

REGISTERED SPEED POST



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

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

F.No. 198/07-11/17 / 1504

Date of Issue:- 01.03.2021

ORDER NO. 98-102 /2021-CEX (SZ) /ASRA/MUMBAI DATED 26.2.2021 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.

Subject:- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli.

Sl. No.	Revision Applications / Order in Appeal No.	Applicant	Respondent
1.	195/07-11/17-RA against OIA No. 58 to 62/2016-TRY (CEX) dated 20.09.2016	Commissioner of Central Excise & Service Tax, Tiruchirappalli-620 001	M/s Sanmar Foundries Ltd. Viralimalai - 621316

ORDER

These Revision Applications have been filed by the Commissioner of Central Excise & Service Tax, Tiruchirappalli (hereinafter referred to as the "applicant") against Orders-in-Appeal passed by the the Commissioner of Central Excise (Appeals-II), Trichirappalli shown at column 5 of Table shown below:

-:TABLE:-

Sl.No.	Revision Application No.	Rebate claim Amount rejected/ disallowed (Rs.)	Rejected vide Order in Original (OIO) No.	OIO set aside vide Order in Appeal (OIA) No.
1	2	3	4	5
1.	198/07-11/2017/RA	1,16,075/-	102/2015-R dated 06.10.2015	OIA No. 58 to 62/2016-TRY (CEX) dated 20.09.2016
2.	-- do --	989/-	112/2015-R dated 29.10.2015	-- do --
3.	-- do --	88,460/-	113/2015-R dated 29.10.2015	-- do --
4.	-- do --	1,998/-	114/2015-R dated 30.10.2015	-- do --
5.	-- do --	1,69,477/-	119/2015 dated 18.11.2015	-- do --
	Total	3,76,999/-		

2. The brief facts of the case are that the respondent, i.e. M/s Sanmar Foundries Ltd. Viralimalai, manufacturers of Industrial Valves of various types and sizes, Stainless Steel Castings, Non-Alloy Steel Castings and machined castings falling under Chapter 73, 84 and 90 of the Central Excise Tariff Act, 1985. The respondent had filed rebate claims under Rule 18 of Central Excise Rules, 2002 on various dates being the duty paid on goods cleared for export from the factory of manufacture viz. Stainless Steel Castings & Non-Alloy Steel Castings, Meter parts, Valves, Actuators and Pipes and Tube Fittings (Swivel), "Identifiable ready to use MCD Parts made wholly of Carbon steel manufactured through casting process", "Valve Accessories" and "Industrial Valves (Cast / Forged body)", exported during 2014.

3. The rebate sanctioning authority rejected rebates claims for the amounts shown at column 3 of above table on the following grounds:

3.1 Reasons for rejection of Rebate to the extent of Rs. 1,16,075/- vide Order in Original No. 102/2015-R dated 06.10.2015 (Sl.No. 1 of the Table above):-

- Description of goods in the ARE-1 is given as Non alloy Steel castings but the same is given in shipping Bill as "Finishing Casting Jacking Pad".

3.2 Reasons for rejection of Rebate to the extent of Rs. 989/-vide Order in Original No. 112/2015-R dated 29.10.2015 (Sl.No. 2 of the Table above):-

- The description of goods removed from the factory is shown as 'Meter Parts' with Chapter heading No. 90269000 in the ARE-1 and in the relevant Shipping Bill and Bill of Lading it was given as 'Idle R to use M/P / Compts made of Stainless Steel Mfd thro Cast Process' with Chapter heading No. 84819090.

