



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,

Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/184/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

222070
2224

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-408 to 415-2017-18
दिनांक Date : 22-03-2018 जारी करने की तारीख Date of Issue

6/4/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/3772 to 3779/AC/2017-Reb दिनांक: 19/12/2017 issued by
Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Red Sun Dye Chem
Ahmedabad

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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक
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।

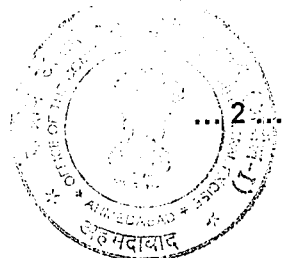
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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।



2

(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 मामलों 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.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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 हों।

(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 दिनांक 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 रुपये या उससे कम हो तो रुपये 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.

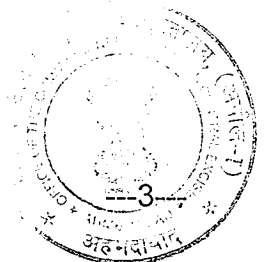
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) 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

(a) 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.



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. Registrar 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 आदेश 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 है।

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 notwithstanding 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is 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 अपील 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।

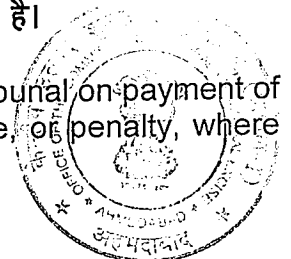
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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, of penalty, where penalty alone is in dispute."



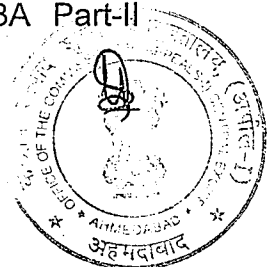
ORDER-IN-APPEAL

This order arises out of 8 appeals filed by M/s. Red Sun Dye Chem, Plot No.3325, Phase-IV, Near Benzo Product, GIDC Estate, Vatva, Ahmedabad-382445 (in short 'appellant') against Order-in-Original No. MP/3772-3779/AC/ 2017-Reb dated 19.12.2017 (in short 'impugned order') passed by the Assistant Commissioner, CGST, Division-III, Ahmedabad South (in short 'adjudicating authority').

2. Briefly stated that the appellant filed 8 rebate claims amounting to Rs.13,74,500/- for goods exported on payment of duty under various ARE-1s alongwith all relevant documents. On scrutiny of the subject claims, inter alia, found that the appellant had taken credit of Rs.12,188/- and duty of Rs.53,125/- debited against ARE-1 no.04 dtd.11.04.2017(invoice no.12 dtd.11.04.2017) vide entry no.20 dtd. 12.04.2017 in RG23A Pt-II (i.e.Cenvat credit account) but the said duty debited was not deducted from the previous closing balance. This act of the appellant culminated into issue of SCN dated 30.11.2017 which was adjudicated by the adjudicating authority vide impugned order rejecting the said rebate claims.

3. Aggrieved with the impugned order, the appellant has filed the present appeals wherein, inter alia, submitted that:

- Due to clerical error by the dealing hand fresh credit of Rs.12,188/- was availed vide entry no.20 dtd.12.04.2017 in 23A Pt-II and also made debit entry of Rs.53,125/- against the same sr.no. however they have debited duty at the end of the month and declared in ER-1 for April-2017.
- Due to clerical error domestic sale invoice no.05 dtd.06.04.2017 having c.ex.duty of Rs.66,750/- was not reflected in ER-1 but duty was debited from cenvat credit register. In view of this error, they declared and debited duty of Rs.9,35,158/- in place of Rs.10,01,198/- during April-2017 in ER-1 resulting in declaring closing balance of Rs.21,65,428/- in place of correct duty balance of Rs.20,98,676/- and the same was rectified in ER-1 for May-2017 showing opening balance Rs.20,98,676/-. Thus, allegation that they have not paid the duty of Rs.53,125/- and claimed rebate is highly misplaced.
- As per para 13 of the impugned order, total duty payable as per ER-1 for April-2017 is Rs.9,35,156/- whereas cenvat credit register shows duty debited is Rs.10,01,908/-. In this regard, they had submitted during personal hearing that the difference was mainly due to non reflecting domestic clearance sales invoice no.05 dtd.06.04.2017 having c.ex.duty of Rs.66,750/- in ER-1 for April-2017, though the same was accounted for in RG23A Part-II



Thus, I find that there was no procedural lapse or bonafide mistake by the appellant but violated condition no.2(a) of Notifin. No.19/2004-CE(NT) dated 06.09.2004 and failed to establish duty paid character of the goods exported and not eligible for rebate of Rs.53,125/- for goods exported vide ARE-1 No.04 dtd.11.04.2017.

6.1 As regards other 7 rebate claims which were filed after the subject claim, I find that the adjudicating authority has not justified rejection of individual claim except the ground for rejection of Rs.53,125/-. It appears that the adjudicating authority has merely presumed that the appellant has manipulated/forged its Cenvat credit register/records for remaining 7 claims. I find that there should be reasonable ground for rejection of each claim which could be justified. Hence, I do not agree with the findings of the adjudicating authority. Accordingly, I remand back to the adjudicating authority for these 7 rebate claims for issue of speaking order after following the principle of natural justice within 30 days of communication of this order.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:

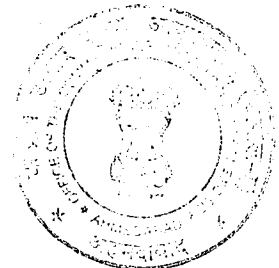
B.A. Patel
25/04/18
(B.A. Patel)
Superintendent(Appeals),
CGST, Ahmedabad.

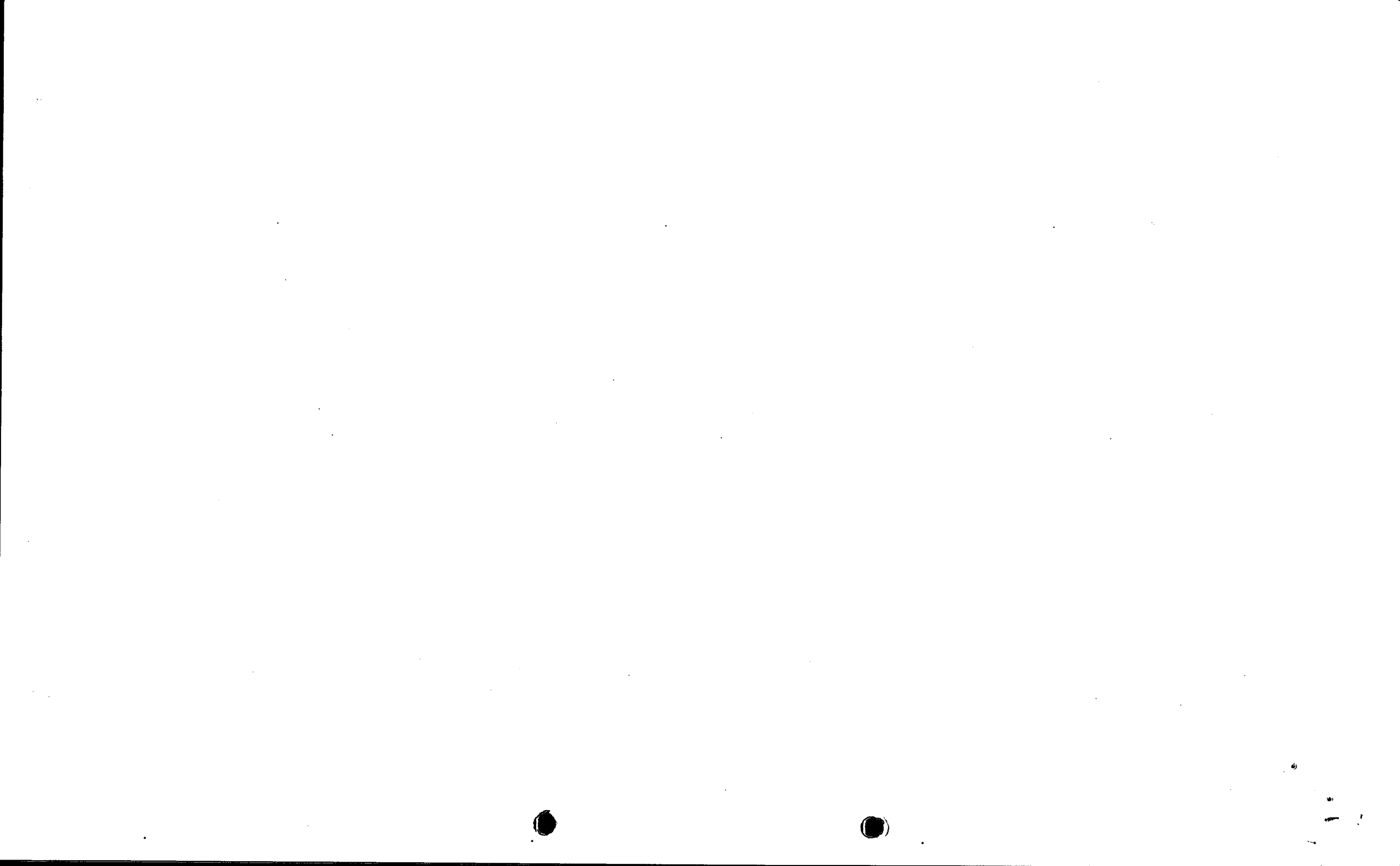
BY SPEED POST TO:

M/s. Red Sun Dye Chem,
Plot No.3325, Phase-IV, Near Benzo Product,
GIDC Estate, Vatva, Ahmedabad-382445.

