रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद– 380015. :

क फाइल संख्या : File No : V2(76)4 /EA-2/Ahd-III/2015-16/Appeal-I 1413 to 1419

ख अपील आदेश संख्या :Order-In-Appeal No.: AHM-EXCUS-003-APP-088-16-17

दिनाँक Date : 23.08.2016 जारी करने की तारीख Date of Issue 24/8/16

श्री अभय कुमार श्रीवास्तव आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Abhai Kumar Srivastav Commissioner(Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original: 01-176/Reb/2015 Date: 20.01.2015
Issued by: Assistant Commissioner, Central Excise, Din: Kadi, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Sejasmi Industries (India) Pvt. Ltd.,

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

द्य अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनॉक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तालिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20 न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I)
OFFICE OF THE COMMISSIONER (APPEALS), CENTRAL EXCISE
AHMEDABAD
अहमदाबाद

ORDER-IN-APPEAL

This appeal has been filed by the Assistant Commissioner, Central Excise, Kadi Division, Ahmedabad-III ['appellant' for sake of brevity] based on the authorizations issued by Commissioner, Central Excise, Ahmedabad-III vide Review Order No. 26/2015-16 dated 19.5.2015, against OIO No. 1-176/Reb/2015 dated 20.1.2015 in the case of rebate filed by M/s. Sejasmi Industries (India) Private Limited, Survey No. 879/919 at Rajpur, Taluka Kadi, Nr. GEB Sub Station, Mehsana Highway, Mehsana, Gujarat – 382715 ['respondent' for the sake of brevity].

2. The facts briefly are that the respondent had filed 224 rebate claims under the provisions of Rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 6.9.2004. Vide four OIOs, the refund sanctioning authority rejected these refund claims on the grounds that Central Excise(Preventive), Ahmedabad-III had booked a case against the respondent for failure to maintain proper records in respect of receipt of inputs and it was under investigation; that the records had been resumed by the Preventive wing; and that the respondent had failed to furnish proof that the duty was correctly discharged. The respondent, feeling aggrieved, filed an appeal before the Commissioner(A) who vide his two OIAs dated 27.9.2013 and 9.10.2013, remanded the case back to the adjudicating authority holding that the claims should have been kept in abeyance and that issuance of notice does not mean conclusion of proceedings. Department feeling aggrieved, assailed the matter before the Hon'ble Tribunal, which vide its Order No. A/10581-10804/2014 dated 7.4.2014 dismissed the departmental appeal on the grounds that Revenue was pursuing legal remedies, before a wrong forum. The respondent thereafter filed an appeal before the Joint Secretary (Review), CBEC, which is still pending.

3. The refund sanctioning authority, based on the aforementioned two appellate orders, issued two OIOs both dated 11.3.2014, wherein he once again rejected the refund claims. The respondent, feeling aggrieved, approached the Commissioner(A), who vide his OIA No. 82-83/2014-15 dated 17.9.2014, who remanded the matter once again to the lower adjudicating authority holding that the claims were not examined on merits; that a notice dated 18.12.2013, issued on the basis of case booked by Central Excise (Preventive), needs to be adjudicated on priority basis; that the notice issued to the respondent cannot be treated as conclusion of the proceedings and consequently cannot lead to a conclusion that the credit availed is improper and incorrect making them ineligible for rebate; that the rebate claims can be rejected only under the circumstances when payment of duty has been found wrong or improper; that since this decision is yet to be made, the rejection of the claim is premature.

4. As mentioned supra, a show cause notice consequent to the preventive action, was issued from F. No. V.76/15-1/OFF/OA/13 dated 4.1.2013 and IV/16-43/PI/2012-13 dated 18.12.2013 to the respondent alleging, *inter alia*, that the respondent had not maintained any records in respect of receipt and issue of raw materials and consumables on which they had availed CENVAT credit; that no statutory or internal records/document were maintained; that that they had taken and utilized CENVAT credit on inputs and consumables, which were not received in the factory of manufacture of final products since they had failed to maintain proper records for the receipt, disposal, consumption and inventory of the inputs.