3.3 Reasons for rejection of Rebate to the extent of Rs. 88,460/- vide Order in Original No. 113/2015-R dated 29.10.2015 (Sl.No. 3 of the Table above) :-

- In 1 ARE-1, the description of goods in the ARE-1 is given as Non alloy Steel castings but the same is given in the Bill of Lading as "3/4" -1"150/600 SWE BODY MACHINED
- In 1 ARE-1 the description of goods removed from the factory is shown as 'Meter Parts' with Chapter heading No. 90269000 in the ARE-1 and in the relevant Shipping Bill (CETH No 84819090) and Bill of Lading it was given as "Idle R to use M/P / Compts made wholly/predominantly of Stainless Steel Mfd thro Cast Process".
- In 1 ARE-1, the description of goods is mentioned as "valves" with CETH No. 84818030 but in the relevant shipping Bill (CETH No 84819090) & Bill of Lading the same is given as "Idle R to use M/P / Compts made wholly/predominantly of Stainless Steel Mfd thro Cast Process".
- In 1 ARE-1 the description of goods is mentioned as "Actuator" with CETH No. 84799090 but in the relevant shipping Bill (CETH No 76169990)& Bill of lading the same is given as "Cast articles including parts /components of aluminum actuator assembly".
- In 1 ARE-1, the description of goods is mentioned as "Pipes and Tube Fittings" with CETH No.73072200 but in the relevant shipping Bill (CETH No 76169990) & Bill of lading the same is given as "Idle R to use M/P / Compts made wholly/predominantly of Stainless Steel Mfd thro Cast Process".
- In 1 ARE-1, the description of goods is mentioned as "Pipes and Tube Fittings" (Swivel) with CETH No.73072200 but in the relevant shipping Bill (CETH No 84818090) & Bill of lading the same is given as "Industrial Valves (Cast / Forged Body)".
- In 2 ARE-1s, the description of goods is mentioned as "Pipes and Tube Fittings" (Swivel) with CETH No.73072200 but in the relevant shipping Bill (CETH No 73259999) & Bill of lading the same is given as "Idle R to use M/P / Compts made wholly/predominantly of Stainless Steel Mfd thro Cast Process".
- In 1 ARE-1, the description of goods is mentioned as "Pipes and Tube Fittings" (Swivel) with CETH No.73072200 but in the relevant shipping Bill (CETH No 73259999) & Bill of lading the same is given as "Non alloy steel castings".

3.4 Reasons for rejection of Rebate to the extent of Rs. 1,998/-vide Order in Original No. 114/2015-R dated 30.10.2015 (Sl.No. 4 of the Table above):-

- In ARE-1, the description of goods is mentioned as Stainless Steel Castings whereas in Airway Bill it is mentioned as '4" 0367 Bosy (with Bolt holes)'

3.5 Reasons for rejection of Rebate to the extent of Rs. 1,69,477/- vide Order in Original No. 119/2015 dated 18.11.2015 (Sl.No. 5 of the Table above) :-

- In 3 ARE-1s, the description of goods is mentioned as "Pipes and Tube Fittings" (Swivel) with CETH No.73072200 but the same is given in the relevant shipping Bill as "Idle R to use MP Comp MD Predo Stainless Steel Mfd through Casting Process" with CETH No. 73079990.
- In 2 ARE-1s, the description of goods is mentioned as "Pipes and Tube Fittings" (Swivel) with CETH No.73072200 but the same is given in the relevant shipping Bill as "Industrial Valves (Cast / Forged Body)".with CETH No. 84818090.

- In 1 ARE-1, the description of goods is mentioned as "Pipes and Tube Fittings" (Swivel) with CETH No.73072200 but the same is given in the relevant shipping Bill as "Non Alloy Steel Castings" with CETH No. 73079999.

4. Being aggrieved with the said orders, rejecting rebate claims for the reasons mentioned above, the respondent filed the appeals before Commissioner (Appeals). Commissioner (Appeals) vide Orders in Appeal mentioned at column No. 5 of Table at para 1 supra, set aside these Orders in Original and allowed the appeals filed by the respondent.

5. Being aggrieved, the applicant department filed present revision applications against the impugned Orders in Appeal mainly on the following common grounds:

5.1 The order of Commissioner (Appeals) dated 20.09.2016 appears to be not legal and proper as the appellate authority failed to consider the following points:-

(a) In all the ARE-1s and export documents based on which the export incentives are claimed by the assessee, many discrepancies with reference to the description of goods with wrong classification, vessel name, flight details, gross weight net weight, etc., were wrongly declared.

