

(2011) 04 MAD CK 0488

In the Madras High Court

Case No : Writ Petition No's. 14884 and 14885 of 2008

Ford India Pvt. Ltd.

APPELLANT

Vs

Assistant Commr. of C. EX., Chennai

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Central Excise Rules, 1944 — Rule 13, 173Q, 18, 57A, 57AA
Central Excises and Salt Act, 1944 — Section 11AA, 2, 35EE, 35G, 37
CENVAT (Credit) Rules, 2001 — Rule 13, 2F, 3, 4

Citation : (2011) 272 ELT 353

Hon'ble Judges : P.P.S. Janarthana Raja, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : C. Natarajan, SC for N. Inbarajan, for the Appellant; K. Ravichandrababu, SCGSC, for the Respondent

Judgement

1. Both the Writ Petitions, filed by the same assessee, involve very same issue. Hence, common order is passed.

2. In W.P. No. 14884 of 2008, the petitioner herein has sought for a Writ of Certiorarified Mandamus to quash the order of the third respondent in Order No. 1/08, dated 27-3-2008 and to direct the first respondent to restore a sum of Rs. 12,63,03,430/- by way of rebate on export of goods during the period March 2001 to February, 2002 under Rule 18 of the Central Excise Rules, 1944.

3. In W.P. No. 14885 of 2008, the petitioner herein has sought for a writ of Certiorarified Mandamus to quash the order of the third respondent in Order No. 2/08, dated 27-3-2008 and to direct the first respondent to restore a sum of Rs. 5,70,15,438/- by way of rebate on export of goods during the period March 2002 to October, 2002 under Rule 18 of the Central Excise Rules, 1944.

4. The facts herein are as follows :

The petitioner herein is a manufacturer of automobiles, parts and accessories, having their factory at Maraimalai Nagar, Chengalpattu District. The petitioner

has sales within India on the manufactured automobiles, apart from the sale of parts and other accessories as well as export of automobiles on specific orders received. The KDP plant (Knock Down Pack Plant) was included as part of their factory premises, as the same is situated within the factory premises. To meet its export obligation, KDP plant procures various components from the manufacturing vendors against export orders with the destination code for South Africa and Mexico and some of the parts procured from vendors undergo further processing in the manufacturing unit. The KDP plant receives all these parts along with their manufactured parts and after inspection, have it sequentially packed in the manner in which it is required in the assembly line in the exported countries and in a pallet, according to the export packing slip, in an appropriately engineered Integrated Modular Carton box and then moved to the storing location identified by the bar code, it is stated that the pallets are thereafter stretched, wrapped, and booked into the system in a case duly packed and moved to a vaning and staging area. Thereafter, stuffing is done and they are sealed and exported. It is also stated that before packing, the panels are sprayed with anti-corrosive material to avoid rust formation. Anti-rust oil treatment is done on all metal parts. The parts are arranged model wise, it is stated that when the pallets are moving to the staging area, the container foot prints are progressively filled with cases both in the system as well as in the foot print area. The petitioner states that literally this is similar to the car getting built on the floor, as the parts are sequenced and vanned. The entire activity in the KDP plant is executed through an agency M/s. TVS Logistics Limited, appointed by the petitioner. Originally, the assessee were taking credit of the duty paid on the components received in the KDP plant in terms of MODVAT scheme under Chapter AA of the Central Excise Rules, 1944, as amended from time to time and as per the corresponding scheme under the CENVAT Credit Rules, 2001. The petitioner exported from the KDP plant on bond and claimed rebate under Rule 13 of the Central Excise Rules, 1944. The credit taken on receipt of the components into the KDP Plant were utilised on the clearance of the manufactured goods from the factory premises under the MOD-VAT/CENVAT Scheme.

