.

(f) it was submitted that historically rebate of duty paid on finished goods was allowed under Notification No. 203/92-Cus dated 19.05.1992 & Notification No. 204/92-Cus dated 19.05.1992, Notification No. 31/97-Cus, Notification No. 51/2000-Cus dated 27.04.2000 and Notification No. 48/1999-Cus dated 29.04.1999.

(g) Advance Authorization and Advance Licence are similar schemes. It was contended that the notifications issued thereunder cannot have

different conditions; that an Advance Licence holder can import raw materials under Notification No. 93/2004-Cus or Notification No. 98/2009-Cus and claim rebate of duty paid on final products under Rule 18 and therefore rebate can be claimed on final products exported even if raw materials are imported under Notification No. 94/2004-Cus or Notification No. 99/2004-Cus.

(h) it was averred that after the introduction of the Central Excise Rules, 2002, rebate on inputs & rebate on final products were merged in Rule 18. In certain notifications, there is a specific bar on rebate of duty paid on inputs & therefore the Department has interpreted the reference to Rule 18 as a complete bar on rebate of duty paid on inputs and final products.

(i) Corrigendums issued for notifications on Advance Licence and Advance Authorization barring rebate only in respect of inputs such as in the case of Notification No. 43/2002-Cus & Notification No. 93/2004-Cus were meant for correcting these notifications. Notification No. 40/2006-Cus dated 01.05.2006, Notification No. 96/2009-Cus dated 11.09.2009 and Notification No. 98/2009-Cus dated 11.09.2009 were corrected in the original notifications without recourse to corrigendums. However, historically it was never the intention of revenue to bar rebate on final products.

(j) they referred to Circular No. 26/2009-Cus dated 30.09.2009 to aver that there was no intent to bar rebate of duty paid on final products.

(k) they placed reliance on the CESTAT Final Order No. A/1536-1538/13/CSTB/C-1 dated 30.05.2013 in respect of M/s Indorama Synthetics (I) Ltd. vs. CCE, Nagpur wherein the Tribunal held that Notification No. 94/2004-Cus bars rebate only in respect of inputs used in export goods and not rebate of duty paid on final products.

(l) they averred that there could not be discrimination between similarly placed assessees as Orders in case of other assessees have been accepted by the Department.

(m) since Rule 19(1) allows final products to be cleared without payment of duty, duty paid by the applicant on final products is not otherwise payable and hence is required to be refunded.

(n) violation of condition of Notification No. 99/2009-Cus disentitles assessees from the benefit of the said notification. There are no provisions under Rule 18 or any other provision under central excise law which require the Department to deny rebate.

(o) 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 (I) Ltd. However, the Tribunal still held the case in favour of the appellant.

(p) they submitted 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 for the reason that the Department had accepted other decisions which were in favour of assessees, these two decisions are distinguishable.

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

(r) on the basis of the above grounds, the applicant prayed that the OIA's be set aside with consequential reliefs, that the rebate be allowed with interest, that they may be allowed to take re-credit of the duty.

4. The applicant was granted a personal hearing on 25.05.2015, 26.08.2019 & 07.05.2019. However, none appeared for the applicant. Shri Krishna S. Naik, Assistant Commissioner, Division IX, Customs & Central Excise, Daman Commissionerate appeared on behalf of the Department and stated that the application involves interpretation of condition under Notification No. 99/2009-Cus dated 11.09.2009; that the applicant was seeking segregation of raw materials or finished goods and that the rebate was to be disallowed in totality.

5.1 Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal. 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 is in question. 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;"

5.2 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 pure conjecture. 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.

5.3 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. The applicant has without seeking any clarification from the Department, chosen to claim rebate.

6.1 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 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."*

6.2 In the case of M/s Indorama Synthetics (I) 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.

7.1 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.

7.2 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

refer 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 irrational 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 any words to it. Needless to say, there is no room for intendment in the interpretation of an exemption notification.

8. The objective of Rule 18 is to grant rebate on payment of excise duty whereas the objective of 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.

9.1 The decision in the case of 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."*

9.2 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.

10. 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. In the result, the rebate claims filed by the respondent are held to be inadmissible.

11. In the result, the impugned Order-in-Appeal No. SRP/212 to 221/VAPI/2013-14 dated 06.08.2013, Order-in-Appeal No. VAP-EXCUS-000-APP-183 to 202-14-15 dated 01.08.2014 & Order-in-Appeal No. VAP-EXCUS-000-APP-510 to 530-13-14 dated 25.02.2014 passed by the Commissioner(Appeals), Central Excise & Customs, Vapi are upheld.

12. Revision applications filed by the applicant are rejected being devoid of merits.

13. So ordered.

11/10/19

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

ORDER No. 85-126 /2019-CX (WZ) /ASRA/Mumbai DATED 11.10.2019

To,
M/s Advance Surfactants India Ltd.
Survey No. 380/1/1,
Village Galonda, Jaripada,
Silvassa – 396 230

Copy to:

1. The Commissioner of CGST & CX, Daman Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Surat
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy