

(2013) 06 GUJ CK 0054
In the Gujarat High Court

Case No : Special Civil Application No"s. 17481 of 2012 with 1265 of 2013

Raj Petro Specialities

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Citation : (2013) 22 GSTR 529

Hon'ble Judges : Sonia Gokani, J;M.R. Shah, J

Bench : Division Bench

Advocate : Paritosh Gupta for Paresh M. Dave, for the Appellant; Gaurang H. Bhatt, Central Government Standing Counsel in Special Civil Application No. 17481 of 2012 and R.J. Oza in Special Civil Application No. 1265 of 2013, for the Respondent

Judgement

M.R. Shah, J.—As common questions of law and facts arise in both these petitions, they are disposed of by this common judgment and order. In both these petitions, the respective petitioners have challenged the impugned orders passed by the revisional authority quashing and setting aside the order passed by the Commissioner (Appeals) and denied the rebate due and payable to the respective petitioners under rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as "Rules") solely on the ground that along with the application for rebate of duty, the respective petitioners have not produced the original copy of ARE-1 forms.

Facts in Special Civil Application No. 17481/2012

2. That the petitioner-company engaged in manufacturing of excisable goods, i.e., lubricant oil exported the same on payment of duty. That the said goods were exported upon filing four ARE-1s. According to the petitioners the said goods were exported directly from their factory. According to the petitioners the original as well as duplicate copies of ARE-1s were lost/stolen for which an FIR came to be lodged with Nahva Sheva Police Station, Thane. That the petitioners submitted an application before the appropriate authority claiming rebate of duty

of Rs. 3,63,089 under the provisions of rule 18 of the Rules on December 30, 2009. That along with the application for rebate of duty, the petitioners submitted the triplicate copy of four ARE-1s and other documents such as mate receipts, bills of lading and shipping bills in support of their claim that as such the goods were exported from their factory on payment of duty. That on the petitioners' rebate claim, the Deputy Commissioner of Central Excise and Customs, Division III-respondent No. 3 issued a show-cause notice on January 13, 2010 raising objection that the claim has been submitted after the expiry of the stipulated period of six months from the date of export. That the petitioners replied to the said show-cause notice pointing out that the claim has been filed well within the period prescribed u/s 11B of the Central Excise Act, 1944. That thereafter the Deputy Commissioner passed an adjudication order on January 29, 2010 rejecting the rebate claim on the ground that the original and duplicate copies of ARE-1s were not filed along with the rebate claim as required under paragraph 8.3 of Chapter 8 of CBEC's excise manual of supplementary instructions.

3. Feeling aggrieved and dissatisfied with the order dated January 29, 2010 passed by the Deputy Commissioner rejecting the rebate claim of the petitioners solely on the ground that the original and duplicate copies of ARE-1s were not filed along with the rebate claim, the petitioners preferred an appeal before the Commissioner (Appeals) submitting that the original and duplicate copies of ARE-1s were lost in transit by the clearing agent for which even FIR was lodged. It was submitted that the copies of ARE-1s duly countersigned by the customs officers were also produced on record to show that the goods were actually stuffed and exported under the supervision of the customs authorities and hence, there could be no dispute regarding actual export of duty-paid clearances. It was also submitted before the Commissioner (Appeals) that the adjudicating authority could not have rejected the rebate claim on the ground not proposed in the show-cause notice.

4. That on appreciation of the evidence produced on record, more particularly, other documents produced by the exporter, along with the rebate claim such as mate receipt, bills of lading and shipping bills, on facts the Commissioner (Appeals) observed and held that in fact the goods against the respective ARE-1s, were exported and hence, substantial condition of payment of duty and export of duty paid goods are satisfied and consequently the Commissioner (Appeals) held that the rebate claim cannot be rejected solely on the ground that the procedural requirement as per paragraphs 8.3 and 8.4 of the CBEC's excise manual of supplementary instructions could not have satisfied, i.e., the original and duplicate copies of four ARE-1s were not produced along with the rebate claim and consequently the Commissioner (Appeals) allowed the appeal preferred by the petitioner-exporters and quashed and set aside the order-in-original and directed that rebate claims shall be sanctioned in respect of those ARE-1s where the goods were examined and sealed by the Central Excise Officers in containers and the same container number and customs seal number

are mentioned in corresponding shipping bill, mate receipt and bill of lading.

5. Feeling aggrieved and dissatisfied with the order passed by the Commissioner (Appeals) dated July 22, 2010 in directing to sanction the rebate claims of the petitioners with respect to ARE-1s as mentioned in paragraph 5 of the order-in-appeal, the Revenue preferred a revision application before the revisional authority-Joint Secretary (Revision Application) and by the impugned order the revisional authority has allowed the said revision application quashing and setting aside the order dated July 22, 2010 passed by the Commissioner (Appeals) and rejected the rebate claim of the petitioners solely on the ground that as the petitioner-exporter has not produced the original and duplicate copies of ARE-1s, which is required to be produced along with the rebate claim as per paragraphs 8.3 and 8.4 of the CBEC's excise manual of supplementary instructions, which is held to be mandatory in nature, the exporter is not entitled to rebate claims.

6. Feeling aggrieved and dissatisfied with the impugned order passed by the revisional authority rejecting the rebate claim of the petitioners by holding that the rebate claim is not admissible as the original and duplicate copies of 4 ARE-1s is not submitted along with the rebate claim, the petitioner-exporter has preferred the present special civil application.

Facts in Special Civil Application No. 1265/2013

7. In Special Civil Application No. 1265/2013 also, the petitioner-exporters exported the goods from their factory premises on payment of duty; they submitted the rebate claim under rule 18 of the Rules without submitting the original and duplicate copies of ARE-1s as they were lost in transit and their rebate claim to be rejected by the Deputy Commissioner solely on the ground that the requirement of submitting the original and duplicate copies of ARE-1s along with the rebate claim as required under rule 18 of the Rules have not been complied with. The Commissioner (Appeals) allowed the appeal and sanctioned the rebate claim on considering the other documents on record and held that in fact it is evident that the goods were exported from the factory and on payment of duty and therefore, the exporter is entitled to the rebate on duty and that their rebate claim cannot be rejected solely on the ground that the original and duplicate copies of ARE-1s are not submitted along with the rebate claim. In revision application filed by the Department against the order passed by the Commissioner (Appeals), the revisional authority has passed the impugned order quashing and setting aside the order passed by the Commissioner (Appeals) and rejected the rebate claim of the petitioners solely on the ground that the exporter has not produced along with the rebate claim, the original and duplicate copies of ARE-1s, by holding that the same is mandatory in nature and in the absence of production of original and duplicate copies of ARE-1s, it cannot be compared and consequently established that in fact the goods have been exported on payment of duty.

8. Feeling aggrieved and dissatisfied with the impugned order passed by the revisional authority, the petitioner-exporters have filed the present special civil application.

9. Shri Paritosh Gupta, learned advocate appearing for Shri Paresh Dave, learned advocate has appeared on behalf of the respective petitioners and Shri R.J. Oza, learned counsel has appeared on behalf of the Department in Special Civil Application No. 1265/2013 and Shri Gaurang Bhatt, learned Central Government Standing Counsel has appeared on behalf of the Department in Special Civil Application No. 17481/2012.

10. Shri Gupta, learned advocate appearing on behalf of the respective petitioners has vehemently submitted that the revisional authority has materially erred in quashing and setting aside the orders passed by the Commissioner (Appeals) and rejecting the rebate claim of the petitioners solely on the ground that the petitioner-exporters have not produced the original and duplicate copies of ARE-1s along with the rebate claim.

11. It is submitted by Shri Gupta, learned advocate appearing on behalf of the petitioners that as such on appreciation of the other documents on record the Commissioner (Appeals) had specifically given the finding that the actual export and the payment of duty has been evident and when thereafter, the Commissioner (Appeals) passed an order sanctioning the rebate claim and that too with respect to those ARE-1s where goods were examined and sealed by the Central Excise Officer in container and the same container number and customs seal number are mentioned in the corresponding shipping bill, mate receipt and bill of lading, without obstructing the said finding, the revisional authority has materially erred in quashing and setting aside the order passed by the Commissioner (Appeals) sanctioning the rebate claim of the petitioner-exporters.

