केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते

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

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

☎ : 079-26305065

टेलेफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(71)01to16/EA-2Ahd-I/2017-18 /2347-2350
V2(71)34&35/Ahd-I/2017-18
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-418 to 435-2017-18**
दिनाँक 19.03.2018 जारी करने की तारीख Date of Issue 03/04/2018

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

ग **Assistant Commissioner,Div-IV, Ahmedabad-I** द्वारा जारी मूल आदेश सं **174,175,176,177/AC/2016-Reb** दिनाँक: **10/10/2016, 236 to 237/AC/2016-Reb** दिनाँक: **20/10/2016, 272,273,274 to 275/AC/2016-Reb** दिनाँक: **25/10/2016, 277 to 280/AC/2016-Reb** दिनाँक: **07/11/2016, 288 to 292/AC/2016-Reb** दिनाँक: **16/11/2016, 311 to 312, 313 to 315, 340 to 341/AC/2016-Reb** दिनाँक: **30/11/2016, 383 to 384, 385 to 387, 388 to 390/AC/2016-Reb** दिनाँक: **22/12/2016, 01 to 11,12 to 13/AC/2017-Reb** दिनाँक: **04/04/2017** से सृजित

Arising out of Order-in-Original No. **174,175,176,177/AC/2016-Reb** दिनाँक: **10/10/2016, 236 to 237/AC/2016-Reb** दिनाँक: **20/10/2016, 272,273,274 to 275/AC/2016-Reb** दिनाँक: **25/10/2016, 277 to 280/AC/2016-Reb** दिनाँक: **07/11/2016, 288 to 292/AC/2016-Reb** दिनाँक: **16/11/2016, 311 to 312, 313 to 315, 340 to 341/AC/2016-Reb** दिनाँक: **30/11/2016, 383 to 384, 385 to 387, 388 to 390/AC/2016-Reb** दिनाँक: **22/12/2016, 01 to 11,12 to 13/AC/2017-Reb** दिनाँक: **04/04/2017** issued by **Assistant Commissioner,Div-IV, Ahmedabad-I.**

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Sri Sai Vishwas Polymers
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 a 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 पूवोक्त 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) यदिं 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 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.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी 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.

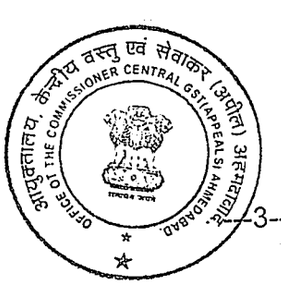
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.



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.

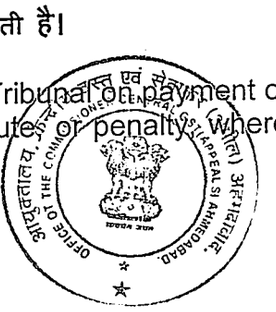
⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

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, 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 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।

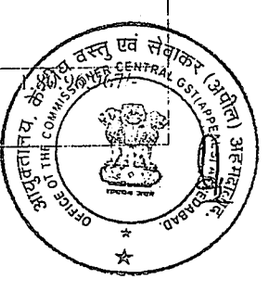
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in disputes or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The Assistant Commissioner, Central Excise, Division-IV(Narol), Ahmedabad-I, Central Excise Bhavan, 5th Floor, Ambawadi, Ahmedabad-380015*(hereinafter referred to as the 'appellant')* have filed the present appeals against the following Orders-in-Original *(hereinafter referred to as 'impugned orders')* passed in the matter of rebate claims filed by M/s. Sri SaiVishwas Polymers, 316, Pratibha Plus Complex, Opposite Narol Gam, Narol-Aslali Highway, Narol, Ahmedabad-382405*(hereinafter referred to as 'respondents')*;

Sr. No.	OIO No.	OIO date	OIO reviewed by	Review Order No.& Date	Appeal No.	Amount of rebate claims sanctioned in OIO (₹)
1	174/Assistant Commissioner /2016 Reb	10.10.2016	The Commissioner, Central Excise, Ahmedabad-I	14/2016-17 dated: 31.03.2017	V2(71)01/EA-2/Ahd-I /2017-18	94,41,034/-
2	175/Assistant Commissioner /2016 Reb	10.10.2016	The Commissioner, Central Excise, Ahmedabad-I	15/2016-17 dated: 31.03.2017	V2(71)02/EA-2/Ahd-I /2017-18	1,32,30,812/-
3	176/Assistant Commissioner /2016 Reb	10.10.2016	The Commissioner, Central Excise, Ahmedabad-I	16/2016-17 dated: 31.03.2017	V2(71)03/EA-2/Ahd-I /2017-18	73,86,252/-
4	177/Assistant Commissioner /2016 Reb	10.10.2016	The Commissioner, Central Excise, Ahmedabad-I	17/2016-17 dated: 31.03.2017	V2(71)04/EA-2/Ahd-I /2017-18	87,70,071/-
5	236 to 237/ Assistant Commissioner /2016 Reb	20.10.2016	The Commissioner, Central Excise, Ahmedabad-I	18/2016-17 dated: 31.03.2017	V2(71)05/EA-2/Ahd-I /2017-18	1,88,33,302/-
6	272/Assistant Commissioner /2016 Reb	25.10.2016	The Commissioner, Central Excise, Ahmedabad-I	19/2016-17 dated: 31.03.2017	V2(71)06/EA-2/Ahd-I /2017-18	72,99,710/-
7	273/Assistant Commissioner /2016 Reb	25.10.2016	The Commissioner, Central Excise, Ahmedabad-I	20/2016-17 dated: 31.03.2017	V2(71)07/EA-2/Ahd-I /2017-18	1,12,08,601/-
8	274-275/Assistant Commissioner /2016 Reb	25.10.2016	The Commissioner, Central Excise, Ahmedabad-I	21/2016-17 dated: 31.03.2017	V2(71)08/EA-2/Ahd-I /2017-18	1,75,56,198/-
9	277 to 280/AC/16- R	07.11.2016	The Commissioner, Central Excise, Ahmedabad-I	22/2016-17 dated: 31.03.2017	V2(71)09/EA-2/Ahd-I /2017-18	2,99,04,461/-
10	288 to 292/Assistant Commissioner /2016- Reb	16.11.2016	The Commissioner, Central Excise, Ahmedabad-I	23/2016-17 dated: 31.03.2017	V2(71)10/EA-2/Ahd-I /2017-18	4,83,81,376/-
11	311 to 312/AC/16- R	30.11.2016	The Commissioner, Central Excise, Ahmedabad-I	24/2016-17 dated: 31.03.2017	V2(71)11/EA-2/Ahd-I /2017-18	1,48,07,477/-
12	313 to 315/AC/16- R	30.11.2016	The Commissioner, Central Excise, Ahmedabad-I	25/2016-17 dated: 31.03.2017	V2(71)12/EA-2/Ahd-I /2017-18	2,74,51,551/-
13	340 to 341/AC/16- R	30.11.2016	The Commissioner, Central Excise, Ahmedabad-I	26/2016-17 dated: 31.03.2017	V2(71)13/EA-2/Ahd-I /2017-18	1,80,00,077/-



14	383 to 384/AC/16- R	22.12.2016	The Commissioner, Central Excise, Ahmedabad-I	27/2016-17 dated: 31.03.2017	V2(71)14/EA-2/Ahd-I /2017-18	1,50,40,581/-
15	385 to 387/AC/16- R	22.12.2016	The Commissioner, Central Excise, Ahmedabad-I	28/2016-17 dated: 31.03.2017	V2(71)15/EA-2/Ahd-I /2017-18	2,40,73,696/-
16	388 to 390/AC/16- R	22.12.2016	The Commissioner, Central Excise, Ahmedabad-I	29/2016-17 dated: 31.03.2017	V2(71)16/EA-2/Ahd-I /2017-18	1,94,56,921/-
TOTAL						29,09,39,010/-

2. The facts of the case, in brief, are that the respondents are engaged in the export of Gold Jewellery on payment of Central Excise Duty@12.5% under the claim of Rebate under Rule 18 of Central Excise Rules, 2002. The respondents are paying Central Excise duty on their exported goods partly through PLA and partly through utilisation of CENVAT Credit availed by them on the inputs. The appellant adjudicated the cases of rebate claims vide above mentioned impugned orders, wherein he had sanctioned the rebate claims to the respondents (Details have been shown in the table under Para 1).

3. Further, the Jurisdictional Authority received a letter F.No. DRI/AZU/ENQ-01(INT-01/17)/2017 dated 06.02.2017 from the Additional Director, DRI, AZU, Ahmedabad, wherein the following points had been, inter alia, submitted:-

(a) An inquiry had been initiated against M/s. Sri Sai Vishwas Polymers, Shop No. 5, Dhawan Building Shankar I, Tola Chowk, Lucknow, U.P.- 226003 (having Branch office at 316, Pratibha Plus Complex, Opposite Narol Gam, Narol-Aslali Highway, Narol, Ahmedabad) by their office regarding simultaneous availment of double benefits in the form of Rebate of the Central Excise Duty paid (using Cenvat Credit of the duty paid on the raw material i.e. gold) and Replenishment Scheme for procurement of duty free Gold Bars from the Nominated Agencies against the same export consignments of gold jewellery.

(b) M/s. Sri Sai Vishwas Polymershas been engaged in the exports of 'Gold Jewellery' to overseas buyers through Ahmedabad Air Cargo Complex on payment of Central Excise Duty@12.5% under claim of Rebate under rule 18 of Central Excise Rules, 2002.They are paying Central Excise duty on their exported goods through PLA and also through CENVAT Credit availed on their inputs viz. Imported 'Gold Dore Bars' & locally procured duty paid 'Gold Bars' and Service Tax paid on the input Services. The exporter thereafter produced the Shipping Bills for these exports of 'Gold Jewellery' before the Nominated Agencies for procurement of 'Gold Bars' under Gold Replenishment Scheme under Chapter 4 of the FTP 2015-2020. The Exporter then sold the said 'Gold Bars' so procured under Replenishment Scheme, in open market. The Exporter while filing Shipping Bills for export of the said Gold Jewellery has also mentioned therein that the export is against Replenishment basis as per Para 4.31 to 4.34 of FTP 2015-20 and Para 4.52 of HBP 2015-20 to be taken from 'M/s. Diamond Indian Ltd'. Therefore, it is clear that the said export of 'Gold Jewellery' was in discharge of their export obligation towards the quantity of Gold Bars to be procured duty free under Replenishment Scheme. I find that the appellant Department has quoted:

(i) DGFT Circular No. 06 (RE-98)/1998-1999 dated 20.05.1998

(ii) Notification no- 57/2000-Cus dated 08/05/2000

(iii) Notification no- 27/2016-Cus dated 10/06/2016

(c) The Exporter while exporting their goods were filing ARE-1(Application for removal of Excisable goods) before the Jurisdictional Central Excise Authority wherein they were certifying that **'the export is neither in discharge of export obligation under a quantity based Advance Licence nor under claim of Duty Drawback under Customs & Central Excise duties**

Drawback under Customs & Central Excise Duties Drawback Rules, 1995'.Whereas, M/s. Sri Sai Vishwas Polymershave claimed for Replenishment of entitled quantity of Gold against the exported articles i.e. Gold Jewellery plus admissible wastage/ manufacturing loss. Hence, these exports of Gold Jewellery are nothing but discharge of quantity of Gold Bars to be procured under Replenishment Scheme. In view of this, it appears that they have intentionally made wrong declaration before the jurisdictional Central Excise Authority to claim benefit under Replenishment Scheme.

(d) The main objective of the Foreign Trade Policy is that if the exporter takes replenishment route, the gold used in manufacture of exported jewellery must have suffered duty. But, once the duty on the gold out of which the exported jewellery was made has been refunded by way of rebate under Rule 18 of Central Excise Rules, then Gold no longer remained duty paid. The Schemes under Chapter 4 of Foreign Trade Policy are not the incentive schemes but duty remission scheme only.

4. Thereafter, all the above mentioned impugned orders were reviewed by the Commissioner, Central Excise, Ahmedabad-I and Review Orders for filing appeals under section 35(2) of the Central Excise Act, 1994 were issued.

The appeal has been filed on the following grounds;

4.1 The Impugned OIO's are passed by the Assistant Commissioner, Central Excise, Div-IV, Ahmedabad-I is not legal and proper.

4.2 DGFT vide Policy circular No.06/(RE-98)1998-1999 dated 20.05.1998 in the case of claim of double benefit for same export in form of DEPB/discharge of export obligation under Advance Licence as well as for discharge of export obligation by *EOU's/EPZ units, has clarified that double benefit cannot be claimed for same export and in the instant case the said claimant has first claimed the Rebate of Central Excise Duty on the exported Goods and later on also claimed the benefit of Replenishment Scheme on the same exported goods i.e. 'Article of Gold Jewellery'. Which resulted in double benefit on the same export shipment, which is completely illegal.*

4.3 The reliance placed on the Judgment of Hon'ble Supreme Court of India in case of "MEWAR POLYTEX LTD. Versus UNION OF INDIA, Civil Appeal No.10413 of 2010, decided on 09.12.2010" has upheld that double benefit on the same export shipment is not allowed.

4.4 CBEC Circular No.30/2016-Customs dated 24.06.2016,wherein it is categorically mentioned that "the declaration should be made that the goods on which AIR of drawback is claimed under tariff item numbers 711301,711302 or 711401 are manufactured or exported without availing cenvat facility for any of the inputs or inputs services used in their manufacturer and without availing the rebate of duty paid on materials used in their manufacturing or processing in terms of Rule 18 of the Central Excise Rules,2002 and are not manufactured or exported in terms of sub-rule (2) of rule 19 of the said Central Excise Rules,2002". In view of the facts and circumstances of the case, the said claimant has knowingly suppressed the facts before the rebate sanctioning authority, of claiming replenishment, in order to gain rebate of the input duty suffered on 'Gold Bars' in illegal manner.

4.5 In view of DGFT vide Policy circular No.06/(RE-98)1998-1999 dated 20.05.1998, CBEC Circular No.30/2016-Customs dated 24.06.2016, and inlight of Supreme Court's Judgment in the case of "MEWAR POLYTEX LTD. Versus UNION OF INDIA, Civil Appeal No.10413 of 2010, decided on 09.12.2010". It is found that the said claimant has wrongly availed both the benefits i.e. *the said claimant has first claimed the Rebate of Central Excise Duty on the exported Goods and later on also claimed the benefit of Replenishment Scheme on the same exported goods i.e. 'Article of Gold Jewellery'*

5. Subsequently M/s. Sri SaiVishwas Polymers, have filed 11 rebate claims in the month of December 2016 for the total amount of Rs. 9,23,71,056/- and 2 rebate claims in the month of February 2017 for the total amount of Rs. 2,07,90,912/- under Rule 18 of Central Excise Rules, 2002. The above rebate claims were rejected by the adjudicating authority on the grounds set forth in

by them in the appeals filed against the sanctioned rebate claims of M/s. Sri Sai Vishwas Polymers, details are tabulated below;

Sr. No.	OIO No.	OIO date	Appeal No.	Amount of rebate claims rejected in OIO (₹)
1	01 to 11/AC/17-R	04.04.2017	V2(71)34/Ahd-I/2017-18	9,23,71,056/-
2	12 to 13/AC/17-R	04.04.2017	V2(71)35/Ahd-I/2017-18	2,07,90,912/-

6. Being aggrieved M/s. Sri Sai Vishwas Polymers,(the respondent/ appellant)also filed two appeals against the above orders, on the following grounds;

(a) the adjudicating authority has rejected the Rebate Claim under Rule 18 of the Central Excise Rules without pointing out any non-compliance or shortcoming or alleged violation of the said rule or Notification No. 19/2004-CE issued there under.

(b) the appellant is paying Central Excise Duty on the final products manufactured and cleared by them(through job workers).

(c) they have been procuring the inputs i.e. standard gold bar from their own gold refinery at Uttarakhand or at times locally(from other refineries), on payment of Central Excise Duty.

(d) they have been exporting the gold jewellery under the claim for rebate of excise duty and replenishment scheme after declaring that 'the export is against the replenishment basis as per Para 4.31 to 4.34 of FTP 2015-20 and Para 4.52 of HBP 2015-20 to be taken from Nominated Agencies.

(e) they have been claiming rebate/refund of Excise duties paid after export of said gold jewellery in terms of Rule 18 of Central Excise Rules, 2002.

(f) the adjudicating authority can't impose a condition on the appellants which is non-existent in law.

(g) they have imported inputs under post export replenishment scheme and not under advance procurement scheme and therefore, they are not bound by export obligation.

(h) the impugned orders have been passed with a pre-mediated and biased mind and are liable to be set aside.

7. Personal hearing for departmental as well party appeal was conducted on 09/11/2017,Shri Bharat Raichandani, Advocate, Shri Praveen Kumar Garg and Shri Sheel Kumar Singh appeared on behalf of the respondents/appellants and reiterated the grounds of appeal and grounds taken in the cross objection. Also submit that O-I-O has travelled beyond the scope of Show Cause Notice. He also points out that provisions of Rule 18 have not been violated. Earlier rebate was allowed and all such orders were accepted by the department.

8. The grounds put forth in the cross objection filed by the respondent/appellant, are as follows:

i) The present appeal filed by the appellant is illegal and bad in law as the same is time barred as per the provisions of Section 35 of the Central Excise Act, 1944.

ii) Without prejudice, the alleged contraventions of Foreign Trade Policy are alien to Rule 18 and the notification issued there under and hence beyond law.

iii) Without prejudice, CBEC Circular No. 30/2016-Customs dated 24.06.2016 is not applicable in the present case.

iv) Without prejudice DGFT circular No.06/(RE-98)1998-1999 dated 20.05.1998 is not applicable to the present case.

v) Without prejudice department cannot impose conditions of other scheme under Chapter 4 of FTP on Replenishment Scheme.

vi) Without prejudice reliance on the decision of Hon'ble Supreme Court of India in case of "MEWAR POLYTEX LTD.reported at 2010(260) ELT 494 (SC) is of no help to the appellant.

9. Before proceeding further to decide the case, this office has written a letter dated 20.12.2017 to the Principle Commissioner, CGST Ahmedabad South, the appellant to clarify certain points i.e.

1. *Proof of date of communication of order in review cell.*
2. *In review order at para 4.5 it is stated that the main objective of the scheme under Chapter 4 of the FTP-2015-20 is to enable duty free import of inputs for export production, including replenishment of input or duty remission. It is further stated in the same para that* ***"The said main objective of the foreign Trade Policy is that if the exporter takes replenishment route, the gold used in manufacture of jewellery must have suffered duty. But once duty on the gold out of which the exported jewellery was made has been refunded by way of rebate under Rule 18 of Central Excise Rules, then Gold no longer remained duty paid."*** *The above bold narration is no where mentioned in the objective; kindly provide the source of, where it is mentioned in any Govt.Policy or circular.*
3. *Whether and how the DGFT circular No.06/(RE-98)1998-1999 dated 20.05.1998 is applicable in the present case, as the said circular states at para-2, that "In this context it is clarified that the exports effected by EOU's/EPZ units, whether directly or through third party are not entitled for DEPB benefits/ discharge of export obligation under advance licence." It means the situation mentioned in the Circular* ***pertains to exports affected by EOU's/EPZ units,*** *in discharge of the export obligation under Advance Licence. The exporter has not exported the goods under Advance Licence.*
4. *Circular No.27/2016-Cus.,dated 10.06.2016 pertains to "Procedure to be followed by nominated agencies importing gold/silver/platinum under the scheme for Export against Supply by Nominated Agencies." How it is applicable in this case, the respondent being an exporter.*
5. *Whether and how the CBEC Circular No.30/2016-Customs dated 24.06.2016, is applicable, in this case, which is related to "increase in all industry rates (AIR) of Duty Drawback on gold jewellery and silver jewellery/articles." Whether respondent exporter have made export under Drawback scheme or Advance licence scheme or otherwise.*

9.1 Aforesaid letter was partially complied by the Additional Commissioner Central GST, Ahmedabad South, vide their letter dated 2.1.2018. Wherein it is submitted that;

"Please refer to your office letter F.No. V2(71)01/EA-2/ Ahd-I/ 2017-18 dated20.12.2017.

In this regard the clarifications are as follows

1. Date of Communication of order in review cell was on 06.01.2017.
2. The source of excerpt mentioned at the Sr. No. 2 of your reference letter has been taken from DRI letter dtd. 06.02.2017 issued from F.No.DRI/AZU/ENQ-01(INT-01/07)/2017. The DRI Ahmedabad Zonal Unit has been requested to clarify the same directly to your office (Copy Enclosed).
3. The, exporter is not EOU/EPZ units and has not exported goods under Advance Licence.
4. The unit M/s. Sri Sai Vishwas Polymers is not a nominated agency importing gold/ silver/ platinum.
5. The exporter has not exported under Duty Drawback or Advance licence Scheme, the same has also been verified from shipping bill no. 9687950 dtd. 26.08.2016 filed by M/s. Sri Sai Vishwas Polymers.

This letter is issued with approval of The Principal Commissioner, Central GST, Ahmedabad South.

Sd/-
(Manisha Kulkarni)
Additional Commissioner (RRA)
Central GST, Ahmedabad South"

9.2 A reminder to expedite the compliance, was written on 8.1.2018, second reminder has been issued on 16.02.2018. But till date clarification has not been received from the Ahmedabad South (Appellant). Under the circumstances as the sufficient time has elapsed, nothing has been heard, hence I am left with no option but to decide the matter as per records available, FTP Policy Circulars on the subject issue.

9.3 The compliance letter dated 2.1.2018, issued by the Additional Commissioner has clarified that the exporter is not EOU/EPZ units and has not exported the goods under Advance Licence, the respondent unit is not a nominated agency importing gold/silver/platinum. The Exporter has not exported the goods under Duty Drawback or Advance Licence Scheme. As regards source of excerpt mentiond at the Sr. No.2 of this office letter dated 20.12.2017, it is stated that the same has been taken from the DRI letter dtd.6.2.2017 and they requested DRI authority to clarify the aforesaid point directly to this office. Till date nothing has been heard from either of them.

10. I have carefully gone through the facts of the appeals, the department's grounds of appeal in the Review Orders, the written cross objection and oral submissions made by the Learned Consultants of the respondents and the impugned orders. Compliance received from the office of the appellant Commissionerate on the grounds of appeal.

10.1 Now The question to be decided by me is whether the respondents have availed double benefit on the same exported articles i.e. benefit of rebate claim under Rule 18 of the Central Excise Rules, 2002 and the benefit of the Gold Replenishment Scheme specified under Chapter 4 of the FTP 2015-20.

10.2 Orders for rejection of thirteen rebate claims are legal and proper or otherwise, by the adjudicating authority.

11. The cross objection filed by the respondent that the appeal is time barred does not hold any water as the orders appealed were received in RRA Section on 6.1.2017 and authorisation to file appeal has been issued on 31.03.2017 and appeal has been filed on 4.4.2017 i.e. within time limit.

11.1 Further as the appellant has taken grounds of appeal from the objective of the scheme under Chapter 4 of the FTP-2015-20. Hence first, I would like to refer the relevant paras under Chapter 4 of Foreign Trade Policy [1st April, 2015 – 31st March, 2020]:

"CHAPTER 4 :DUTY EXEMPTION / REMISSION SCHEMES:

4.00 Objective

Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of input or duty remission.

SCHEMES FOR EXPORTERS OF GEMS AND JEWELLERY

4.31 Import of Input

Exporters of gems and Jewellery can import / procure duty free input for manufacture of export product.

4.32 Items of Export

Following items, if exported, would be eligible:

*(i) **Gold jewellery**, including partly processed jewellery and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above;*

(ii) Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight;

(iii) Platinum jewellery including partly processed jewellery and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% platinum by weight.

4.33 Schemes

The schemes are as follows:
(i) Advance Procurement / Replenishment of Precious Metals from Nominated Agencies;
(ii) Replenishment Authorization for Gems;
(iii) Replenishment Authorization for Consumables;
(iv) Advance Authorization for Precious Metals.

4.34 Advance Procurement/ Replenishment of Precious Metals from Nominated Agencies
(i) Exporter of gold / silver / platinum jewellery and articles thereof including mountings and findings may obtain gold / silver / platinum as an input for export product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified in this behalf.
(ii) The export would be subject to wastage norms and minimum value addition as prescribed in paragraph 4.60 and 4.61 respectively in the Handbook of Procedures."