(b) The rebate claims are being an export incentive scheme and the Notification provides for filling of rebate claims by the exporter/claimant which envisages proving that the goods declared in the ARE1s were indeed exported and the onus is not on the department for granting, presumptively.

(c) The decision of the Revisionary Authority, in the case of M/s.Electro Steel Casting Ltd., as reported in 2015(321) ELT150 (GOI) not applicable to the facts and circumstances of the case as in the instant case goods were not cleared under physical supervision of Central Excise Authorities. Export was done by the assessee and no physical supervision was done by the Central Excise Authorities.

(d) The decision of the Revisionary Authority, in the case of M/s.Ran's Pharma Corporation, as reported in 2014(314) ELT953 (GOI) is also not applicable as in the case the goods were procured from a different manufacturer. In the above said decision, the issue in dispute was that the goods cleared from the manufacturer's premises and the goods that were exported by the merchant-exporter from the Air Cargo Complex, Ahmadabad were one and the same. In the issue on hand the goods were manufactured and cleared by the assessee and hence the decision it not applicable to the present case.

(e) In the case of Bhavnagar university vs. Politana Sugar Mills Pvt Ltd., as reported in (2003) 2 SSC 111, the Hon'ble Apex Court has held that "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision." The Hon'ble Supreme Court in the case of CCE Bangalore Vs Srikumar Agencies 2008(232)ELT 577(SC) held that Court decision not statue- Reliance thereon without discussion of facts- Decision not to be relied upon without discussing similarity of facts- Judgements of courts not to be construed as statutes- Circumstantial flexibility, additional or different fact may make a world of difference between conclusions in two cases-Disposal of

cases by blindly placing reliance on a decision not proper". As the facts of the case referred by the appellate authority are different from the present dispute, the decisions rendered therein are not squarely applicable to the case on hand.

(f) The Revisionary authority, CBEC, New Delhi in their order No.103-141/14 CX. Dated 31.3.2014 in respect of appeal of M/s Sanmar Foundries, Viralimalai, against the order of rebate sanctioning authority rejecting rebate claims in respect of ARE1s where description of goods varies between excise documents and export documents held that;

"while preparing ARE 1, the applicant was fully aware that the goods required to be exported and export documents like shipping bill and bill of landing, etc., are to be filed for export. Under such circumstances, it cannot be justified as to how there can be mismatch of description between excise document and export documents. Applicants as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation which he failed to do. Under such circumstances, the rebate claim are rightly held inadmissible."

The above said decision of the Government of India mutandis mutatis applicable to the instant case on hand under dispute and the decision of the Revisionary Authority dated 31.3.2014 is of recent one and the same should have been considered by the appellate authority while deciding the issue.

(g) The mere fact of receipt of foreign exchange is only for corroborative evidence and receipt of the foreign exchange alone does not in any way prove the goods cleared from the factory and exported are one and the same.

(h) The rebate of duty is an export incentive scheme extended to the manufacturers and all safeguards and conditions mentioned in the Notifications are to be scrupulously complied with for sanction of rebate, Further, the Central Excise Rules, 2002 prescribes the details to be available in the Excise invoice and ARE-1s. The description of goods in both must be the same. The shipping bills are filed by the assessee and at the time of preparation of the same they must aware of the description of goods. Assessee cannot mention one description in excise invoice and another description in shipping Bill, when both the documents are prepared by them.

(i) The consignment was not opened for physical examination as evident by the remarks in the Shipping Bills, endorsement by the Customs Officers in the ARE-1s cannot conclusively prove that the goods cleared from factory and exported were one and the same.

6. Personal hearing in this case was held on 08.01.2021 through video conferencing and Ms. Sharanya Vijay. K, Advocate duly appointed by the respondent company appeared online for hearing. She re-iterated their written submissions dated 06.01.2021 and stated that Commissioner (Appeals) has rightly allowed their benefit of rebate as minor errors cannot take away their substantive claim when duty payment, export and all other documentation is in order. Nobody

from the applicant department appeared for the personal hearing. In their written submissions dated 06.01.2021 the respondent company submitted as under:-

6.1 All the cases the goods have been actually exported; goods have left the country and the foreign exchange has also been realised. There is no dispute on any of these aspects.