12. It is further submitted by Shri Gupta, learned advocate appearing on behalf of the petitioners that as per the notification under Central excise rule 18, more particularly, clause (2) for the purpose of claiming rebate of duty under rule 18 of the Rules, what is required to be established and proved is that the excisable goods have been exported after payment of duty, directly from a factory or warehouse. It is submitted that therefore, once it is established and proved by the exporter on production of other corresponding documents with excisable goods are actually exported after payment of duty, directly from a factory or warehouse, the exporter shall be entitled to the rebate of duty under rule 18 of the Rules. It is submitted that the production of original and duplicate copies of ARE-1s is under clause 3 under the head of "Procedures". It is submitted that as such as per the procedure prescribed (which cannot be said to be a condition for claiming the rebate of duty), the exporters are required to produce the original and duplicate copy of ARE-1s along with the other documents such as shipping bill, bills of lading and mate receipt. It is submitted that the production of such documents are required so as to enable the appropriate authority while considering the rebate claim of the exporter, so as to satisfy itself with respect to

the rebate claim and to satisfy that in fact the excisable goods have been exported on payment of duty from the factory and/or warehouse. It is submitted that for some valid reason like lost in transit and/or theft and/or any other ground, if the original and duplicate copies of ARE-1s are not available and where they are not produced along with the rebate claim, if from other supporting documents like shipping bill, mate receipt and bill of lading, it is established and proved that in fact the goods have been exported on payment of duty from the factory and/or warehouse, despite non-production of the original and duplicate copies of ARE-1s, the exporter shall be entitled to rebate of duty if all other conditions as mentioned in clause (2) of the notification under Central excise rule 18 are complied with.

13. It is further submitted by Shri Gupta, learned advocate appearing on behalf of the petitioners that for claiming/getting the rebate of duty, production of original and duplicate copies of ARE-1s is not a condition precedent. It is submitted that as such production of original and duplicate copies of ARE-1s is a procedure one along with other corresponding supporting documents so as to satisfy the authority to consider the rebate claim of the exporter whether in fact excisable goods have been supported after payment of duty directly from the factory or warehouse or not as claimed by the exporter. It is submitted that as such the conditions and limitations for rebate of duty are mentioned in clause (2) of the notification under Central excise rule 18, in which no such condition of production of the original and duplicate copies of ARE-1s is mentioned.

14. It is further submitted by Shri Gupta, learned advocate for the petitioners that as such production of the original and duplicate copies of ARE-1s along with the rebate claim is a procedural one and therefore, on non-production of the same along with the rebate claim on valid ground, if on considering the other supporting documents produced along with the rebate claim, it is established and proved that in fact the exported goods have been exported after payment of duty, directly from a factory or warehouse and all other conditions mentioned in clause (2) of the notification under Central excise rule 18 are satisfied and complied with, the rebate claim cannot be rejected solely on the ground that original and duplicate copies of ARE-1s are not produced along with the rebate claim.

15. Shri Gupta, learned advocate appearing on behalf of the petitioners has heavily relied upon the decision of the Bombay High Court in the case of UM Cables Limited Vs. Union of India and Others, rendered in Writ Petition No. 3102 of 2013 by which on the similar facts and circumstances and while dealing with the rebate claim under rule 18, which was rejected on the ground of non-submission of the original and duplicate copies of ARE-1s, the Bombay High Court has held that the procedure which has been laid in the notifications is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty-paid character is fulfilled and it is

further held that the said procedure of submission of original and duplicate copies of ARE-1s cannot be raised to the level of mandatory requirements and the said procedure of submission of original and duplicate copies of ARE-1s is directory.