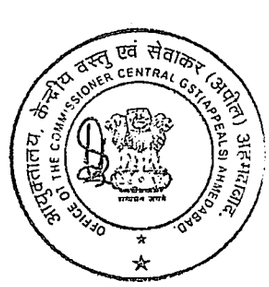
In the review order at para 4.5 it is stated that the main objective of the scheme under chapter 4 of the FTP 2015-20 is to enable duty free import of inputs for export production, including replishment of input or duty remission. It is further stated in the same para that- ***"The said main objective of the foreign Trade Policy is that if the exporter takes replenishment route, the gold used in manufacture of jewellery must have suffered duty. But once duty on the gold out of which the exported jewellery was made has been refunded by way of rebate under Rule 18 of Central Excise Rules, then Gold no longer remained duty paid.*** " The said bold contention is no where written in the Para 4 of FTP 2015-20, neither the source of this so called objective has been explained by the appellant despite reminders to elucidate. I find that the interpretation of objective by the appellant department is not proper and legal. Hon' ble High Court in case of **INTAS PHARMA LTD.** (332) E.L.T. 680 (Guj.) has stated that

"Interpretation of statutes - Taxing statute - There is no scope of any intendment - It has to be construed in terms of language employed in statute - Regard must be had to clear meaning of words - Matter should be governed wholly by language of rules and notification. [para 8]

8. It is by now well settled that in a taxing statute there is no scope of any intendment and the same has to be construed in terms of the language employed in the statute and that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the rules and the notification. As noticed earlier, the procedure laid in the notification dated 6-9-2004 provides for sealing of the goods and examination at the place of the despatch. Undisputedly, in the case of the present petitioner, no such procedure has been followed. Moreover, the notification defines duty for the purpose of the notification to mean the excise duty collected under the enactments stated therein. Undisputedly, the duties paid by the petitioner in relation to the goods in question do not fall within the enactments stipulated in the notification. Clearly therefore, the petitioner has failed to satisfy the basic requirements for availing of the benefits under the notification"

The same position has been adopted by Hon'ble Apex Court in the case of **PARMESHWARAN SUBRAMANI** reported in 2009 (242) E.L.T. 162 (S.C.) :

"Interpretation of statutes - Legislative intention - No scope for court to undertake exercise to read something into provisions which the legislature in its wisdom consciously omitted - Intention of legislature to be gathered from language used where the language is clear - Enlarging scope of legislation or legislative intention not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate - Courts cannot add words to a statute or read words into it which are not there - Court cannot correct or make assumed deficiency when words are clear and



unambiguous - Courts to decide what the law is and not what it should be - Courts to adopt construction which will carry out obvious intention of legislature. [paras 14, 15]"

From the above decisions it is very clear that neither intendment can be applied to the taxing statute **(INTAS PHARMA LTD)** supra, nor words can be added to a statute or read words into it which are not there **(PARMESHWARAN SUBRAMANI)** supra. I find that Appellant Department has wrongly added words to simple and plain objective stated in (Chapter 4 of Foreign Trade Policy [1st April, 2015 – 31st March, 2020]). This is not proper and legal in view of the decisions cited supra.

The respondent has procured the gold from their refining unit who imports the gold dore/ bars on payment of applicable Customs duty and refines and manufactures standard gold dore bars and from other domestic gold refiners. All the procurement of the gold is under proper Central Excise Invoice through which they avail CENVAT Credit of the excise duty paid on gold. The object of the replenishment scheme is that the manufacture can procure gold duty free from nominated agency for manufacture of jewellery or after export they can import through Nominated agency duty free as provided in para 4.34 of the FTP policy. They have chosen the option as provided in para 4.34. Hence there is no violation of FTP Policy.

11.2 CBEC vide Circular No. 27/2016-Cus dated 10/06/2016 laid down a procedure for duty free import of gold/silver/platinum by Nominated Agencies for supply to exporters. In this case the exporter is not a nominated agency also they have not procured the inputs from nominated agency for manufacture of Jewellery exported but they have procured the inputs on payment of Central Excise Duty. Hence this circular is no way or is not applicable in the instant case. The relevant sub-paras of para 6 of this Circular are reproduced here for ease of reference:

> *" 6. (v) the exporters intending to receive precious metal from the Nominated Agencies will register themselves with their jurisdictional Asst. Commissioners who will issue them a one-time certificate specifying therein the details of their units. This certificate has to be produced to the Nominated Agencies while taking gold. The exporter shall submit to the Asst. Commissioner an undertaking to the effect that he shall export the jewellery made from the gold/silver/platinum received from the nominated agency within the period stipulated in the Foreign Trade Policy.*

(vi)……,….

(vii) As far as exporters operating under replenishment scheme are concerned, they may be permitted to receive precious metal from the Nominated Agencies on submission of EP copy of the shipping bill. Nominated agencies shall also monitor the export proceeds realization of such shipments against which they have replenished precious metal, on the basis of Bank certificate of realization to be submitted by exporters to the nominated agencies, as a proof of having exported the jewellery.

(viii) the Nominated Agencies would supply the gold / silver / platinum for export production and would submit an exporter-wise consolidated monthly account in format enclosed by the 10th of the succeeding month to the Customs station of import;

(ix) the exporter shall furnish the EP copy of the shipping bill and Bank Realization Certificate to the nominated agencies as a proof of having exported the jewellery made from the duty free goods released to them within the period prescribed in the Foreign Trade Policy;

(x) wherever such proof of export is not produced within the period prescribed in the Foreign Trade Policy, the Nominated Agencies shall deposit the amount of duty calculated at the effective rate leviable on the quantity of precious metal not exported, within 7 days of expiry of

the period with in which the jewellery manufactured out of the said precious metal was supposed to be exported."
(Emphasis supplied)

In view of above it can be concluded that the respondent has not violated any provisions of this circular also.