5. It is seen from the documents filed before us that based on the verification of accounts, the Superintendent of Central Excise alleged that the petitioner had had irregular availment of CENVAT credit and thereby contravened the provisions of Rules 57AB, 57AC(7) of the Central Excise Rules, 1944 upto 30-6-2001 and proviso to Rules 3 and 4 of the CENVAT Credit Rules, 2001 from 1-7-2001 onwards. Demand notices were served for a sum of Rs. 4,08,39,896/- for the period 7-6-2000 to 31-3-2001 by the Divisional Preventive Unit and under notice dated 27-7-2002 for the period from 31-3-2000 to December 2001. The notice alleged that the irregular/wrong availment of CENVAT credit was on bought out auto components received directly from the vendors at the KDP plant exclusively for export to South Africa and Mexico. The activity in the KDP plant was only a trading activity and could not be treated as manufacturing activity. Hence, the

receipt of parts and components at the KDP plant, which were subsequently exported, did not qualify as "inputs" in terms of definition under Rule 57AA of the Central Excise Rules, 1944 and Rule 2F of the CENVAT Credit Rules, 2001. Since the sequential arrangement did not involve any manufacturing or any process leading to fixing of parts together, the parts received at the plant could not be interchanged with that of the manufacturing plant. In the circumstances, the petitioner had contravened the provisions of Rules 57AB and 57AC(7) of the Central Excise Rules, 1944, as it existed and Rules 3 and 4 of the CENVAT Credit Rules, 2001. The undue financial accommodation was an intentional one, attracting penal action under erstwhile Rule 173Q of the Central Excise Rules, 1944 and Rule 13 of the CENVAT Credit Rules, 2001. The petitioner objected to the said notice in detail vide their letter dated 5-10-2001, that the activity undertaken in KDP plant was covered within the concept of "manufacture" and the petitioner also laid reliance on the circular of the Central Board of Excise and Customs dated 31-12-1996, read with, the circular dated 28-8-2000, that the activity undertaken was a manufacturing process and that being revenue neutral, they prayed for dropping the action. The claim was, however, rejected and adjudicated under order dated 8-3-2002, confirming the demand of Rs. 4,08,89,896/-, covering the period 7-6-2000 to 31-3-2001, along with interest u/s 11AA of the Central Excise Act, 1944, apart from penalty of Rs. 10.00 lakhs under Rule 173Q of the Central Excise Rules, 1944. The authority also deleted the KDP plant from the existing manufacturing unit. Under order dated 13-6-2002, the CENVAT Credit demanded along with interest for the period 1-4-2001 to 31-12-2001 was adjudicated with penalty imposed at Rs. 20.00 lakhs for the period January, 2002 to October, 2002 and under order dated 30-6-2003, the demand of Rs. 8,15,38,491/- was con-

6. Aggrieved by the same, the petitioner preferred appeals before the second respondent - Commissioner of Central Excise, who, in turn, rejected the same. Ultimately, the assessee came before the CESTAT. By order dated 21-3-2007 2007 (121) ECC 192 , the Tribunal rejected the claim of the assessee on the ground that all that the assessee had done in the KDP Plant was receiving bought-out auto components and coating it with rust-proof oil and after random testing, sequencing packing/palleting the same, they were exported on bond under Rule 13 of the erstwhile Central Excise Rules. Since the activity undertaken in the KDP plant was not a manufacturing activity, the quality checking, sequencing, packing etc., were preparatory or ancillary to, or otherwise connected with manufacture of cars abroad by the petitioner. This would not come under the benefit of Rule 18 of the Central Excise Rules. Further, the KDP plant was not a factory as per the definition u/s 2(e) of the Central Excise Act. In the circumstances, the Tribunal held that the assessee was not entitled to avail CENVAT Credit on the components purchased from the vendors and directly received into KDP plant and exported to South Africa and Mexico. In the result, the Tribunal rejected the appeals. Consequent on that, the Tribunal also confirmed the levy of penalty imposed by the authorities below. Aggrieved by the

same, the petitioner has preferred appeals u/s 35G before this Court in C.M.A. Nos. 2973 to 2975 of 2007.

7. It is seen from the facts that in the meantime, the petitioner filed rebate claim on 21-3-2002 for Rs. 12,63,03,430/- pertaining to the above-said issue on export undertaken during the period March, 2001 to February, 2002, on the ground that in the event of the credit being denied, they would be eligible for rebate in terms of Rule 18 of the Central Excise Rules, 2001. The said claim was rejected on 18-2-2003. The rebate claim made by the petitioner for the period March, 2002 to October, 2002 for Rs. 5,70,15,438/-, pertaining to the "export undertaken for the above-said period, was also rejected under order dated 22-8-2003. The petitioner filed revisions against the same before the Commissioner, which were rejected. Aggrieved by the same, the petitioner preferred revisions before the Government on 29-6-2004 u/s 35EE of the Central Excise Act, 1944 for the period March, 2001 to October, 2002. In the meantime, during the pendency of the revisions before the third respondent, and appeals before this Court as against the orders of CESTAT dated 21-3-2007, the assessee paid the excise duty on the goods which were brought into the KDP plant and taken in for export, and prosecuted its revision before the Government of India. Apparently, with the appeals pending before this Court, the assessee took this alternative route to get the benefit under Rule 18 of the Central Excise Rules. The Government of India, third respondent herein, passed an order on 27-3-2008, wherein, it pointed out that the petitioner herein had, in fact, exported the goods. However, since the issues on CENVAT credit availment and rebate are already before this Court in the Civil Miscellaneous Appeals filed as against the order of the CESTAT, the rebate claim could not be decided in isolation. The third respondent further pointed out that quite apart from export of goods, what needed to be determined was whether the substantive conditions of payment of duty had been satisfied or not. In the circumstances, the third respondent remanded the matter back to the original authority, directing him to consider the petitioner's applications for rebate in the light of the circumstances stated and pass a reasoned order regarding the mandatory conditions after following the principles of natural justice. Aggrieved by the same, the petitioner has preferred W.P. Nos. 14884 and 14885 of 2008, seeking a Writ of Certiorarified Mandamus to quash the order dated 27-3-2008 and to direct the first respondent to grant rebate of Rs. 12,63,03,430/- on the export of goods for the period March, 2001 to February 2002 and for a sum of Rs. 5,70,15,438/- for the period March, 2002 to October, 2002.

8. On notice, the respondents have filed a counter, wherein they deny the petitioner's claim for rebate by preferring a petition before the Government of India and by remitting the duty component on the goods received in the KDP plant. The respondents contend that the assessee was well aware that during the period March, 2001 to October 2002, the availment of credit was rejected by the Department; nevertheless, the assessee continued to avail CENVAT Credit and preferred a rebate claim. Thus the assessee continued to prefer its claim and as

against the order of rejection, they filed appeals before the CESTAT, which rejected the same on 21-3-2007. Thus, when the petitioner's claim were already rejected, the assessee is not entitled to maintain the applications for rebate on the duty paid on inputs. The counter further stated that the mere fact that the goods are exported, by itself, would not strengthen the case of the petitioner, since the petitioner is bound to go by Rule 18 of the Central Excise Rules, which came into effect from 1-7-2001. This means that the assessee should have complied with the conditions therein and in the Notification No. 41 of 2001-Central Excise, dated 26-6-2001, by filing necessary declaration and giving the verification of input output ratio. Evidently, the assessee had not furnished the particulars as prescribed under the Notification. Hence, on the ground of non-compliance of the conditions stated therein, the rebate claim was not maintainable. Considering the fact that the revisional authority had remanded the matter back to the original authority for considering the applications afresh, the Writ Petitions have to be dismissed.

9. The sum and substance of the counter is that the assessee is not entitled to have the claim of CENVAT Credit and rebate, unless and until the assessee comes within the four corners of the requirements of Rule 18 of the Central Excise Rules.