6.2 The Commissioner (Appeals) had gone into all aspects and has clearly recorded the finding that the rebate has to be allowed since;

(i) Value of goods and description in Shipping Bill and ARE-1 match.

(ii) Value in USD matches across all documents in export invoice, excise invoice, ARE-1 and Shipping Bill.

(iii) Goods have been exported and export proceeds have been received and relevant BRC's are available.

(iv) Even if there is any minor procedural lapses in the documents, that cannot take away the beneficial provisions.

6.3 The alleged defects are only minor and technical in nature. The fact that goods have been exported is never in dispute in respect of these matters.

6.4 The objective of excise rebate under Rule 18 is to ensure that only the goods are exported and the taxes are not exported. Even though there is no requirement for receipt of convertible foreign exchange in Rule 18 this receipt has also been demonstrated. They have already produced all relevant documents establishing the genuineness of the transaction and the same stands well accepted by the Commissioner (Appeals) vide its order. Moreover, the adjudicating authority while passing the Order-in-Original has made a clear observation to the effect that the respondent has exported its goods. That being the case, the department cannot approbate and reprobate as laid down by the Tribunal in the case of Griffin Laboratories Ltd Vs. CC (1989) 41 ELT 613 & Laxindco Steel Pvt Ltd Vs. CCE (2008) 10 STR 527.

6.5 They have satisfied all the conditions specified under the Notification No.24/2011 dated 05.02.2011 issued under Rule 18 which deals with the rebate of duty on export of goods and the same remains undisputed. That being the case, they are rightly eligible for the refund. Also, the relevant documents were endorsed by the proper officer of Customs. The decision of the Hon'ble GOI in Ran's Pharma Corporation case (2014) 314 ELT 953 (G01) & Electro Steel Casting Ltd (2015) 321 ELT 150 (G01) is squarely applicable to their case as the operative portion of the said decision reiterates the well settled position of law that rebate cannot be denied for minor procedural infractions.

6.6 A number of decisions of the Government of India in revision proceedings and the decisions of the Supreme Court on export benefits are relevant to the issue and given below:-

1. In Re. Electro Steel Castings (2015) 321 ELT 150 (GOI),
2. In Re. Socomed Pharma Pvt. Ltd. (2014) 314 ELT 949 (GOI),
3. In Re. Aventis Pharma Ltd (2012) 285 ELT 151 (GOI)

4. In Re AG Enterprises (2012) 276 ELT 127,
5. Suksha International Vs. UOI (1989) 39 ELT 503 (SC),
6. Formica India Vs. Collector of Central Excise (1995) 77 ELT-511 (SC),
7. Mangalore Chemicals and Fertilizers Ltd. Vs. Dy. Commissioner — (1991) 55 ELT 437 (SC),
8. Ford India Pvt. Ltd. Vs. ACCE (2011) 272 ELT 353;
9. Shasun Pharmaceuticals Vs. IV (2013) 291 ELT 189;
10. Union of India Vs. Farheen Texturisers (2015) 323 ELT 104 — Bom SLP Dismissed by Supreme Court in (2015) 323 ELT A23;
11. Zandu Chemicals Ltd. Vs. UoI (2015) 315 ELT 520 (Bom.)
12. Shree Ambika Sugars Ltd. V/s JS (2019) 368 ELT 334-Mad.

The excise duty has been duly paid and rebate was legitimately claimed in accordance with law. Therefore, the application filed by the department against the Order of the Commissioner (Appeals) may be dismissed.

7. Government has carefully gone through the relevant case records and perused the impugned Orders-in-original and orders-in-appeal as well as written submissions dated 06.01.2021 filed by the respondent. As the issue involved in these 5 Revision Applications are similar, they are taken up together and are disposed off vide this common order.

8. Government notes that in all the above cases the adjudicating authority rejected the Rebate Claims filed by the applicant on the ground that there was difference in Tariff Heading (CETH)/description of the exported goods appearing on Excise Invoices / ARE-1s and on Shipping Bill / Bill of Lading and other reasons specified at paras 3.1 to 3.5 supra and hence it could not be established that the same goods which were manufactured and cleared by the applicant were ultimately exported.