11.3 Further, the respondents while filing Shipping Bills for export of the said Gold Jewellery had declared therein that "the export is against Replenishment basis as per Para 4.31 to 4.34 of FTP 2015-20 and Para 4.52 of HBP 2015-20 to be taken from M/s. Diamond Indian Ltd." They have procured duty paid gold domestically under proper tax invoice, for manufacture of the gold jewellery wherein no restriction was present on sale of such finished goods. (In view of FTP policy the export obligation exist only if the respondent had procured gold duty free from nominated agency prior to export.)

11.4 The FTP does not stipulate the "End Use" of the replenished gold, prior to the amendment in the Scheme vide Notification No. 40/2015-20 dated 23rd February,2017, is reproduced below;

[To be published in the Gazette of India Extraordinary Part-II, Section - 3, Sub-Section (ii)]

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade

Notification No.40/2015-2020

New Delhi,Dated: 23 February,2017.

***Subject:** Amendment in Paragraph 4.34(i) of Chapter 4 of the Foreign Trade Policy (FTP) 2015-2020.*

S.O.(E): In exercise of powers conferred by Section 5 of FT (NA) Act, 1992, read with paragraph 1,02 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby makes following amendments in Para 4.34

(i) of Chapter 4 of Foreign Trade Policy 2015-20,

2. Paragraph 4.34 (i) of FTP 2015-20 is amended to read as under:
Exporter of gold / silver / platinum jewellery and articles thereof including mountings and findings may obtain gold / silver / platinum as an input for export. product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified in this behalf. In case where CENVAT credit facility on Precious metal (Gold, Silver and Platinum) as input has been availed and Gems and Jewellery products are exported availing rebate, then replenishment of Precious metal shall be allowed provided that such inputs procured duty free are used in the manufacture of dutiable goods in the factory/unit, where exported Gems and Jewellery products were mantrfactured. Sale/transfer of such duty free Precious metal inputs

shall not be allowed.

3 Effect of Notification: Paragraph 4.34(i) of FTP 2015-20 related to replenishment of Precious metals is amended.

Sd/-
[Ajay Kumar Bhalla]
Director General of Foreign Trade
Ernail:dgft@nic,in

(Issued from F. No. 01/94/180/12/AM17/PC-4)

In view of above even gold procured prior to amendment under replenishment scheme and sold in open market, was permissible and restriction has been imposed for end use from 23.2.2017 vide Notification no 40/2015-2020 dated 23 Feb 2017.

11.5 In fact, the amendment to the policy w.e.f. 23.2.2017 implies that prior to the said amendment there was no restriction regarding the end use of the goods procured under the replenishment scheme. In light of such amendment the intention has been made clear that if credit had been taken on the inputs and the final products were exported under rebate, the replenished goods were not to be sold and were to be used only for manufacture of dutiable goods. It is with this amendment that the concept of dual benefit is born and not before such amendment. Thus, the question of dual benefit does not arise prior to 23.2.2017. The period under consideration is prior to the amendment and the policy as it stood at the material time laid no restrictions on either availing the benefit of rebate under Rule 18 of the Central Excise Rules or end use of the replenished goods under the scheme.

Even for the sake of argument, if the theory of dual benefit is considered, the issue before me is whether the rebate of duty paid on the goods exported is eligible or otherwise. The provisions for rebate have been made under Rule 18 of the Central Excise Rules, 2004 and the governing notification viz. Notn. No. 19/2004 CE(NT) lays down the procedure & conditions pertaining to the rebate claim. It is nowhere in dispute that any of the provisions of Rule 18 *ibid* or Notn. No. 19/2004 CE(NT) have been violated. The rebate is sought to be denied on the sole ground of dual benefit and that too by seeking to interpret the objective under the Foreign Trade Policy. It is a well settled law that the law is to be read in plain language employed and nothing is to be added or deducted from the laid down law. In the instant case, the department is seeking to interpolate the objectives (which have not been spelt out) of the Foreign Trade Policy in the law governing the rebate provisions. Such interpolation of Foreign Trade Policy in central excise law is not permissible unless expressly provided for. Thus, the theory of dual benefit, even if considered, would certainly not affect the claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notn. No. 19/2004 CE(NT) in as much as there is no violation of any of the conditions laid therein. This, is buttressed by the amendment in policy with effect from 23.2.2017 as reproduced at para 11.4 above. Even after the amendment, the policy has not restricted availment of rebate of duty paid on exported goods. What is sought to be restricted is only the end use of the replenished goods in such an event. The policy makes it clear that in the event Gems and Jewellery products are exported availing rebate, the replenishment will be allowed subject to the condition that such replenished goods are used in the manufacture of dutiable goods. Thus, even after the amendment, if the replenished goods are not used in the manufacture of dutiable goods, the recourse would be to recover the duty on such replenished goods since the policy states that "*replenishment shall be allowed provided that . . . . . .*". So even after the amendment if the conditions of end use are violated, the rebate cannot be disallowed but the legal course of action would be to disallow the benefits accruing due to replenishment. This is all the more so because of the fact that no corresponding changes have been made in Notn. No. 19/2004 CE(NT) to the effect that rebate shall not be allowed if the replenished goods are not used for manufacture of dutiable goods. In a nutshell, the objectives or intentions, whatsoever, of the Foreign Trade Policy would have no bearing on the action of grant of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notn. No. 19/2004 CE(NT) unless such restrictive provisions have been made in the relevant rule and notification.