10. Learned senior counsel appearing for the assessee made detailed submissions as to the scope of Rules 12 and 13 of the Central Excise Rules, 1944, prior to the amendment in 2001, Rules 18 and 19 of the Central Excise Rules and the Scheme relating to MODVAT Scheme as contained in Chapter AA of the Central Excise Rules, 1944, and as amended under the CENVAT Credit Rules, 2001 made u/s 37 of the Act, only to insist that contrary to the Notification and the Government circular in the year 1996, the further Circular No. 345/2/2000, dated 29-8-2000 and the Scheme of rebate, the Revenue had committed a serious error in rejecting the prayer of the assessee for rebate. Given the fact that the third respondent had found, as a matter of fact, that the assessee had exported the automobile parts and other accessories in terms of its foreign purchase orders; that having regard to the fact that the third respondent had also found that the claim for rebate was made well within the period of limitation and further there was no revenue leakage considering the fact that the petitioner had remitted the duty on the goods received in the KDP plant, the said Authority should have granted the relief. Since there was no further question of considering the other aspects as regards the compliance of the requirements of the Rules and the circulars of the year 1996, or for that matter, 2001, the third respondent ought not to have remanded the matter.

11. In support of the contention, learned senior counsel appearing for the assessee brought to our attention the orders passed by the Government of India in similar circumstances that undue emphasis should not be given on procedural technicalities in the matter of considering the claim for rebate. The understanding of the Revenue as regards the scope of Rule 18 of the Central Excise Rules, as had been expounded in the circulars in the year 1996 and 2001,

ought to have been extended to the case of the assessee.

12. In this connection, he placed reliance on the decisions reported in 2006 (204) E.L.T. 632 Formica India Division Vs. Collector of Central Excise and Others, and submitted that given the fact that all the particulars as are required under Notification No. 41 of 2001 are available before the first respondent and the fact that the assessee had exported the goods as well as paid the duty, in respect of which CENVAT Credit was availed of, the benefit of rebate, as given under Rule 18 of the Central Excise Rules, ought to have been given. He further pointed out to the undertaking given before the Government of India in its revision as to the petitioner's readiness to withdraw the Civil Miscellaneous Appeals, which are pending before this Court.

13. Learned senior counsel submitted, in the circumstances, that the allegation that the petitioner had not followed the procedure, did not survive. He pointed out that there is no bar in law for an assessee to claim any alternative benefit, if available to an assessee under law. The claim for rebate came to be filed when the Revenue sought to deny the credit on inputs. Thus in the absence of any prohibition under the Act as to the stage at which the rebate should be claimed or the claim to get barred by reason of an appeal pending before this Court, the Revenue should have considered the benefit of rebate under the Scheme. Thus while asserting the stand that the petitioner would be entitled to CENVAT Credit as per Rule 13 and Rule 18 of the MODVAT and CENVAT Rules, as explained in the circular dated 11-10-1996 and the Notification No. 41/2000, dated 26-6-2001, learned Senior Counsel stated that the Rules on MODVAT Credit and the claim for rebate should be read in a harmonious manner, considering the fact that the intention of these procedures are revenue neutral only. He pointed out that the claim of rebate would depend on the payment of duty on "inputs". Since the inputs suffered duty, the petitioner is entitled to claim rebate under Rule 18. He submitted that soon after the dismissal of the appeal on 21-3-2007, since the entire CENVAT Credit stood obliterated, the petitioner reversed the credit and remitted the duty of Rs. 14,77,72,789/- on 19-4-1997. Thus, no CENVAT Credit was availed. In the background of the same, the third respondent should have granted the relief.

14. He pointed out that the exports were effected, under Rule 13 procedure, under Bond. As per Rule 57AD(4)(v), credit on inputs need not be reversed, if the final products are exported under bond under Rule 13. Rule 13 contains the definition of manufacture, which includes the process of blending of any goods, making alteration or any other operation thereon. Therefore, the definition of manufacture contemplated a wider meaning to be given to the term. Referring to the EXIM Policy and Drawback Rule, he stated that even repacking is included in the said definition. He also drew our attention to the Circular of the Central Board of Excise and Customs No. 283/117/96, dated 31-12-1996, that export of inputs, as such, under Bond, were also treated as final products, by reason of the definition of manufacture under Rule 57F(1)(ii), to avoid any disadvantage to an

exporter of inputs under Bond. Thus, this view was reiterated even under the amended CENVAT Scheme, 2001 and in the Circular No. 345/2/2000, dated 29-8-2000.

