केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय उत्पाद शुल्क भवन, सातवीं मंज़िल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015

☎: 079-26305065 टेलेफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

438 to 442

क फाइल संख्या (File No.) : V2(63)33/Ahd-II/Appeals-II/ 2017-18
V2(63)7/North/Appeals / 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 251-252-17-18**

दिनांक (Date): **29/12/2017** जारी करने की तारीख (Date of issue): 23/1/2018

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No . **492-499/Reb/IV/17-18 Dated: 22/05/2017 & 680-682/Reb/IV/17-18 Dated: 28/06/2017**
issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Nandan Terry 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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए |

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो |

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है |

G. file

Cont...2

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडिट 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 दिनाँक 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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) उक्तलिखित 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

रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 a court fee stamp of Rs.6.50 paise 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस सन्दर्भ 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।

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."

ORDER-IN-APPEAL

S No	Appeal No.	Order-in-Origina No. & Date	Amount involved
1	33/Ahd-II/appeals-II/17-18	492-499/Reb/IV/17-18 dated 22.05.2017	Rs.10,72,019/-
2	7/North/appeals/17-18	680-682/Reb/IV/17-18 dated 28.06.2017	Rs.4,51,328/-

The above two appeals have been filed by M/s Nandan Terry Pvt Ltd, Dholka, Gujarat [*for short-the appellant*] against the Orders-in-Original mentioned above [*for short-impugned order*] passed by the Assistant Commissioner of Central Excise, Division-II, Ahmedabad-II [*for short-the adjudicating authority*].

2. Briefly stated, the appellant has filed rebate claims amounting to rupees mentioned in the above table, under Rule 18 of Central Excise Rules, 2002 (CER) before the jurisdictional officer for refund of duty paid on goods falling under chapter 63 of Central Excise Tariff Act, 1985 which was cleared under Drawback Scheme. During scrutiny of relevant documents filed for rebate claims, it observed that apart from availing facility of CENVAT credit under Cenvat Credit Rules, 2004 (CCR) they also availed facility of Drawback under Column "A" of the Drawback Schedule i.e Drawback when CENVAT facility not availed; that they applied rebate of duty paid on exported goods (which is given to offset taxes suffered by finished goods) and also claimed benefit of Drawback at higher rate (to offset taxes suffered by inputs which includes Customs, Central Excise and Service Tax component put together). Thus, as it appeared that they were claiming two benefits simultaneously by contravened the provisions of Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules 1995 (Drawback Rule) and Sr.No.7 of Notification No.131/2016-Customs (NT) dated 31.10.2016, a show cause notice dated 11.04.2017 and 25.05.2017 was issued to the appellant for rejection of said rebate claims. Vide impugned order, the adjudicating authority has rejected the said claims on the grounds alleged in the impugned notices.

3. Being aggrieved, the appellant has filed the instant appeals on the grounds that:

- The adjudicating authority has not correctly appreciated that they had exported goods which were manufactured out of inputs where no input credit or input service credit was taken but exported goods on payment of duty which was debited from their CENVAT credit account of capital goods; that rebate is unreasonably denied on the ground that they had claimed excess claim of drawback, however, they are eligible such claim when no credit of duty paid on inputs or input service was not taken.
- They were clearing their final products in domestic market without payment of duty, claiming exemption of notification No.30/2004-CE following not to take credit of duty paid on inputs or input service; that while exporting goods they paid duty from the accumulated credit of capital goods which is allowable under Rule 18 of CER; that the adjudicating authority has relied upon notification No.131/2016-Cus (NT) but not applied it correctly in fact of the case as to whether they taken credit of duty paid input of input service.

- Drawback has no connection with duty paid on capital goods or finished goods being exported; that rebate under Rule 18 directly has nexus with Drawback of duty paid on inputs or input service; that entire Drawback Rules deals with granting back incidence of duties paid on raw material either excise or customs and service tax on input services used in the manufacture of goods but the said rules do not provide for Drawback of duty paid on capital goods in any manner; that rebate benefit cannot be denied when facts of export is not in any dispute.
- They relied on case laws viz- 2014 (3114) ELT 1006 GOI; 2015 (320 ELT 671 GOI and other various case laws in their favour.

4. Personal hearings in both the appeals were held on 01.12.2017. S/Shri P.P.Jadeja, K.N.Upadhya and H Powa, Authorized Representatives of the appellant appeared for the same and reiterated the grounds of appeal and further submitted additional submissions.

5. I have carefully gone through the facts and records of the case, records of the cases and submissions made in the appeal memorandums as well as submissions made during the course of personal hearing. The issue to be decided in the instant appeals is as to whether the appellant is eligible for both the benefit of higher Drawback and rebate on duty paid exported goods.