11.6 **Eligibility for Rebate Claim:** Now coming to the matter of eligibility for rebate claim made by the respondents/Appellant, under rule 18 of Central Excise Rules 2002.On going through the Notification No.19/2004-CE dated 6.9.2004 as amended issued under Rule 18 of the Central Excise Rules 2002, there is no condition requiring the fulfilment of the provisions of Foreign Trade Policy or Customs Notification No.57/2000-Cus. Only restriction imposed vide Notification No.93/2004-Cus dated10/09/2004 that "while exporting the resultant goods in discharge of the export obligation under an Advance Licence, the exporter is not entitled to claim any of the rebate of the duty under Rule 18." Here the respondent has not exported the goods under

advance licence hence this is not applicable in this case. I find that Hon'ble High Court of Bombay in case of **MERCEDES BENZ INDIA PVT** 016 (41) S.T.R. 577 (Bom.) has stated that

> *"**Interpretation of statutes** - Intent of Parliament - It has to be gathered from language used - If words are plain, simple and clear, there is no scope for interpretation or applying any principle thereof. [para 21]".*

I find that the objective of rebate is very clear and unambiguous that taxes should not be exported and if duty has been paid and goods have been exported, the rebate should be allowed. I find that both conditions have been fulfilled in the impugned cases.

11.7 The DGFT Circular No. 06 (RE-98)/1998-1999 dated 20.05.1998 is reproduced below:

POL CIR NO. 06/(RE-98)/1998-1999 Dated 20-05-1998

Sub:

*Attempts to obtain **double benefits under DEPB / Advance Licensing Scheme** in respect of goods being manufactured / **processed by 100% Export Oriented Units (EOUs) / units in Export Processing Zones (EPZs).***

Sir

1. Certain instances have been brought to the notice of DGFT wherein some of the exports effected by 100% EOU / units in the Export Processing Zones are also being counted towards discharge of export obligation under advance licences or wherein DEPB benefits are being claimed. Thus the same exports are also being counted towards benefits under DEPB / advance licence as well as for discharge of export obligation by EOUs / EPZ units

2. In this context it is clarified that the exports effected by EOUs / EPZ units, whether directly or through third party are not entitled for DEPB benefits / discharge of export obligation under advance licence. If any such I find that the instances have come to the notice of Regional Licensing Authorities, then, the Enforcement proceedings must be initiated immediately. In the case of third party exports, as per Paragraph 3.54 of the Exim Policy, 1997-2002, the shipping bills must indicate the names of both the manufacturers and the third party. It is clarified that while indicating the name of the manufacturer in such cases, the status of the unit i.e 100% Export Oriented Unit or Unit in the Export Processing Zone also must be clearly indicated.

3. This issues with the approval of Director General of Foreign Trade

Yours faithfully
(L.B.Singhal)
Dy. Director General of Foreign Trade
For Director General of Foreign Trad

I find that the above circular of the DGFT, is applicable to the case of double benefit for the same export in form of DEPB/discharge of export obligation under Advance License as well as for discharge of export obligation by EOUs/EPZ units and clarifies that double benefit can't be claimed for the same export. It is evident from the letter dated 2.2.2018 of Additional Commissioner RRA Central GST, Ahmedabad South that the export of the respondent was not under Advance Licence/Drawback/DEPB. Thus the grounds of appeal taken by them is negated by themselves vide aforesaid letter.

11.7 The case of Mewar Polytex Ltd vs Union of India & Ors on 9 December 2010 [2010(260) E.L.T. 494 (S.C.)], is on different facts than the present case thus of no help to the appellants.

11.8 In view of the facts and discussion herein above, I find that the appellant i.e. department have no merit in the case and hence all the appeal's filed by the department are liable to be rejected as devoid of merit. Appeals filed by M/s. Sri Sai Vishwas Polymers, are required to be allowed with consequential relief.

12. In view of the foregoing, all the appeals filed by the appellant i.e. Department, are rejected. Appeal filed by M/s. Sri SaiVishwas Polymers, are allowed with consequential relief.

13. The appeals filed by both the appellant stand disposed of in above terms.

13. अपीलकर्ता द्वारा दर्जकीगई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)

Attested`

(K.H.Singhal)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY SPEED POST TO:

M/s. Sri SaiVishwas Polymers,
316, PratibhaPlus Complex,
Opposite Narol Gam, Narol-Aslali Highway,
Narol, Ahmedabad-382405.

Copy to:

(1) The Chief Commissioner, Central Tax, Ahmedabad Zone.

(2) The Commissioner, Central Tax, Ahmedabad South.

(3) The Assistant Commissioner, Central Tax Division-IV, Ahmedabad South.

(4) The Asstt. Commissioner (System), Central Tax HQ, Ahmedabad.

(5) Guard file

(6) PA