



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,
सातवीं मंजिल, पॉलिटेक्निक 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)/124&125/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

245870
2462

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-455 & 456-2017-18
दिनांक Date : 27-03-2018 जारी करने की तारीख Date of Issue 10/4/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/2547-2551/AC/2017-Reb दिनांक: 20/9/2017 and
MP/2552-2556/AC/2017-Reb दिनांक: 25/9/2017 issued by Assistant Commissioner, Central Tax,
Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Saraf Dyechem Industries
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।

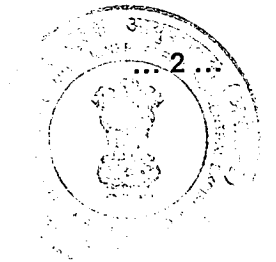
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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



(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 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 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.

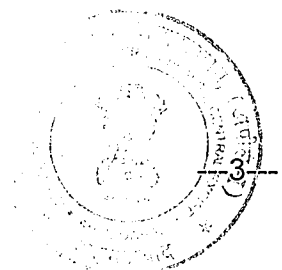
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अनुसूचि-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।

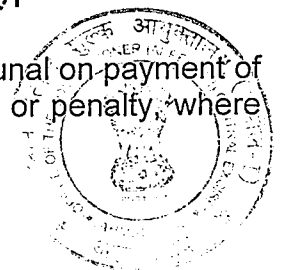
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This appeal has been filed by M/s. Saraf Dyechem Industries, Plot No. C-1/B/382, GIDC, Vatva, Ahmedabad-382445 (hereinafter referred to "as the appellant") against the following Order-in-Original numbers (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Tax, Division III, Ahmedabad South, (hereinafter referred to as "the adjudicating authority").

Sr. No.	O-I-O No.	OIO date	Amount of refund claimed	Appeal No.
1	MP/2547-2551/AC/2017-Reb	20.09.2017	Rs. 5,17,770/-	V2(32)124/Ahd-I/2017-18
2	MP/2552-2556/AC/2017-Reb	25.09.2017	Rs. 12,12,746/-	V2(32)125/Ahd-I/2017-18

2. The facts of the case, in brief that the appellant filed refund claims under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 seeking rebate of duty paid on excisable goods ARE-1 wise. The documents were scrutinized and on the basis of some discrepancy Show-Cause have been issued to the appellant. Adjudicating authority rejects the refund claims on the following ground "

In respect to OIO No.MP/2547-2551/AC/2017-Reb dated 20.09.2017:

2.1 (i) Container sealed in the factory premises of manufacturer as no container number and seal no. mentioned in the C. Ex invoice/ARE-1, nor necessary certificating regarding self stuffing and sealing container has been given as per Notification no. 19/2004-CE(NT) dated 06.09.2004 read with Circular No. 736/52/2003-CX dated 11.08.2003.

(ii) As per the customs endorsement on the back side of ARE-1 no. 179 dated 01.03.2017, the name of vessel is "M. V. Mersk Kiel V-1706E which left on 17.03.2017 whereas the Bill of Lading No. MAX/AHM/0376/1617 dated 05.03.2017 issued by M/s Maxicon Container Line Pte. Ltd. mentions the vessel name as " MAULLIN" (same vessel name in corresponding shipping bill as well) and there



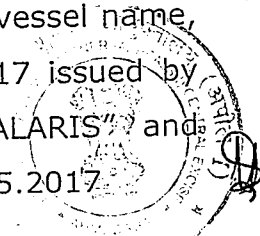
is no date of shipment mentioned.

(iii) As per the Customs endorsement on the back side of ARE-1 no. 21 dated 04.05.2017, the name of vessel is "Clemens Schulte which left on 08.05.2017" and the Bill of Lading no. EPIRINDAHD112095 dated 09.05.2017 issued by M/s Emirates Shipping Line DMCEST also mentions the vessel name as "Clemens Schulte/01715/E", whereas the Mate receipt No. 197022 issued by Terminal/Chief Officer of M/s Emirates Shipping Line (Emirates Shipping Agency) mentions the name of vessel as MARIE DELMAS" and sailed dated is 06.05.2017.

(iv) As per the Customs endorsement on the back side of ARE-1 no. 41 dated 27.05.2017, the name of vessel is "MAIPO which left on 30.05.2017" and the Bill of Lading no. HLCUAM2170555620 dated 31.05.2017 issued by M/s Hapag-LLOYD also mentions the vessel name as "MAIPO", however the Mate receipt No. 0039 issued by Terminal/Chief Officer of M/s Hapag-LLOYD and submitted by the appellant alongwith the rebate claim, mentions the name of vessel as "MSC ASYA and sailed dated 29.05.2017", Corresponding Shipping Bill also mentions the name of vessel as MSC ASYA.