5. These notices dated 4.1.2013 and 18.1.2013 were adjudicated vide OIO no. AHM-CEX-003-ADC-14 to 15-14-15 dated 28.11.2014 wherein he confirmed the demand in respect of the CENVAT Credit of Rs. 45.31 lakh, wrongly availed.

6. The refund sanctioning authority vide his OIO No. 01-176/Reb/2015 dated 20.1.2015, consequent to the OIA dated17.9.201,4 sanctioned a rebate of Rs. 59.22 lakh and further allowed re-credit of Rs. 2.59 lakh, holding that though credit was disallowed vide OIO dated 15.4.2015, it would have no bearing on the rebate since the rebate was in respect of duty paid clearance of excisable goods meant for export and the case; that recovery of credit held to be inadmissible would obviously be initiated by the revenue and would be recovered in due course as and when the said matter would reach its finality in the appellate proceedings.

7. The aforementioned OIO dated 20.1.2015 sanctioning rebate, was reviewed by the Commissioner, Central Excise, Ahmedabad-III vide his Review Order No. 26/2015-16 dated 19.5.2016, on the grounds that:

- the entries in the input register were recorded upto 14.12.2011 and for consumables upto 23.3.2012;
- Vide the three OIAs dated 27.9.2013, 9.10.2013 and 17.9.2014, it was directed that the rebate claim can be decided after outcome of the notice dated 18.12.2013 or on the basis of the OIO passed in respect of the said show cause notice;
- In the OIO in respect of the above show cause notice it was held that CENVAT credit was wrongly availed; that since the assessee had utilized the inadmissible credit, the question of granting rebate did not arise;
- The rebate claim was for the period when the receipt and issue of cenvatable inputs were not recorded;

It is based on this review order that appellant has filed this appeal with a prayer that the impugned OIO be set aside.

8. Personal hearing in the matter was held on 10.8.2016. Shri Paresh Dave and Ms. Shilpa Dave, both advocates, appeared on behalf of the respondent and submitted their written submissions, wherein it was contended that:

- an appeal against the OIO no. AHM-CEX-003-ADC-14 to 15-14-15 dated 28.11.2014, has already been filed before the Tribunal [Appeal No. E/10189/2016];
- since the aforementioned appeal is pending, the departmental contention that the issue regarding the wrong availment of CENVAT credit is decided, is not correct;
- rebate claim is to be decided based on the notification no. 19/2004-CE(NT) dated 6.9.2004 and rule 18 of the Central Excise Rules, 2002 and has nothing to do with the order passed by the Additional Commissioner, wherein CENVAT credit stands disallowed;
- the question of inadmissibility of CENVAT credit cannot bar the respondent from claiming rebate;
- the Hon'ble Tribunal has in the cases of M/s. STI Industries [2012(285) ELT 2010] and Johnson and Johnson [2008(225) ELT 25], held that assessee is entitled to CENVAT credit in spite of the fact that RG 23A register was not maintained;
- after the year 2003, it was not incumbent upon the assesses to maintain records in a particular format and if the receipt and consumption of the inputs **could otherwise be established** from private records, then credit of duty paid on inputs was admissible;
- not maintaining RG 23A part I was a procedural irregularity – which should not be considered as a fatal lapse, for rejecting export benefits of rebate altogether;
- substantive conditions for availment and utilization of CENVAT credit have been fulfilled & hence, non fulfillment of procedure does not justify the proposal of denial of credit;
- the manufactured goods have been exported; the receipts of export have been realized; documents required for supporting a rebate claim have also been filed ; the duty paid character of the final products is also found to be not wrong or unreliable. Thus all substantive conditions for rebate claim stood satisfied;
- it has been decided in a catena of judgements that benefit given by the Government for enhancing export could not be denied for any technical reasons or venial infractions.