9. Commissioner (Appeals) while allowing the appeals filed by the respondent company observed as under :-

05. "In the instant cases, the Department argued that even though the appellants have filed the said 5 rebate 'claims in time and there is no bar under unjust enrichment act, there are discrepancies noticed in the tariff heading adopted in excise documents and export documents produced by the appellants for their claims. Further added that even though the descriptions are correlated between Excise documents and Export documents in Excise invoices, ARE-1s, Shipping Bills and Bills of Lading, however the LAA has rejected the said rebate based on the decision of Revisionary Authority order No.103-141/14-CX dated 31.03.2014 in para 7.10. Whereas it is seen from the records that the appellants has clearly mentioned the description in all the excise documents and export documents, which was also accepted LAA. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization on the, said export proceeds.

The LAA merely rejected the said rebate claims based on the above said Revisionary Authorities Order. Whereas the same Revisionary Authority at a later date in many cases, even for the discrepancies noticed in excise documents and export documents has allowed the rebate claims.....

06. I find that the LAA has placed reliance on the order of the Revisionary Authority Central Board of Excise and Customs, New Delhi in their Order No. 103-141/14-CX dated 31.03.2014 which held that "In respect of revision applications mentioned in SI.No.31, 32, 35, 36, 38 and 39 part of the rebate claims were rejected for the reason amongst other reasons, amongst other reasons that there is a mismatch in description of goods between ARE-1, Shipping Bill of Lading, Government finds that the applicant is a manufacture-exporter. While preparing ARE-1, the applicant was fully aware that the goods required to be exported and export documents like shipping bill and bill of lading, etc. are to be filed for export. Under such circumstances, it cannot be justified as to how there can be mismatch of description between excise documents and export documents. Applicants as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation which they failed to do. Under such circumstances, the rebate claims are rightly held inadmissible." However I find that the orders of the Revisionary Authority subsequently have continued to uphold the principle of correlation between excise documents and export documents. **The Hon'ble Revisionary Authority in the case of M/s. United Phosphorus Ltd reported in [2015 (321) E.L.T. 148 (G.O.I.)] has held that " Export rebate claim - Proof of export -Original/duplicate copies of ARE-1 - Non-submission of - Proof of export may be examined on the basis of collateral evidences - Cross reference of impugned ARE-1 with shipping bill tallies with quantity/weight and description mentioned in export Invoices/shipping bills - ARE-1 endorsed by Customs officer to effect that goods actually exported - Correlation established between export documents and Excise document, hence, export of duty paid goods may be treated as completed - Appellants eligible for rebate claim - Rule 18 of Central Excise Rules, 2002", which is squarely applicable to these cases also. This condition is satisfied as seen on perusal of the documents. Description of the goods covered in A.Nos.93, 96 to 98/ 2015-TRY(CEX)(Rebate) & A.No.01/2016- TRY(CEX)(R), ARE-1 wise as per excise invoice, ARE-1, export invoice , Shipping Bill and Bill of lading is given as an Annexure and correlation between the description in Excise and Export documents is established. Further in all these cases the appellants have exported their goods and received the export proceeds also. Shri. S.Natarajan, Vice-President Business Accounts vide their letter Ref. SFL/1617/Comm.Appeal declaration/060034 dated 12.09.2016 has certified that all the goods covered in the said five appeals have been dully exported and they have received 100% export proceeds in time also. I also find that the R.O has certified the uniformity of item number is maintained by the assessee which has been accepted by the LAA. However rejection of the rebate in these 5 appeals solely on account of the Revisionary Authority Order no.103-141/14-CX dated 31.03.2014 which the LAA has construed as a binding precedent. Further the Department has not put forth any documentary evidences to prove that the said goods has not been exported by the appellant and no export proceeds were received. In the absence of any such evidences**

the subsequent Orders of the Revisionary Authority reaffirming the principle of correlatability, the appellants are eligible for the rebate as mentioned in the said orders. Therefore I find no merits in the orders passed by the LAA and are liable to be set aside.....