(v) As per the Customs endorsement on the back side of ARE-1 no. 42 dated 29.05.2017, the name of vessel is " MAERSK STADELHORN which left on 03.06.2017" and the Bill of Lading no. 769765925 dated 05.06.2017 issued by M/s Maersk Line India Pvt Ltd. (Safmarine) also mentions the vessel name as "MAERSK STADELHORN", however the Mate receipt No. 00047 issued by Terminal/Chief Officer of M/s Maersk Line India Pvt Ltd. (Safmarine) mentions the name of vessel as "MARIE DELMAS" and sailed dated 30.05.2017", Corresponding Shipping Bill also mentions the name of vessel as "MARIE DELMAS".

(vi) As per the Customs endorsement on the back side of ARE-1 no. 25 dated 10.05.2017, the name of vessel is " MV SM MUMBAI V 003E which left on 15.05.2017" and corresponding Shipping Bill 5978701 dated 10.05.2017 also mentions the same vessel name, Bill of Lading no. KKLUAMD1700288 dated 16.05.2017 issued by M/s K Line mentions the vessel name as "KOTALARIS" and mentions corresponding S. B. No. 5976701 dated 10.05.2017.



In respect to OIO No.MP/2552-2556/AC/2017-Reb dated 25.09.2017:

2.2 (i) Container sealed in the factory premises of manufacturer as no container number and seal no. mentioned in the C. Ex invoice/ARE-1, no necessary certificating regarding self stuffing and sealing container has been given as per Notification no. 19/2004-CE(NT) dated 06.09.2004 read with Circular No. 736/52/2003-CX dated 11.08.2003.

(ii) ← (ii) As per the customs endorsement on the back side of ARE-1 no. 40 dated 27.05.2017, the name of vessel is "MAIPO which left on 30.05.2017" and the Bill of Lading no. dated 31.05.2017 issued by M/s Hapag-Lloyd also mentions the vessel name as "MAIPO", however the Mate receipt No. 00038 issued by Terminal/Chief Officer of M/s Hapag-LLOYD and submitted by the appellant alongwith the rebate claim, mentions the name of vessel as "MSC ASYA and sailed dated 29.05.2017" and the Shipping Bill No. 6365026 dated 29.05.2017 mentions the name of vessel as "MSC ASYA".

(ii) As per the Customs endorsement on the back side of ARE-1 no. 42 dated 29.05.2017, the name of vessel is " MAERSK STADELHORN which left on 03.06.2017" and the Bill of Lading no. 769765925 dated 05.06.2017 issued by M/s Maersk Line India Pvt Ltd. (Safmarine) also mentions the vessel name as "MAERSK STADELHORN". However the Mate receipt No. 00045 issued by Terminal/Chief Officer of M/s Maersk Line India Pvt Ltd. (Safmarine) mentions the name of vessel as "MARIE DELMAS" and sailed dated 30.05.2017", Shipping Bill no. 6372578 dated 29.05.2017 also mentions the name of vessel as "MARIE DELMAS".

(iv) As per the Customs endorsement on the back side of ARE-1 no. 43 dated 29.05.2017, the name of vessel is " MAERSK STADELHORN which left on 03.06.2017" and the Bill of Lading dated 05.06.2017 issued by M/s Maersk Line India Pvt Ltd. (Safmarine) also mentions the vessel name as "MAERSK STADELHORN". However the Mate receipt No. 00046 issued by Terminal/Chief Officer of M/s Maersk Line India Pvt Ltd. (Safmarine) mentions the name of vessel as "MARIE DELMAS" and

sailed dated 30.05.2017", Shipping Bill no. 6372705 dated 29.05.2017 also mentions the name of vessel as "MARIE DELMAS".

(v) As per the Customs endorsement on the back side of ARE-1 no. 28 dated 10.05.2017, the name of vessel is " MV SM MUMBAI V 003E which left on 15.05.2017" and corresponding Shipping Bill 5978717 dated 10.05.2017 also mentions the same vessel name, Bill of Lading no. KKLUMD1700288 dated 16.05.2017 issued by M/s K Line mentions the vessel name as " KOTALARIS.

(vi) As per ARE-I no. 27/2016-17 dated 10.05.2017, the sailed date is 15.05.2017, Bill of Lading dated is 16.05.2017. Vessel name mentioned in this ARE-1 and Shipping Bill is different from Bill of Lading

3. Being aggrieved, the appellant have filed the present appeal and requested to set-aside the impugned order and allow the refund claims.