6. The adjudicating authority has denied the rebate claim on the grounds that when the appellant had availed the duty Drawback of Customs, Central Excise duty and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of CER by way of cash payment as it would result in double benefit; that the higher Drawback and the rebate is deliberated in case of M/s Ragav Industries Ltd by the Hon'ble High Court of Madras [2016 (334) ELT 585] and the Hon'ble Court has denied the rebate as per the proviso to Rule 3 of the Drawback Rules. On other hand, the appellant submits that they cleared goods export under payment of duty from the CENVAT credit accumulated on capital goods and as per notification No.131/2006-Cus (NT) dated 31.10.2016 for availing higher Drawback, no CENVAT credit facility has been availed for any of the inputs or input services used in the manufacture of export product; that the provisions of the said notification has not been considered by the Hon'ble Court in the decision *supra*.

7. Therefore, I observe that the genesis of the dispute is as to whether the appellant is eligible for rebate of duty paid on the exported goods from the accumulated CENVAT credit of capitals goods, while claiming higher Drawback rate as specified under notification No.131/2006-Cus *supra*.

8. The rebate of central excise duty paid on finished goods governs under Rule 18 of CER and the provision of drawback of duty of material/inputs used in manufacture of export product has been provided under Section 75 of the Customs Act, 1962. Further, Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 has been formulated under said Section 75 of the Customs Act, 1962.

The said Drawback Rules, 1995 as amended, empowers the Government to issue notification at such amount or at such rate, as determined by the Central Government. The Central Government has issued notification No. 110/2015-Cus. (N.T.), dated 16-11-2015 with respect to All India Rates of Drawback which was superseded by notification No.131/2016-Cus (NT) *supra*.

9. The rebate under Rule 18 of CERA stipulates that

> *"Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification".*

Proviso to Rule 3 of Drawback Rules states that

> *" drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government, provided that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made there under, or of the Central Excise Act, 1944 (1 of 1944) and the rules made there under, or of the Finance Act, 1994 (32 of 1994) and the rules made there under, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained"*

The superseded notification No.131/2016-Cus *supra* determines the rates of Drawback as specified in the schedule to the said notification subject to certain notes and conditions. Condition No.12 (a) clarifies the expression "when Cenvat facility has not been availed" used in the said schedule is as follows:

> *"the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product."*

10. The Rebate under Rule 18 of the Central Excise and Drawback under customs are two different issues. One can claim rebate of the excise duties paid on the clearance of export goods from central excise authority. The drawback is under AIR - Drawback schedule wherein two separate rates has been indicated. One Rate is applicable when CENVAT credit availed and another rate is when CENVAT credit not availed. In the instant cases, the appellant availed the rate of Drawback under the schedule "when CENVAT facility has not been availed". The appellant vehemently argued that the expression "when CENVAT facility has not been availed" clarifies that while availing the facility of Drawback, they should not avail the facility of CENVAT for any of the inputs or input services used in the manufacture of export goods; that they have not taken any CENVAT credit on the inputs or input services used in the manufacture of export goods but availed CENVAT credit of capital goods

used in the factory and utilized said credit while exporting goods. Thus, they are eligible for rebate.

11. I observe that the adjudicating authority has denied the rebate based on the decision of M/s Ragav Industries Ltd *supra*. I have perused the said decision of Hon'ble High Court. I observe that the Hon'ble High Court has considered an identical issue the said decision; that in the facts of the said case also the petitioners exported finished goods by paying duty under CENVAT credit of capital goods and claimed duty Drawback on higher side. I further observe that M/s Raghav Industries Ltd has filed the appeal before the Hon'ble Court against the Order No. 51/2015-CX, dated 24-8-2015 [2016 (334) E.L.T. 700 (G.O.I.).], passed by the Government. In the said order, the Government holds that the rebate claims of duty paid on exported goods are not admissible under Rule 18 of CER when exporter has availed higher rate of duty drawback of Customs and Central Excise in respect of exported goods. The Hon'ble High Court has also upholds the decision of the Government and stated that "the respondents have rightly rejected the claim made by the petitioners. I do not find any error in the order passed by the respondents and the writ petition is liable to be dismissed"[2016 (334) ELT 584 – Mad].