10. Government observes that there is no investigation carried out by the department to find out the reason/motive of the respondent in showing different CETH in Excise and Customs documents. There is nothing on record to show that by his acts of omission and commission, the respondent has simultaneously availed some other inadmissible export benefits, so as to outrightly negate claim of rebate. In the instant cases except for mismatch in CETH / Description, there is nothing to show that the goods which left the factory were not exported. In the absence of any evidence adduced by the Department to suggest that the goods exported were not the same goods and not duty paid, the respondent's submissions cannot be brushed aside.

11. It is pertinent to note that to ascertain the queries (*queries as regards different description and CETH No, appearing in various Excise and Customs Documents as stated at paras 3.1 to 3.5 supra*), the Range Officer (R.O.), Viralimali-II Range was directed by the original authority to examine the issue and submit a report. After Verification, the R.O. had certified in all these cases that the documents stated by the assessee were verified and found that the uniformity of item no. maintained by the assessee remains same irrespective of different description quoted for the goods in the Pos/SB/Ex-invoice/Com.Invoice/Bill of Lading/Stock Register in case of clearance made in respective ARE-1 Nos..... Based on this report of the R.O., the Original authority in every Order in Original concluded that *"therefore, the duty paid goods removed vide ARE-1 No/s..... Viz.....(description of goods in ARE-1) document-wise stands linked to that was exported under Shipping Bill/s Nos..... as (description of goods in Shipping Bill)"*. The Original authority also observed that *"in addition to the above, as corroborative evidence, the claimant has submitted the self attested e-BRC copies for the money realized for export of goods made through Shipping Bill/s Nos.(corresponding ARE-1 Nos). The details of the eBRC copies are found tallied with that of the shipping Bill. Therefore, the subject goods removed under the disputed ARE-1s stand document-wise correlated with that of corresponding shipping Bills and the further submissions of respective eBRCs confirms their export status"*.

12. The Original authority, i.e. Assistant Commissioner, Central Excise -II Division, Trichy has also observed in Orders in Original mentioned at column no. 4 of Table at para 1 supra that:-

It is further verified from the Original and duplicate copies of the ARE-1 that particulars given in the Part-B by the Customs Officer for the proof of export tally with the relevant Shipping Bills and Bills of Lading.

13. In RE: Neptunus Power Plant Services Pvt. Ltd.(reported in 2015 (321) E.L.T. 160(G.O.I) in order to examine the issue of corelatibility, Government made sample analysis of the exports covered vide some of the shipping bills and observed that

(iii) Government finds that in Shipping Bill No. 8083985, dated 19-3-2012, there is cross reference at ARE-1s No. 16 & 17 both dated 19-3-2012 and vice-versa. The above mentioned ARE-1s find mention of relevant duty paying invoice No. 815, dated 31-1-2012 and 955, dated 23-2-2012 issued by M/s. Shree Saibaba Ispat (I) Pvt. Ltd., Bhavnagar and M/s Arya Ship Breaking Corporation, Mumbai respectively. Further, description, weight and quantities exactly tally with regard to description mentioned in respective ARE-1s and other export documents including Shipping Bill and export invoices. Since, exported products i.e. the scraps of propeller are less in quantity and each quantity is very high in weight ranging from 500 kgs-5000 kgs, such tallying of marking cannot be brushed aside. As such there are sufficient, corroboratory evidences that goods covered vide impugned excise documents have actually been exported vide impugned export documents. Further, endorsements of Customs Officers at the port of export, on part "B" of said ARE-1s also conclusive support the same observation.

14. Moreover, the basic ingredient of co-relatability as discussed supra have been duly examined by the concerned RO in the instant cases and he has found sufficient correlation (irrespective of different description quoted) in excise and customs documents to suggest that duty paid goods removed vide ARE-1s document-wise stand exported under relevant Shipping Bills. In addition to the above, as corroborative evidence, the Original authority has also accepted that the details of the eBRC copies submitted by the claimant / respondent are found tallied with that of the shipping Bill. Despite the aforesaid correlation/ corroboration, the Original authority has rejected the rebate claims and therefore the Commissioner (Appeals) in his impugned Order has rightly observed that *"the rejection of the rebate in these 5 appeals solely on account of the Revisionary Authority Order no.103-141/14-CX dated 31.03.2014 which the LAA has construed as a binding precedent"*.