9. Thereafter vide letter dated 11.8.2016, Shri Paresh Dave, Advocate, submitted additional submissions raising the following averments:

- the total refund claim covering the period from December 2011 to July 2012 is of Rs. 61,81,918/-; that the CENVAT credit disallowed is of Rs. 48,19,328/-; that in respect of the domestic clearances made during the said period Central Excise duty to the tune of Rs. 18,93,387/- was discharged by utilizing the CENVAT credit.
- revenue has not alleged that the respondents had utilized disputed credit while paying duties on the exported goods; that there cannot be any co-relation between disputed credit on one hand and utilization of CENVAT credit utilized on the exported goods and hence, this is no ground for disputing the rebate claims only because the exports were made during the said period.

10. The only issue that needs to be addressed in this appeal filed by Revenue is whether rebate can be allowed despite the fact that the credit utilized in exporting goods [on which rebate is claimed] stands disallowed on the grounds that it was wrongly availed?

11. As already mentioned, the rebate allowed in cash and as a re-credit is of Rs. 61,82,219/-, which as per the Revenue's appeal should have been disallowed since CENVAT Credit which was utilized towards payment of Central Excise duty on exports were held as inadmissible credit vide a separate proceeding .

12. Vide OIO No. AHM-CEX-003-ADC-14 to 15-14-15 dated 28.11.2014, the Additional Commissioner, Central Excise, Ahmedabad-III disallowed the CENVAT credit holding that;-

- the CENVAT credit register nowhere mentions the quantity of inputs or consumables received; the CENVAT Credit register was also not properly maintained;
- it was not possible to ascertain as to whether the inputs or consumables were actually received and utilized in the manufacture of final products or not;
- the details submitted by the respondent contained only the details of payment made to suppliers; that it did not indicate receipt of inputs and consumables and use of the same in the manufacture of final products; that it contained details only in respect of certain suppliers of raw materials and did not cover all the suppliers of inputs;
- no statutory or private records maintained depicting receipt and use of inputs were made available; that there were no other records other than RG 23 A part I which was maintained by the respondent detailing receipt and use of inputs;
- the primary condition for availing CENVAT credit on inputs is that it should be received in the factory and that it should be used in the manufacture of final products; that this can be established only if proper records are maintained, which as is already admitted were not being maintained.

13. Both the rebate sanctioning authority [OIO dated 20.1.2015] and the respondent have argued that since the provisions of rule 18 of the Central Excise Rules, 2002 read with the notification supra, have been followed, the question of denying the rebate does not arise even if part of rebate may be in respect of duty paid from CENVAT credit, which has been held to be ineligible. Notification No. 19/2004-CE(NT) dated 6.9.2004, as amended, lists certain conditions and limitations. The first condition i.e. 2(a) states that *the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by Central Board of Excise and Customs by a general or special order*. This means, that export should be on payment of duty. In the present case, duty of Rs. 61.82 lakh, paid and sought as rebate, includes CENVAT Credit of Rs. 48.19 lakh, which has been held as ineligible CENVAT Credit. The original order dated 28.11.2014, holding the credit as wrongly availed, has been upheld by my predecessor vide his OIA No. AHM-EXCUS-003-APP-018 to 019-15-16 dated 29.9.2015. Although the said OIA has been appealed before the Hon'ble Tribunal, yet it has not been stayed and therefore is in operation now. As the credit of Rs. 48.19 lakh stands ineligible, the export clearances made by utilizing this amount and on which rebate of duty is sought – is hit by the mischief of the first and primary condition i.e. *excisable goods shall be exported after payment of duty*. The duty of Rs. 48.19 lakh, reportedly paid on export goods by utilizing this CENVAT credit, has been held as ineligible vide the aforementioned OIO dated 28.11.2014, which as is mentioned supra has also been upheld by the Commissioner(Appeal). Therefore, as of now, it has to be construed that *goods were exported without payment of duty, at least partly.* **Unless and until duty paid character of exported goods is proved the rebate cannot be granted.** I place reliance on the judgments in case of M/s.