12. The appellant argued that the provisions of notification No.131/2016-Cus *supra* were not brought to the notice of the Hon'ble High Court of Madras in Raghav Industries Ltd's case and the observations made therein may be construed to be *per incuriam* and cannot be treated as binding effect in the facts of this case. This argument is not correct and acceptable, looking into the backdrop of the facts discussed in the decision of Hon'ble Court. The gist of the decision is reproduced below:

> *"**11.** Heard both sides and perused the materials available on record.*
>
> ***12.** After clearing the goods on payment of duty under claim for rebate, the petitioners should not have claimed drawback for the central excise and service tax portions, before claiming rebate of duty paid and they should have paid back the drawback amount availed before claiming rebate. When this was not done, availing both the benefits would certainly result in double benefit.*
>
> ***13.** While sanctioning rebate, the export goods, being one and the same, the benefits availed by the petitioners on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Both the rules are intended to give relief to the exporters by offsetting the duty paid. When the petitioners had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit.*
>
> ***14.** As per the proviso to Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government*

provided that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder or of the Finance Act, 1994 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained.

***15.** In the judgment relied upon the learned counsel for the petitioner, the Hon'ble Supreme Court has held that the benefits of rebate on the input on one hand as well on the finished goods exported on the other hand shall fall within the provisions of Rule 18 of Central Excise Rules, 2002 and the exporters are entitled to both the rebates under the said Rule.*

***16.** In the case on hand, the benefits claimed by the petitioners are covered under two different statutes - one under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 under Section 75 of the Customs Act, 1962 and the other under Rule 18 of the Central Excise Rules, 2002. Since the issue, involved in the present writ petition, is covered under two different statutes, the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case.*

***17.** As per the proviso to Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the petitioner is not entitled to claim both the rebates."*

13. It is to mention here that the appellant had filed the appeal before the Hon'ble Court against the decision passed of Government. The Hon'ble Court has passed the decision after considering all facts and materials available on records. I observe that while deciding the case of M/s Raghav Industries Ltd [2016 (334) E.L.T. 700 (G.O.I.).] *supra,* the government of India has considered the provisions of relevant notifications issued under Drawback Rules. In the said decision, while holding that the rebate claims of duty paid (utilized under credit of capital goods) on exported goods are not admissible under Rule 18 of CER when exporter has availed higher rate of duty drawback of Customs and Central Excise in respect of exported goods, Government has observed as under:

***11.**As regards citing of individual interpretations/applicability of abovementioned Notifications/Case Laws, Government observes that Hon'ble Supreme Court in the case of Amit Paper v. Commissioner of Central Excise, Ludhiana reported in 2006 (200) E.L.T. 365 (S.C.) = 2008 (12) S.T.R. 536 (S.C.) has held that primacy to a Notification cannot be given over Rules as such interpretation will render statutory provisions in Rules nugatory and in the case of Commissioner of Trade Tax UP v. Kajaria Ceramics Ltd. reported in 2005 (191) E.L.T. 20 (S.C.) it was held on the issue of interpretation of statutes that context and parameters of statutory provisions under which a Notification is issued, are to be read in toto and when a Notification is issued under one statutory provision for same purpose as a chain of progress without overlapping, the ambiguity of contents of such Notification can be resolved by referring not only to statutory provisions but also to previous and subsequent Notification. Further, Government, going by the observations of Hon'ble Supreme Court in Case (i) ITC Ltd. v. CCE [2004 (171) E.L.T. 433 (S.C.)] and (ii) Paper Products Ltd. v. C.C. [1999 (112) E.L.T. 765 (S.C.)] that the plain and simple wordings of the (clarified/stipulated) statute are to be strictly adhered to, is of the considered opinion that the claimed rebate of duty paid on exported goods is not admissible in these cases".*

14. In view of above, I do not find any merit in the argument of the appellant as discussed in para 12 above. In these circumstances, by following the decision of Hon'ble High Court of Madras and Government's decision in case of M/s Raghav Industries Ltd *supra*, I am of the considered view that the adjudicating authority has rightly rejected the rebate claims filed by the appellant.

15. In view of above discussion, I reject both the appeals filed by the appellant. The appeals stand disposed of accordingly. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है.

(उमा शंकर)
आयुक्त (अपील्स - I)
Date: /12/2017.

Attested

(Mohanan V.V)
Superintendent (Appeal)
CGST, Ahmedabad.

By RPAD
To
M/s Nandan Terry Pvt Ltfd,
357/A/6, Karati to Dhgoli Road,
Dholi Rupagadh Dholi Integrated Spinning Park Ltd,
Dholka, Gujarat

Copy to:-
1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Principal Commissioner, CGST, South
3. The Addl./Joint Commissioner, (Systems), CGST, South
4. The Dy. / Asstt. Commissioner, CGST Division- II, South
5. Guard file.
6. P.A