15. There are many GOI orders subsequent to Order no.103-141/14-CX dated 31.03.2014 referred above wherein it is held that if on the basis of collateral evidences, the correlation stands established between export documents and excise documents, export of duty paid goods may be treated as completed. In RE : Gimpex Pvt. Ltd. [2020(372)E.L.T.745(G.O.I.) while rejecting the Revision Application filed by the Department, GOI in its Order No. 102/2019-CX dated 18.10.2019 observed as under:-

There is a procedural lapse on the part of the respondent, since CETH on shipping bill has been mentioned wrongly due to oversight. The applicant has not challenged the Bank Realisation Certificate mentioning details relating to invoice no. and date, description of goods, customs authenticated shipping bill, bill of lading and FOB value realized in Foreign Exchange. The fact that the customs preventive officer has certified the export of impugned consignment and remittance has also been received against the said export has not been contested.

Reliance is placed on the judgment of Hon'ble High Court of Bombay in the case of Zandu Chemicals Ltd. v. Union of India wherein the court has held that interpretation of statutes, procedural requirement are capable of substantial compliance, and cannot be held to be mandatory 2015 (315) E.L.T. 520 (Bom.). Further, Government, in the case of Agio Pharmaceuticals Ltd. has held substantial condition of Rule 18 of Central Excise Rules, 2002 are complied with, therefore rebate cannot be denied for minor procedural infraction 2014 (312) E.L.T. 854 (G.O.I.).

16. Government also observes that the Commissioner (Appeals) on the basis of verification of the documents in the instant cases has observed in the impugned Order (reproduced at para 9 supra) that

'Description of the goods covered in A.Nos.93, 96 to 98/ 2015-TRY(CEX)(Rebate) & A.No.01/2016- TRY(CEX) (R), ARE-1 wise as per excise invoice, ARE-1, export invoice, Shipping Bill and Bill of lading is given as an Annexure and correlation between the description in Excise and Export documents is established'.....

"Further the Department has not put forth any documentary evidences to prove that the said goods have not been exported by the appellant and no export proceeds were received. In the absence of any such evidences the subsequent Orders of the Revisionary Authority reaffirming the principle of correlatability, the appellants are eligible for the rebate as mentioned in the said orders".....

Undoubtedly the above observations recorded by the Commissioner (Appeals) based on verification of documents, in the impugned order are irrefutable.

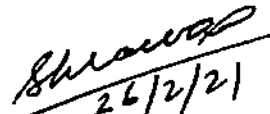
17. In many of its previous Revision Orders, Government has observed that :-

Rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that, an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed

that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the *Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.)* in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in *Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.)*. In many cases of rebate specifically, GOI has viewed that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned".

18. In view of discussion in foregoing paras, Government does not find any reason to interfere with or modify the Orders-in-Appeal No. 58 to 62/2016-TRY (CEX) dated 20.09. 2016 passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli and upholds the same.

19. The revision applications are rejected being devoid of merits.


26/2/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

98-102
ORDER No. /2021-CEX (SZ) /ASRA/Mumbai Dated 26.02.2021

To,

The Commissioner of CGST & CX, Tiruchirapalli (Trichy),
No.1, Williams Road,
Cantonment, Tiruchirapalli 620 001.

Copy to:

1. M/s. Sanmar Foundries Ltd. 87/1, Vadugapatti Village, Viralimalai, Pudukottai District- 621316
2. The Commissioner of CGST & CX (Appeals) Tiruchirapalli [Trichy] No.1, Williams Road, Cantonment, Tiruchirapalli - 620001
3. The Deputy / Assistant Commissioner, of CGST & CX, Trichy I Division, No.1, Williams Road, Cantonment, Tiruchirapalli 620 001
4. S.I.P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.