16. It is further submitted by Shri Gupta, learned advocate appearing for the petitioners that as such in the present case on considering other documents submitted by the petitioners along with the rebate claim such as mate receipt, shipping bills, bills of lading, etc., in fact the Commissioner (Appeals) has given a specific finding based on facts that in fact the excisable goods in question, governed under the concerned ARE-1 are exported on payment of duty from the factory and the said finding of fact arrived at by the Commissioner (Appeals) has not been upset by the revisional authority. It is submitted that as such there is no finding by the revisional authority in the impugned order that neither there is any export of excisable goods on payment of duty, from the factory nor even the export on payment of duty under the concerned ARE-1s are even doubted. It is submitted that the revisional authority has denied the rebate claims solely on the ground that along with the rebate claim, the exporter has not submitted the original and duplicate copies of ARE-1s, which cannot be sustained even on facts of law, more particularly, the finding given by the Commissioner (Appeals) with respect to actual export on payment of duty in the presence of the concerned officers of the Department, from the factory.

17. Making the above submissions and relying upon the aforesaid decisions of the Bombay High Court, it is requested to allow the present special civil applications.

18. Both these petitions are opposed by Shri R.J. Oza, learned counsel and Shri Gaurang Bhatt, learned Central Government standing counsel appearing on behalf of the Department. It is submitted by learned counsel appearing on behalf of the Department that as such and in the facts and circumstances of the case, there is no error and/or illegality committed by the revisional authority in rejecting the rebate claim of the respective petitioners on non-production of the original and duplicate copies of ARE-1s. It is submitted that as such production of the original and duplicate copies of ARE-1s along with the rebate claim is required as per the statutory procedure required to be followed under the Rules and the concerned notifications. It is submitted that as per rule 18 of the Rules, the rebate of duty shall be subject to such conditions or limitations, if any, and fulfilment of such procedure as may be specified in the notification. Therefore, it is submitted that if even any of the procedure is not fulfilled, in that case, the exporter shall not be entitled to the rebate of duty. It is submitted that therefore, the impugned decision of the revisional authority rejecting the rebate claim of the respective petitioners on non-production of original and duplicate copies of ARE-1s is absolutely in consonance with rule 18 of the Rules.

19. It is further submitted that paragraphs 8.3 and 8.4 of Chapter 8 of the CBEC's excise manual of supplementary instructions prescribed submission of

original and duplicate copies of ARE-1s as mandatory document for filing claim of rebate. It is submitted that the submission of original copy of ARE-1s is a must and/or required by the Department to compare the original, duplicate and triplicate copies of ARE-1s and satisfy himself with the goods cleared for export under the relevant ARE-1s are actually exported and there is no correction/amendment, etc., in the description, quantity, value, etc., in all the copies of ARE-1s obtained through different authorities/means/manner. It is submitted that therefore, when the original and duplicate copies of ARE-1s are not submitted along with the rebate claim, the authority will not be in a position to satisfy himself by comparing the duplicate and triplicate copies of ARE-1s with respect to actual export of exporter goods and payment of duty, quantity, etc. It is submitted that as rightly observed by the revisional authority that original and duplicate copies of ARE-1s are relevant and material documents so as to consider the rebate claim of the exporter which is as such mandatory in nature, which is required to be submitted along with the rebate claim as per the statutory requirement of procedure and therefore, in the absence of submission of the original and duplicate copies of ARE-1s, the exporter shall not be entitled to the rebate claim and therefore, the revisional authority has rightly rejected the rebate claim of the respective petitioners. It is submitted as rightly observed by the revisional authority, ARE-1 is a basic essential document for export of duty under the rebate claim. It is submitted that the customs certification on the said copy of ARE-1s as such proves the export of goods and therefore, in the absence of the said original and duplicate copies of ARE-1s; the rebate sanctioning authority has no chance to compare those documents with triplicate copy of ARE-1s and therefore, he cannot satisfy himself of the correctness of the rebate claim. Therefore, it is submitted that the submission of original and duplicate copies of ARE-1s duly endorsed establishes the export of duty paid goods and therefore, the essential requirement cannot be done away with.