15. Per contra, learned standing Counsel appearing for the respondents pointed out to Rules 12, 13 as well as 18 and 19 of the Central Excise Rules and submitted that in the absence of any manufacturing activity in the KDP plant, the assessee is not entitled to have the benefit of rebate. In any event, with the appeals pending before this Court, the petitioner is not entitled to any remedy of rebate as of today without the compliance of the mandatory conditions and rightly, the third respondent remitted the matter to the files of the first respondent.

16. Heard the learned Senior Counsel appearing for the assessee and the learned Standing Counsel appearing for the respondents and perused the material records placed before this Court.

17. Although learned Senior counsel made detailed submissions on the merits of the appeals filed as against the orders of the CESTAT, we do not think that the merits of the appeals need to be adverted to herein, considering the fact that the petitioner had remitted the duty and thereby reversed the credit for the purpose of claiming rebate under the relevant Rule 12/18 of the Central Excise Rules, relating to the relevant period. For the present, we propose to deal with the contention in the Writ Petitions only.

18. Chapter AA of the Central Excise Rules deals with credit of duty paid on excisable goods used as "inputs". Rule 57 A, as it stood upto 28-6-1995, deals with the applicability of the provision to such finished goods that the Government may specify for the purpose of allowing credit of any duty paid on the goods used or in relation to the manufacture of the said final products. Rule 57F deals with the manner of utilisation of the inputs in respect of which, a credit of duty has been allowed under Rule 57A and the credit allowed in respect of duty paid thereon. It stated that the input on which credit of duty has been allowed, shall be reversed after intimating the jurisdictional Assistant Collector of central Excise from the factory for home consumption or "for export under bond as if such inputs have been manufactured in the said factory". The provision in Rule 57F, as it existed as on 31-12-1996, however, omitted the deeming fiction to allow utilisation of credit on the inputs, in respect of which a credit of duty has been allowed under Rule 57 A and removed for export under bond.

19. On the amendment made to the MODVAT Credit Scheme to one of CENVAT credit, necessary amendments were introduced, under Chapter AA, under the Central Excise Second Amendment Rules, 2000, effective from 1-4-2000. The Rules contained a definition of inputs much wider than the original provision. Rule 57AA(d) defines "input". Rule 57AB provides for the circumstances under which CENVAT credit is available. For the purpose of this case, we need to note Rule 57AB(1)(b), which reads as follows :

(b) The CENVAT credit may be utilized for payment of any duty of excise on any final products manufactured by the manufacturer or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed, or such capital goods are removed as such.

Explanation. - When inputs or capital goods are removed from the factory, the manufacturer of the final product shall pay the appropriate duty of excise leviable thereon as if such inputs or capital goods have been manufactured in the said factory, and such removal shall be made under the cover of an invoice prescribed under rule 52A.

20. Rule 57AC(7) specifically states that no refund of credit would be allowed, if the manufacturer avails of duty drawback under the Customs and Central Excise Duties and Drawback Rules 1995, or rebate of duty under Rule 12 in respect of such duty. It further pointed out that where inputs are used in the final products, which are cleared for export under Bond, or used in the intermediate product cleared for export, CENVAT credit should be allowed to be utilised by the manufacturer towards payment of excise duty on any final products cleared for home consumption or for export on payment of duty.

21. The provisions under Rule 57AA to Rule 57AK underwent amendment and the provisions relevant for this case during the period 1-3-2001 to 30-6-2001 show that the input definition under Rule 57AA(d) once again retained its content. Rule 57AB relating to CENVAT Credit under sub-rule (IB) stated that CENVAT Credit may be utilised for payment of any duty of excise on any final products manufactured by the manufacturer or payment of duty on inputs or capital goods, if such inputs are removed as such or after the partially processed or such capital goods are removed as such. Rule 57AC(7) reiterated the provisions as before.