4. Personal hearing in the case was granted on 31.01.2018. Mr. Abhishek Chopar, CA appeared before me and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case on records, impugned OIOs, grounds of appeal in the Appeal Memorandum and oral as well as written submissions made by the appellant at the time of personal hearing. On going through the impugned order, it is observed by me that there are given below reasons to reject the rebate claim:

- (i) Mismatch of vessel number and sailed dated between Mate's Receipt and Bill of Lading.
- (ii) Mismatch of vessel name among Bill of Lading and Mate's Receipt, Shipping Bill and ARE-1.
- (iii) Not mentioning the container no. and seal no. and necessary certification on the Central Excise invoices and Triplicate copy of concerned ARE-1s resulting to contravention of Circular No. 736/52/2003- dated 11.08.2003.

6. Mate Receipt is a document signed by an officer of a vessel evidencing receipt of a shipment onboard the vessel. It is not a document of title and is issued as an interim measure until a proper bill of lading can be issued. However, Bill of lading is a legal document between the shipper



of a particular good and the carrier detailing the type, quantity and destination of the good being carried. The bill of lading also serves as a receipt of shipment when the good is delivered to the predetermined destination. This document must accompany the shipped goods, no matter the form of transportation. However Bill of lading is prepared on the basis of the Mate's receipt. Vide Circular no. 56/2016-cus dated 24.11.2016, it is decided by the Board that Customs Houses should "**no more insist for Mate Receipt**" in case of containerized cargo. Vessel No. given in the Bill of Lading is the only vessel vide which the goods are to be exported.

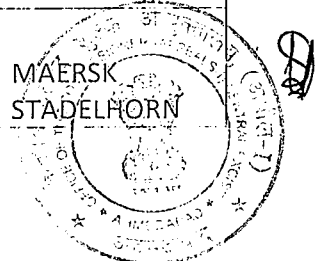
7. It is observed in respect of ARE-1 nos. 179 dated 01.03.2017, 21 dated 04.05.2017, 40, 27.05.2017, 42 dated 29.05.2017, 41 dated 27.05.2017, 42 29.05,2017 and 43 dated 29.05.2017 that vessel no. endorsed by the Custom Officer on the ARE-1 differ from the vessel name given in the concern Shipping Bill No. **However, a Custom Officer endorses the details on the Part-B of the ARE-1 after the completion of export, only on the basis of concerned Shipping Bill.**

7.1 It is also observed in respect of ARE-1 nos. 21 dated 04.05.2017, 25 dated 10.05.2017, 27 dated 10.05.2017, 28 dated 10.05.2017, 40, 27.05.2017, 42 dated 29.05.2017, 41 dated 27.05.2017, 42 29.05,2017 and 43 dated 29.05.2017 that vessel no. endorsed on the Shipping Bill differ from the vessel name given in the Bill of Lading.

7.2 It is further observed in respect of ARE-1 nos. 179 dated 01.03.2017, the endorsement by the customs officer is same as Bill of Lading but differ from vessel no. given in the concern Shipping Bill.

7.3 On the verification of the both appeals filed by the appellant, I observed that the goods have been exported vide the details given follow:

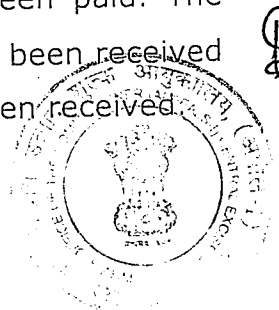
ARE-1 no.	ARE-1 date	Shipping Bill No.	Shipping Bill date	Bill of Lading no.	Bill of Lading date	Name of vessel as per Bill of Lading no.
42	29.05.2017	6372798	29.05.2017	769765925	05.06.2017	MAERSK STADELHORN
42	29.05.2017	6372578	29.05.2017	769765925	05.06.2017	MAERSK STADELHORN
43	29.05.2017	6372705	29.05.2017	769765925	05.06.2017	MAERSK STADELHORN



41	27.05.2017	6365068	29.05.2017	HLCUAM21 70555620	31.05.2017	MAIPO
40	27.05.2017	6365026	29.05.2017	HLCUAM21 70555620	31.05.2017	MAIPO
21	04.05.2017	5843345	04.05.2017	EPIRINDAH D112095	09.05.2017	Clemeans Schulte/01715/ E
179	01.03.2017	4485851	02.03.2017	MAX/AHM /0376/161 7	05.03.2017	MAULLIN
25	10.05.2017	5978701	10.05.2017	KKLUAMD1 700288	16.05.2017	KOTA LARIS
28	10.05.2017	5978717	10.05.2017	KKLUAMD1 700288	16.05.2017	KOTA LARIS
27	10.05.2017	5978701	10.05.2017	KKLUAMD1 700288	16.05.2017	KOTA LARIS