20. It is further submitted by the learned counsel appearing on behalf of the Department that as rightly observed by the revisional authority, the nature of the above requirement is a statutory condition and if the submission/production of the same is done away, in that case, it would lead to a possible fraud of claiming an alternative available benefit which may amount to addition of double benefit. Therefore, it is submitted that as such the revisional authority has not committed any error and/or illegality in rejecting the rebate claim of the petitioners by quashing and setting aside the orders passed by the Commissioner (Appeals) sanctioning the respective rebate claims.

21. Now, so far as the reliance placed upon the decision of the Bombay High Court in the case of UM Cables Limited Vs. Union of India and Others, is concerned, it is submitted by the learned counsel appearing on behalf of the Department that as such on facts and even on law, the said decision shall not be applicable.

22. Making the above submissions, it is requested to dismiss the present special

civil applications.

23. Heard learned advocates appearing on behalf of the respective parties at length and also considered and gone through the order passed by the Commissioner (Appeals) as well as the revisional authority.

24. At the outset it is required to be noted that in the present case the respective petitioner-exporters submitted the rebate claims under rule 18 claiming rebate of duty on the ground that they in fact exported the goods directly from their factory after payment of duty. As per rule 18 which reads as under, where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or possessing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification:

18. Rebate of duty.--Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or possessing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

25. That the Central Government has issued, the notification under Central excise rule 18 for rebate of duty on export of goods to all the countries other than Nepal and Bhutan. The said notification also provides for conditions and limitations on fulfilment of which they shall be granted rebate of whole of the duty paid on excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985. That the conditions and limitations provided in clause (2) of the said notification reads as under:

(2) Conditions and limitations:

(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

(b) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;

(c) that the excisable goods supplied as ship's stores for consumption on board a vessel bound for any foreign port are in such quantities as the Commissioner of Customs at the port of shipment may consider reasonable;

(d) the rebate claim by filing electronic declaration shall be allowed from such place of export and such date, as may be specified by the Board in this behalf;

(e) that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;

(f) that the amount of rebate of duty admissible is not less than five hundred rupees;

(g) that the rebate of duty paid on those excisable goods, export of which is prohibited under any law for the time being in force, shall not be made.

(h) that in case of export of goods which are manufactured by a manufacturer availing of the notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/1999-Central Excise, dated 8th July, 1999 (G.S.R. 508(E), dated 8th July, 1999) or No. 33/1999-Central Excise, dated 8th July, 1999 (G.S.R. 509(E), dated 8th July, 1999) or No. 39/2001-Central Excise, dated 31st July, 2001 (G.S.R. 565(E), dated 31st July, 2001) or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 56/2002-Central Excise, dated 14th November, 2002 (G.S.R. 764(E), dated 14th November, 2002) or No. 57/2002-Central Excise, dated 14th November, 2002 (G.S.R. 765(E), dated 14th November, 2002) or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated 25th June, 2003 (G.S.R. 513(E), dated 25th June, 2003) or 71/2003-Central Excise, dated 9th September, 2003 (G.S.R. 717(E), dated 9th September, 2003) or No. 20/2007-Central Excise, dated 25th April, 2007 (G.S.R. 307(E), dated 25th April, 2007), the rebate shall not be admissible under this notification.

26. Therefore, as such and as per the said notification on fulfilment of the aforesaid conditions and limitations, an exporter who has exported the excisable goods after payment of duty and directly from a factory or warehouse as such shall be entitled to grant of rebate of the whole of the duty paid. The aforesaid notification which is issued under rule 18 also provides for the procedure to be followed by the exporter as well as the Department while considering the rebate claim under rule 18 of the Rules. As per the procedure prescribed in the said notification and as per paragraphs 8.2, 8.3 and 8.4 of Part I of Chapter 8 of the CBEC's excise manual of supplementary Instructions, more particularly, as per paragraph 8.2, it shall be essential for the exporter to indicate on ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file the claim of rebate and as per paragraph 8.3, the exporter is required to submit the following documents for filing the claim of rebate:

(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 the ARE-1,

(iii) Invoice issued under rule 11,

(iv) Self attested copy of shipping bill,

(v) Self attested copy of bill of lading and

(vi) Disclaimer certificate (in case where claimant is other than exporter).