Rainbow Silks and Others [Writ Petition No. 3956 of 2010 and reported at [2013(4) ECS (7) (Bom-HC)] and Jhawar International [2012 (281) E.L.T. 460 (G.O.I.)] to the extent that if duty paid nature of exported goods is in doubt, rebate is not admissible. Thus, the rebate claims were sanctioned erroneously in so far as veracity of part of cenvat credit that was used for payment of duty on export goods was in doubt.

14. In so far as one to one correlation of the disputed credit with payment of duty on export goods is concerned, it may be mentioned here that the department has stopped long back asking the assessee to establish one to one correlation between the inputs/input services, on which credit has been taken, and the final product/service. Therefore, the allegation of lack of one to one correlation, cited by the appellant, does not hold much ground. Further, on page 17 of the submissions dated 10.8.2016, it is mentioned that a copy of RG 23 A part I register is enclosed. However, no such annexure was submitted.

15. Now, I would like to discuss the citations relied upon by the respondent. Though the cases relied upon pertain to CENVAT credit wrongly availed- though not a part of the present dispute, since it is the primary reason, for which the rebate sanctioned is disputed, I would like to discuss the same.

[i] Siti Industries [2012(285)ELT 210]
In this case, M/s. Siti Industries had not maintained the RG 23A part I. However, entries were made in the register at gate and the assessee also provided certificates from the suppliers of goods. The case stands distinguished since in the present dispute not only was the respondent not maintaining any other records, but there were no entries being made at the gate.

[ii] Johnson and Johnson [2008(225) ELT 25]
In this case the assessee produced necessary documents like stock register, input invoice, original cardex records, copies of declaration, material receipt notes which established that the inputs were used in the manufacture of final products. This case is not applicable since in the present dispute nothing has been produced by the respondent since he was not maintaining any records – to prove that the inputs claimed to have been received were in fact received- and more importantly used in the manufacture of final products.

[iii] Rose Mount India Ltd [2004(177) ELT 175]
This case pertains to the erstwhile Rule 57G of the Central Excise Rules, 1944 and is therefore not applicable to the present case.

[iv] Caprihans (India) Ltd [1999(108) ELT 861]
In this case, the goods though not accounted in RG23A part I, were accounted in the private records of the assessee. However, in the present dispute , it is recorded in the OIO that no private records were also maintained by the respondent and therefore the benefit of this case cannot be made applicable.

[v] Mangalore Chemicals and Fertilizers Ltd [1992 AIR 152 91 SSCR (3) 336]
This judgement of the Hon'ble Apex Court clearly states that a distinction needs to be made between a procedural condition of a technical nature and a substantive condition. It further states that non-observance of the former is condonable while that of the latter not condonable as likely to facilitate commission of fraud and introduce administrative inconveniences. By no stretch of imagination can non-maintenance of stock register be held as a procedural condition of technical nature. The primary condition as is already discussed for availment of credit is receipt of the goods and utilization of the said goods in the manufacture of final goods. It is only the stock register which can advance the respondent's claim that both the primary conditions have been met. As a substantive condition is not met – the ratio of this case law is not applicable as the Apex Court itself has held that it is not condonable.

16. In view of the foregoing, as far as rebate in respect of duty of Rs. 48.19 lakh is concerned, which was paid by utilizing the CENVAT Credit that stands disallowed, the same is held to have been erroneously sanctioned. For the rest of the amount, since there is no dispute as far as the credit availment is concerned, the sanction of rebate is upheld. The department's appeal, is partly allowed as mentioned above. The appeal stands disposed of accordingly.

Date: 23.08.2016

23.08.16

(Abhai Kumar Srivastav)
Commissioner (Appeals-I)
Central Excise, Ahmedabad

Attested

(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D

M/s. Sejasmi Industries (India) Private Limited,
Survey No. 879/919 at Rajpur,
Taluka Kadi,
Nr. GEB Sub Station,
Mehsana Highway,
Mehsana,
Gujarat – 382715

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Kadi, Ahmedabad-III
5. Guard file.
6. P.A .