Copy to:

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Principal Commissioner, CGST, Ahmedabad South (RRA).
- (3) The Asstt. Commissioner, CGST, Division-III, Ahmedabad South.
- (4) The Asstt. Commissioner(System), CGST HQ, Ahmedabad South.
(for uploading the OIA on website)
- (5) Guard file
- (6) P.A. file.





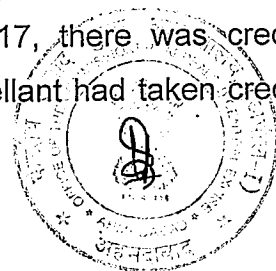
register, the adjudicating authority has remained silent on this vital submission which was consequence of clerical error and was not a case of non payment of c.ex.duty and rely upon case laws viz. UOI vs. Farheen Texturisers -2015(323)ELT-104(Bom.).

- W.r.t. observation of the adjudicating authority in para 15 of the impugned order, they are maintaining Cenvat account in tally records. The deptt. also insists that RG-23A Part-II should be submitted with the claim but the fact remains that they have already paid c.ex.duty on all domestic and export clearance made during April-2017.
- The case law of M/s. Sanket Food Products P. Ltd-2015(328)ELT-693(GOI) relied upon by the adjudicating authority has grossly erred as the same relates to non-payment of c.ex.duty at the time of clearance of goods from factory of export whereas they have established that they have paid duty relating to export during April-2017 to June-2017.
- The adjudicating authority has rejected all the eight claims on the basis of his findings related to ARE-1 No.04 dtd.11.04.2017 though at no point of time doubted the payment details of remaining 7 claims.

4. Personal hearing in the matter was held on 22.02.2018. Shri Anil Gidwani, tax Consultant, appeared on behalf of the appellant and reiterated the grounds of appeal and submitted that their submission dtd.12.12.2017 to original authority has been rejected; that all other rebate claims rejected without any reason; that clerical mistake has been rectified but not considered in the impugned order; that he referred to para G, H and I of grounds of appeal.

5. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. I find that main issue to be decided is whether the appellant is eligible for rebate or otherwise for goods exported under ARE-1 No.04 dtd.11.04.2017. Accordingly, I proceed to decide the case on merits.

6. I find that the subject rebate claims are filed under Rule 18 of the Central Excise Rules, 2002. Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18ibid prescribes conditions and procedure for claiming rebate. I find that there is series of lapses by the appellant as stated in the impugned order. However, the main issue revolves around debiting Rs.53,125/- on 12.04.2017. In this regard, I had called for original case file underwhich said rebate claim was rejected. I find that originally, the appellant had submitted copy of RG23A Pt-II page no. 001 alongwith the subject rebate claim. I find that on 11.04.2017, there was credit balance of Rs.20,42,344/-. On 12.04.2017, the appellant had taken credit



of Rs.12,188/- and also debited Rs.53,125/- for goods cleared under ARE-1 no.04 dtd.11.04.2017 and shown closing balance of Rs.20,54,532/- instead of Rs.20,01,407/-. Moreover, there is difference in duty payable as per RG23A Pt-II register and that shown in ER-1 return for the month of April-2017. This fact remained silent till issue of deficiency memo dtd.21.11.2017. On being asked by the adjudicating authority vide letter dtd.21.11.2017, the appellant submitted another set of RG23A Pt-II having manual alteration. In reply to SCN dtd.30.11.2017, the appellant submitted amended RG23A Pt-II without any documentary evidences to justify their claim. On being asked by the adjudicating authority to produced original RG23A Pt-II for the month of April,2017, copy of which was submitted while submitting the claim, the appellant stated that they have burnt and destroyed the old register and did not inform the deptt. regarding this any time whatsoever. I find that as per CBEC's Excise Manual of Supplementary Instruction, Chapter 6, Para 2.1(vi), the assessee shall preserve these records for a period of 5 years immediately after the financial year to which such records pertain. I find that this action on the part of appellant clearly shows their malafide intention and establishes that goods have been exported without payment of duty vide ARE-1 no.04 dtd.11.04.2017. I find that just to overcome this default, the appellant has tried to mis-direct the adjudicating authority as well as this authority by producing manipulated documents to hide their action of exporting the goods without payment of duty. Further, the appellant has not proved conclusively with documentary evidence that duty of Rs.53,125/- is paid by them after its clearance for export. I also finds that the appellant has not produced any documentary evidence in support of their claim vide their letter dated 12.12.2017. The evidence produced before me also appears different set of Cenvat credit account. In this regard, I find that the Govt. of India in case Saknet Food Products P.Ltd. [2015(328)ELT-693(GOI)] has held as under:

“Rebate - Duty not paid at the time of clearance of goods from factory for export - Fundamental condition for granting rebate claim is that duty paid goods are exported - Since condition is not satisfied, rebate claim cannot be held admissible - Adjustment of appropriation of duty before filing of rebate claim cannot be treated as compliance of Condition No. 2(a) of Notification No. 19/2004-C.E. (N.T.) read with Rule 18 of Central Excise Rules, 2002. [paras 10, 11]”