27. Thus, as per the aforesaid procedure, the exporter claiming rebate of duty paid is required to submit the aforesaid documents which includes the original copy of ARE-1. It cannot be disputed that the aforesaid documents are required to be submitted along with the rebate claim so as to satisfy the concerned authority considering the rebate claim whether in fact the conditions and limitations as mentioned in the aforesaid notification for grant of rebate are satisfied or not, i.e., whether the excisable goods have in fact been exported after payment of duty, directly from the factory or warehouse or not and that the excisable goods have been exported within six months from the date on which they were cleared for export from the factory or warehouse or within such extended period as the Commissioner of Excise may in any particular case allow and whether all other conditions and limitations mentioned in clause (2) of the notifications are satisfied or not. Therefore, even in a case where one of the document though required to be produced as per the procedure is missing either due to destruction and/or theft and/or any other valid reasons if from the other supporting and corresponding documents produced it cannot be satisfied that the excisable goods have been in fact exported after payment of duty and directly from the factory or warehouse in that case, despite non-submission of one of the documents, the exporter shall be entitled to the rebate of duty. In the present case, as stated hereinabove, as such the respective petitioners/exporters could not produce the original and duplicate copies of ARE-1s as they were lost for which even complaints were filed at the relevant time. However, the exporters did submit other documents like mate receipt, shipping bills, bills of lading, etc. It is required to be noted at this stage that apart from the fact that respective petitioners did submit the triplicate copy of the ARE-1, even the Commissioner (Appeals) on appreciation and considering other documents such as mate receipt, shipping bills, bills of lading, etc., on facts held that the goods for which the rebate of duty is claimed were in fact exported against the same ARE-1 and substantial condition of payment of duty and export of duty-paid goods are satisfied. In paragraphs 4.2 and 4.3 while allowing the rebate claimed, the Commissioner (Appeals), Vapi observed and held as under:

4.2 The mandatory requirements under rule 18 of the Central Excise Rules, 2002 is that the duty paid on export goods shall be refunded and the requirements u/s 11B of the Central Excise Act, 1944, shall be fulfilled. Therefore, it has to be examined as to whether these mandatory requirements that duty on export goods was paid and duty-paid goods were actually exported, have been fulfilled or not. I have gone through the documents produced by the appellant, viz., ARE-1s, mate receipts, shipping bills and bills of lading. It is evident from ARE-1 dated April 27, 2009 that the goods were stuffed in the factory by the Central Excise Officers in the container No. GLDU 5338898 by customs seal No. 002036. The same container number and customs seal number are mentioned in the corresponding mate receipt, bill of lading and shipping bill. It is thus evident that the goods against the same ARE-1 were exported and hence substantial

condition of payment of duty and export of duty-paid goods are satisfied. Therefore, the rebate claim cannot be rejected on the ground that procedural requirements as per paragraphs 8.3 and 8.4 of the CBEC's Excise manual of supplementary instructions could not be fulfilled.

4.3 I find that the CESTAT in the cases of Model Buckets and Attachments P. Ltd. v. CCE as reported in [2007] 217 ELT 264 1996 (67) ECR 1 08 held that if the goods are stuffed in the factory by the Central Excise Officers, the supporting documents like shipping bill, mate receipt, bill of lading, etc., can be used to establish export of goods if original and duplicate copies of ARE-1 are lost. The ratio of the said decisions is exactly applicable in this case because the goods were sealed by the Central Excise Officers in containers and the same container number and customs seal number are mentioned in the corresponding shipping bill, mate receipt and bill of lading.