22. Rule 12 of the Central Excise Rules, 1944, provides for rebate of the duty paid on the excisable goods and duty paid on materials used in the manufacture of goods exported outside India, subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture, destination, as may be provided for in the Notification. Proviso to Rule 12 states that on satisfaction of the fact of export, the Commissioner of Central Excise shall allow the claim of rebate, even if all or any of the conditions laid down in the Notification, issued under the Rule, have not been complied with.

23. Rule 13 touches on export in bond of goods on which duty has not been paid. It states that the Government may issue Notifications in the Gazette to permit export of specified excisable goods in bond without payment of duty, in the like manner, as the goods falling for consideration under Rule 12(1) from the factory of the manufacturer or warehouse or any other premises as may be approved by the Commissioner. Sub-Rule (b) of Rule 13 states that the Central Government may issue Notification for export of goods in bond without payment of duty from

the place of manufacture or storage for use in manufacture.

24. Under Notification No. 9 of 2001, the above-said Rules were rescinded and in its place. Rules 18 and 19 were introduced. Rule 18 stated that when any goods are exported, the Central Government may grant rebate of duty paid on such excisable goods or duty paid on the materials used in the manufacture or processing of such goods. The rebate shall be granted on the fulfilment of conditions or limitations prescribed in the Notification issued thereon. Rule 19 deals with export without payment of duty. It states that any excisable goods can be exported without payment of duty, subject to such conditions as may be prescribed by the Board. Sub-Section (2) provides for removal of any material without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises for use in the manufacture or processing of goods which are exported.

25. The Central Board of Excise and Customs considered the scope of the above-said provisions on MODVAT and CENVAT Credit with reference to export of goods and the rebate in the Circular No. 283/117/96-CX, dated 31-12-1996. It referred to the representation made as regards the credit on inputs cleared as such for export under bond, to be utilised for payment of duty on final products cleared for home consumption or alternatively for a refund in cash, considering the doubt that had arisen on the above-said issue, the Board passed the circular, pointing out to Rule 57F providing for the manner of utilisation of the inputs and the utilisation of the credit allowed in respect of the duty paid thereon. It pointed out that Rule 57F(4) proviso treated export of inputs under bond as final product by virtue of deemed manufacture clause. The Board pointed out that the expression "as if such inputs have been manufactured in the same factory" under the original Rule 57F(1)(ii) covered all such cases within the ambit of proviso to Rule 57F(4). The omission of the fiction, by Notification No. 28/95-C.E. (NX)/ dated 29-6-1995, was with a view to simplify the clearance procedure, which created a doubt in respect of utilisation of credit in such cases. The Board pointed out "it is not the intention of the Government to debar such manufacturer/exporters from utilising credit. Clearance of inputs as such for export under bond can still be treated at par with "final product" and the manner of utilisation of credit in such cases will be governed by the provisions of the proviso to Rule 57F(4). It is also observed that in case such inputs are cleared on payment of duty by debit in RG 23A Part-II account by virtue of Rule 57F(4)(iii), the manufacturer will be entitled for rebate under Rule 12(1)(a) of the Central Excise Rules. He is, however, put to disadvantage if he opts for export under bond procedure. The exports under "claim of rebate" and "export under bond" should be at parity, since, intention of both the procedures are to make duty incidence "nil". It is also an established principle that rules should be interpreted in a manner which do not render them redundant. Accordingly, it is clarified that the Modvat credit in RG 23A Part-II account against the export of inputs as such under bond can be utilised in the same manner as it is provided for a final product under proviso to Rule 57F(4). Obviously, it follows from this that such inputs should be allowed to be exported

under bond without any reversal of the credit."

26. In the Circular issued by the Central Board of Central Excise and Customs in F.No. 345/2/2000-TRU, dated 29-8-2000, the Board pointed out in paragraph 8 as follows :

8. Explanation to Clause (b) of sub-rule (1) of Rule 57AB refers to payment of appropriate duty of excise if the inputs or capital goods are removed as such from a factory. It has been pointed out that there may be a situation where the input or capital goods are exported. Doubt has been expressed whether such export clearances have to be made only on payment of duty. In this context it is clarified that under the excise procedures, a manufacturer can export the goods under bond without payment of duty. This is a facility that is available to the manufacturer under the excise procedure, in such case, the appropriate duty of excise that is payable is "nil". Therefore, there is no bar for a manufacturer to remove the inputs or capital goods for export under bond within the Explanation referred to above.