8. I agree with the adjudicating authority that there is mis-match of vessel name Shipping Bill, ARE-1 and Bill of Lading/Mate Receipt and appellant failed to satisfy the reason behind the same. But Vessel No. given in the Shipping Bill may differ from Bill of Lading. Vessel no. is given at the time of the filling of the Shipping Bill. The process of filling of Shipping Bill is far before the goods reach to the port of export. Vessel for shipment may change at the port based on availability of vessels. So, there are possibility of mismatch of vessel no. in the submitted documents by the appellant. But we cannot ignore other related things which indicate that the goods have been exported and foreign exchange for the same has been received. The adjudicating authority, nowhere in the impugned order, has denied the fact that the goods have been exported. His entire argument is based on the procedural lapse committed on the part of the appellant and mismatch of vessels name only. I am of the view that once export procedure has been completed, consecutive benefits arising out of the said export should not be denied to the appellant.

9. The basic concept of the granting the refund of duty is that, the same goods should be exported on which the duty has been paid. The goods were exported and also the payment for the same has been received in convertible foreign exchange and BRC for the same has been received.



10. The required documents for rebate of duty paid on goods exported. Rule 18 of CER 2002 and Notification No.19/2004 CE (NT) dated 6.9.2004 are as under:

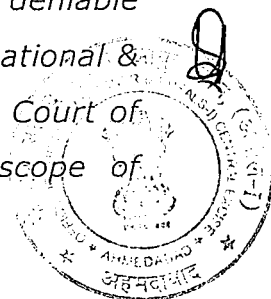
- (i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 numbers and dates, corresponding invoice numbers and dates, amount of rebate on each ARE-1 and its calculations.
- (ii) Original copy of ARE-1.
- (iv) Invoice issued under Rule 11 of CER, 2002
- (v) Self attested copy of Shipping Bill (EP copy) and Bill of lading/ Airway Bill.
- (vi) Proof of duty payment.
- (vii) Disclaimer certificate. (in case claimant is other than exporter)

11. The connectivity of the export can be understandd as under:

Tax Invoice~ARE-1~Commercial invoice~Shipping Bill~Bill of Lading~BRC

Tax Invoice number reflected in concern ARE-1, Commercial invoice no, ARE-1 no. reflected in Shipping Bill. The description and quantity of the goods shown in the Tax invoice, Commercial invoice, ARE-1 also matched with description and quantity of the goods shown in the concerned Shipping Bill. The commercial invoices and date and Shipping Bills no. reflected in Bills of Lading. The container no. shown in the Shipping Bill also the same reflected in Bills of Lading as well as Mate Receipt. Important contained of the Shipping Bills viz. invoice no., description of the goods, container no. port of Loading , port of Discharge and in some case Shipping Bills no. also reflect in the Bill of Lading. The same Shipping Bill Number reflects in the BRC.

12. I agree with the view of the appellant given in the grounds of appeal that *"That Joint Secretary, Government of India, Department of Revenue, in the case Cotfab Export, 2006(2005) ELT1027 (GOI) in para 6 has said that the procedural infraction of notification/circulars to be condoned if export has taken place-settled law is that substantive benefit not deniable for procedural lapses. In Case of Union of India Vs. Suksha International & Nutan Gems and other -1989 (39) ELT 503, the Hon'ble Supreme Court of India has held that an interpretation unduly restricting the scope of*



beneficial provisions is to be avoided so that it may not take away with one hand what the policy given the other."

12.1 Further on the basis of the cases of *Radha Kanhaiya Textile Processors-2016(336) E.L.T. 654(Tri.-Mumbai)*, *Ford India Pvt Ltd-2011(272) E.L.T.353(Mad.)* and *Suksha International & Nutal Gems & Anr-1989(39) E. L. T. 503(S.C.)* **the procedural infractions should not come in the way of sanctioning the refund/rebate.**

13. In view of the discussion above, I do not agree with the views of the adjudicating authority. I reject the impugned order and allow the appeal filed by the appellants.

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

14. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

S. DUTTA
10/04/18
(S. DUTTA)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,

M/s. Saraf Dyechem Industries,
Plot No. C-1/B/382, GIDC,
Vatva, Ahmedabad-382445

Copy to:-

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