28. At this stage, it is required to be noted that as such the revisional authority has not upset the finding and observation of the Commissioner (Appeals) and the revisional authority has not given any finding that the finding given by the Commissioner (Appeals) that the goods against the same ARE-1 were exported and hence, the substantial condition of payment of duty and export of duty-paid goods are not satisfied is incorrect and/or not substantiated. As stated hereinabove, the revisional authority has rejected the rebate claim solely on the ground that the petitioner-exporters have not produced/submitted the original and duplicate copies of ARE-1s along with the rebate claim. Under the circumstances, when on appreciation and considering other documents like mate receipts, shipping bills, bills of lading, etc., it has been established that the goods against the same ARE-1s were exported after payment of duty directly from their respective factories and when the conditions and limitations mentioned in clause (2) of the notification issued under Central excise rule 18 are satisfied, merely because the exporter could not produce the original and duplicate of ARE-1s along with the rebate claim, they cannot be denied the rebate of duty when considering other documents produced, it can be established and proved that in fact the excisable goods have been exported after payment of duty and directly from a factory or warehouse. Under the circumstances, as such the revisional authority has materially erred in rejecting the rebate claim of the respective petitioner-exporters.

29. It appears from the impugned order passed by the revisional authority that while rejecting the rebate claim of the petitioners on non-submission of the original and duplicate copies of ARE-1s, the revisional authority has observed that what has weighed with the revisional authority is that production of original/duplicate copy of ARE-1 is mandatory and of compulsory nature which is required as per the procedure required to be followed statutorily and that the original/duplicate copies of ARE-1s are very important and vital documents so as to enable the authority to satisfy the claim of the exporter and to compare the same along with the other documents. However, it is required to be noted that as

per the requirement of law, submission/production of original and duplicate copies of ARE-1 along with the rebate claim is not the only requirement. As observed hereinabove, along with the rebate claim, an exporter claiming rebate of duty is required to produce a number of other documents such as shipping bill, bills of lading, mate receipt, etc. If the intention was to produce and consider the original and duplicate of ARE-1, only in that case, there is no requirement of production of other documents. Under the circumstances, merely because the exporter could not produce/submit along with the rebate claim, the original and duplicate copies of ARE-1 but has produced other documents like mate receipt, shipping bills, bills of lading, etc., and from the supporting and corresponding documents is able to prove and establish that the excisable goods have in fact been exported on payment of duty from its factory/warehouses and all other conditions and limitations mentioned in clause (2) of the notification issued under rule 18 are satisfied, the exporter shall be entitled to the rebate of duty.

30. The aforesaid issue is also required to be viewed from another angle. It cannot be disputed that an exporter is entitled to the rebate of the duty under rule 18 on fulfilment of the conditions and limitations mentioned in clause (2) of the notification issued under rule 18 of the Rules. Submission of documents along with the rebate claim is falling under the head "Procedure". Therefore, as such production of the original and duplicate copies of ARE-1 along with the rebate claim is a procedural one. Therefore, even if some documents though required to be produced along with the rebate claim could not be produced but from other documents it can be established and proved that all the conditions and liabilities for rebate claim are satisfied, the exporter shall be entitled to the rebate of duty. There can be more than one valid reasons for non-production of one or two documents required to be produced as per the procedure. Merely because for some valid reasons the exporter is not able to produce some documents which are required to be produced as per the procedure, if on facts and considering other documents, if the exporter is able to prove and satisfy the authorities with all the conditions and limitations mentioned in clause (2) are satisfied, in that case, the exporter shall be entitled to the rebate of duty. Thus, as stated hereinabove, the production of original and duplicate copies of ARE-1 is not the only requirement. As per the procedure, an exporter is required to produce other documents also such mate receipt, shipping bills, bills of lading, etc. Thus, to that extent, the production of original and duplicate copies of ARE-1 which are required to be produced along with the rebate claim as per the procedure is required to be held directory and not mandatory. However, while holding so, it is observed that even if non-submission of original and duplicate ARE-1s, the export is required to be established and proved with all conditions and limitations for claiming rebate of duty under rule 18 more particularly mentioned in clause (2) of the notification issued under rule 18 are satisfied even from other supporting documents and if still and on considering other documents the actual export of excisable goods on payment of duty directly from the factory and/or warehouse is not established and proved, in that case, the authority