27. Notification No. 41 of 2001, dated 26-6-2001 provided for the modality on the claim for rebate and the conditions to be complied with.

28. In the background of the above-said provisions and the Circular issued by the Central Board of Excise and Customs, it is clear that clearance of inputs as such for export under bond are treated on par with finished products and that the assessee would be entitled to the utilisation of the credit in terms of the provisions on MODVAT/CENVAT credit. Thus, the exports under claim of rebate and export under bond of the inputs are treated on parity with the export of final products. The view thus taken by the Central Board of Excise and Customs is more in consonance with the object of providing for rebate to encourage export to earn more foreign exchange.

29. As rightly pointed out by the learned Senior Counsel, the decision of the Apex Court reported in State of Kerala and Others Vs. Kurian Abraham Pvt. Ltd. and Another, as well as the unreported decision of the Supreme Court in Civil Appeal No. 4233 of 2007, dated 21-4-2011 (State of Tamil Nadu v. India Cements Ltd. & Another) clearly pointed out to the binding nature of the Circulars issued by the Board espousing the content of the provisions.

30. We also agree with the submission of the learned Senior Counsel as to the compliance of the procedural requirements in the claim for rebate that, so long as their substantive compliance and that the factum of export is not in doubt, rebate being a beneficial scheme, the same should be interpreted liberally. The reliance placed on the decision of the Government of India in a similar situation in the decision reported in 2006 (204) E.L.T. 632 (In Re : Modern Process Printers), relied on by the learned Senior Counsel for the petitioner, fully supports the case of the petitioner.

31. Even though learned standing Counsel appearing for the Revenue submitted

that the circulars are not binding on the Court, the question herein is not as to the validity of the circular, but as to the binding nature of the circulars issued by the Board. As already pointed out, the Circulars of the year 1996 and 2001 clearly brought out the intention of the Government to grant rebate in respect of export of inputs also as such under bond, that the same shall be treated on parity with the final product and the manner of utilisation of credit would be governed by the provisions of Rule 57F(4). That being the case, we do not think that the Revenue would be justified in objecting to the course taken by the petitioner herein seeking rebate on the duty paid inputs, exported as such.

32. It is no doubt true that rebate under Rule 18 is available in respect of duty paid goods. The Revenue does not deny herein that in respect of the CENVAT Credit claimed, the petitioner had already remitted the duty on the inputs exported.

33. In the above circumstances, we do not find any impediment in the first respondent in considering the rebate claim of the petitioner.

34. It is seen from the order of the Government of India dated 7-4-2008 that the Government had considered the claim of the assessee as regards the claim on rebate made in the context of their reversing the Modvat claim by payment of duty. The third respondent pointed out that in the matter of a claim for rebate, what is required to be seen is whether substantive conditions of payment of duty and export of goods had been satisfied. Given the fact that the issue on CENVAT Credit availment of rebate are related, the rebate claim, as such, could not be considered in isolation, to grant the relief to the assessee. Rightly, it found, as a matter of fact, that the export of goods had taken place. However, what stood in the matter of granting the relief to the petitioner was the pendency of appeals before this Court filed against the order of the CESTAT. In the circumstances, the Government thought it fit to remand the matter back to the original authority to consider the applications for rebate claim in the light of the circumstances and pass an order regarding the compliance of the mandatory conditions.

35. As already pointed out, given the scope of the circular dated 31-12-1996 that the assessee exporting the inputs, as such, would be entitled to have the claim for rebate under Rule 12 of the Central Excise Rules, we feel that the question as to whether the assessee is a manufacturer in respect of the goods which are exported through the KDP plant for the purpose of granting the benefit under Rule 12 of the Central Excise Rules, as such, does not require any consideration before this Court. Since the question as to whether the assessee is entitled to the benefit under Rules 12 or 18 of the Central Excise Rules, as the case may be, is a matter which was not in dispute at all before the Government, all that the third respondent had directed was to find out whether the assessee had complied with the particulars for the purpose of grant of rebate. It would be appropriate to extract the words of the third respondent, as follows :

19. Govt. observes that what needs to be determined in the present case is

whether substantive conditions of payment of duty and exportation of goods have been satisfied or not. That export of goods has taken place has not been disputed by the Department, it is also a fact that the applicant has gone in appeal against CESTAT's order. Since the two issues of Cenvat Credit availment and Rebate are related, the Rebate claim cannot be decided in isolation.

20. In this situation Govt. remands the matter to the original authority who is directed to consider the appellant's rebate claim in the light of present circumstances and pass a well reasoned order with clear findings regarding compliance with mandatory conditions after following principles of natural justice.

36. In the light of the above-said reasoning given in the order now under challenge in these writ Petitions, we feel that in considering the remand, it is wholly unnecessary for the first respondent herein to get into the question as to whether the petitioner is entitled to have the benefit of rebate, where the assessee is a manufacturer or not, to come under the scope of Rules 12 or 18 of the Central Excise Rules, as the case may be, pertaining to the relevant period under consideration. In the background of the circulars referred to above, all that the first respondent needs to look at is as to whether the assessee had complied with the requirements, as had been stated in Notification No. 41/2001-C.E. (N.T.), dated 26-6-2001, as are relevant to the case of the assessee, an exporter of inputs as such, under bond.

37. Learned Standing Counsel appearing for the respondents, however, pointed out that even though the assessee had made his claim within the time of one year, yet, the payment of duty thus came only in the year 2007. In the circumstances, the question of considering the same on payment of duty within time does not arise. We do not find such a technicality shall be put forth as a hurdle in considering the claim of the assessee. The reliance placed by the learned Senior Counsel on the decision reported in 2006 (204) E.L.T. 632 (In Re : Modern Process Printers), in this context, needs reference.

38. The Revenue considered the question which arose under similar circumstances, wherein, the Revisional Authority pointed out, as in this case, that the applicant therein had exported the goods out of India under claim of duty under Rule 18 of the Central Excise Rules, read with Notification No. 41 of 2001, dated 26-6-2001, issued in terms of Rule 18 of the said Rules. The Revisional Authority pointed out that in respect of incentive oriented beneficial schemes, intended to boost export and where the substantive fact of export made is not in doubt, liberal interpretation is to be accorded in cases of technical lapses, so that the very purport of the Section is not defeated. The reported decision referred to the decisions of the Apex Court reported in Union of India (UOI) and Others Vs. Suksha International and Nutan Gems and Another, Union of India (UOI) Vs. A.V. Narasimhalu, and Formica India Division Vs. Collector of Central Excise and Others, to ultimately hold that the procedural infraction of Notification/Circulars are to be condoned, if exports have really taken place and that the substantive benefit cannot be denied on procedural lapses. Thus holding,

the revisional authority granted the relief.

39. Applying the said decision herein, we feel, it is a fit case where the first respondent should be directed to consider the claim of the assessee. Given the fact that the assessee had paid the duty on the exported goods and the factum of export is also admitted by the Revenue and the fact that the assessee's original claim of CENVAT credit is now reversed by the assessee paying duty thereon, there being no leakage of revenue on the assessee giving the particulars relevant to its case, as had been required under Notification No. 41 of 2001, we do not find, there could be any impediment in considering the claim of the assessee for a rebate under Rule 18 of the Central Excise Rules.

40. In the above circumstances, we hereby direct the first respondent to consider the claim of the assessee for rebate within a period of eight weeks from the date of receipt of a copy of this order. In the meantime, the assessee is hereby directed to comply with the requirements, as are applicable to the assessee's case, as given under Notification No. 41 of 2001 before the first respondent, to enable him to consider the claim for rebate.

41. In the light of the above, the Writ Petitions are disposed of with the directions as stated above. No costs.