would be justified in rejecting the rebate claim. However, merely on the ground of non-submission of original and duplicate ARE-1s on that ground alone the rebate claim of an exporter cannot be rejected. However, even for claiming rebate of duty, the exporter is required to satisfy from other documents produced that all the conditions and limitations mentioned in clause (2) of the notification issued under rule 18 are satisfied and in fact the excisable goods have been exported on payment of duty from its factor)" or warehouse and other limitations and conditions are satisfied. In the present case, as stated hereinabove, on facts and on appreciation of other documents like mate receipt, shipping bills, bills of lading, etc., the Commissioner (Appeals) had given the finding which is reproduced hereinabove and the said observation and finding of the Commissioner (Appeals) with respect to the actual export of the exported goods on payment of duty, from their factories have not been upset by the revisional authority.

31. At this stage the decision of the Bombay High Court in the case of UM Cables Limited Vs. Union of India and Others, is required to be referred to. In the case before the Bombay High Court also, the exporter who claimed the rebate of duty could not submit the original and duplicate ARE-1s and his rebate claim under rule 18 came to be rejected on the ground of non-submission of original and duplicate ARE-1s and to that the Bombay High Court in paragraphs 10 to 13 has observed and held as under:

Rule 18 of the Central Excise Rules, 2002 empowers the Central Government by a notification to grant a rebate of duty paid on excisable goods or on materials used in the manufacture or processing of such goods, where the goods are exported. The rebate under rule 18 shall be subject to such conditions or limitations, if any, and the fulfilment of such procedure as may be specified in the notification. Rule 18, it must be noted at the outset, makes a clear distinction between matters which govern the conditions or limitations subject to which a rebate can be granted on the one hand and the fulfilment of such procedure as may be prescribed on the other hand. The notification dated September 6, 2004 that has been issued by the Central Government under rule 18 prescribes the conditions and limitations for the grant of a rebate and matters of procedure separately. Some of the conditions and limitations are that the excisable goods shall be exported after the payment of duty directly from a factory or warehouse, except as otherwise permitted by the CBEC; that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as may be allowed by the Commissioner; that the market price of the excisable goods at the time of export is not less than the amount of rebate of duty claimed and that no rebate on duty paid on excisable goods shall be granted where the export of the goods is prohibited under any law for the time being in force. The procedure governing the grant of rebate of Central excise duty is specified in the same notification dated September 6, 2004 separately. Broadly speaking the procedure envisages that the exporter has to present four copies of an

application in Form ARE-1 to the Superintendent of Central Excise. The Superintendent has to verify the identify of the goods and the particulars of the duty paid and after sealing the packet or container, he is required to return the original and duplicate copies of the application to the exporter. The triplicate copy is to be sent to the officer with whom a rebate claim is to be filed either by post or by handing it over to the exporter in a tamper proof sealed cover. After the goods arrive at the place of export, they are presented together with the original and duplicate copies of the application to the Commissioner of Customs. The Commissioner of Customs after examining the consignment with the particulars cited in the application is to allow the export if he finds that the particulars are correct and to certify on the copies of the application that the goods have been duly exported. The claim for rebate of duty is presented to the Assistant or Deputy Commissioner of Central Excise who has to compare the duplicate copy of the application received from the officer of customs with the original copy received from the exporter and the triplicate received from the Central Excise Officer.

The manual of instructions that has been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-1, the invoice and self attested copies of the shipping bill and the bill of lading. Paragraph 8.4 specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by the customs. The second is that the goods are of a duty-paid character as certified on the triplicate copy of the ARE-1 form received from the Jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of Central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty-paid character.

The procedure which has been laid down in the notification dated September 6, 2004 and in the CBEC's manual of supplementary instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty-paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.

A distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in *Mangalore Chemicals and Fertilisers Ltd. Vs.*

Deputy Commissioner of Commercial Taxes and others, . The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in clause (2) of the notification are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE-1s, the impugned order passed by the revisional authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions. In the facts and circumstances of the case, there shall be no order as to costs.