NEUTRAL CITATION
2026:GUJHC:14258-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.12738 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI Sd/-

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Approved for Reporting	Yes	No
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ASHLAND INDIA PRIVATE LIMITED & ANR.
Versus
UNION OF INDIA & ORS.

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Appearance:
MS AMRITA M. THAKORE, ADVOCATE for
MR BHAVESH B CHOKSHI(3109) for the Petitioner(s) No. 1,2
MS HARDIKA VYAS(11450) for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 20/02/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. ***RULE***. Learned Senior Standing Counsel Ms.Hardika Vyas waives service of notice of Rule on behalf of the respondents.

2. Since the issue involved in the present writ petition is short, the same is taken up for hearing and is being decided by this judgment.

3. The petitioners have assailed the order dated 28.09.2023 passed by the respondent No.1. Further, a prayer is made for issuance of a direction to the respondents to sanction the rebate claim of Rs.1,29,92,156/- in terms of Rule 18 of the Central Excise Rules, 2002 (in short, “the Rules, 2002”).

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BRIEF FACTS : -

4. To secure rebate benefits, as contemplated under Rule 18 of the Rules, 2002, the petitioner No.1 being a merchant-exporter, filed a claim before the office of the respondent No.3 for an amount of Rs.1,32,92,598/- on 29.12.2017 (the “Original Claim”). However, on the same day, the respondent No.3, vide letter bearing reference F.No.CGST/Anjar-Bhachau/REF-REB/17-18 dated 29.12.2017 (the “Rejection Letter”), returned the application along with the accompanying documents.

5. The Rejection Letter merely mentions that the petitioner No.1 had failed to comply with the conditions and procedures specified in Paragraph No.3(b)(i) of Notification No.19/2004. Being uncertain about the alleged non-compliance and the basis of rejection, the petitioner No.1 re-submitted its claim on 26.06.2018 before the office of the respondent No.3 (the “Re-filed Claim”). In the interregnum, the Finance Team of the petitioner No.1 had relocated from its Mumbai office to Hyderabad. During the course of such relocation, the original and duplicate copies of the ARE-1 forms were inadvertently misplaced.

6. Thereafter, the respondent No.3 adjudicated the re-filed claim by passing an Order-in-Original bearing reference “Rebate Order No.05/Rebate/2018-19” dated 28.09.2018 partly in favour of the petitioner. Subsequently, the Commissioner, CGST, Kachchh, Gandhidham formed an opinion that the Order-in-Original was not legal and proper and was liable to be set aside. Accordingly, the said Commissioner exercised the powers of review vested under Section 35E(2) of the Central Excise Act, 1944 (in short, “the Act, 1944”) and

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passed a Review Order No.04/OIO/18-19 dated 26.12.2018, authorizing the incumbent Assistant Commissioner, CGST, Anjar–Bhachau Division, Gandhidham to prefer an appeal against the Order-in-Original. The appeal preferred by the Revenue was filed before the respondent No.2 and culminated in the issuance of the Order-in-Appeal bearing No.KCH-EXCUS-000-APP-059-2020 dated 03.07.2020.

7. Aggrieved by the said Order-in-Appeal, the petitioner No.1 preferred a Revision Application under Section 35EE of the Act, 1944, before the respondent No.1. Thereafter, the respondent No.1 passed the impugned order dated 28.09.2023 rejecting the Revision Application filed by the petitioner No.1. Hence, the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS :-

8. Learned advocate Ms.Amrita Thakore, appearing for learned advocate Mr.Bhavesh Chokshi for the petitioners, at the outset, has submitted that the competent officer i.e. the Assistant Commissioner, Kachchh, Gandhidham, ought not to have returned the rebate claim filed vide application dated 29.12.2017, in view of the provisions of the CBEC Manual (Old), particularly Chapter 8, which governs rebate claims on exports. In this regard, she has placed reliance on Part-IV thereof and has submitted that the competent officer ought to have pointed out the deficiencies to the petitioners before returning the rebate claim. In support of her submissions, reliance is placed on the judgment of this Court in the case of United Phosphorus Limited Vs. Union of India, 2005 (184) E.L.T. 240 (Guj.).

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9. The second ground, which has been raised by learned advocate Ms.Thakore, is that the Appellate Authority has fell in error in setting aside the order in original dated 25.09.2018 by holding that the rebate claim could not have been approved by the Assistant Commissioner by passing the order dated 25.09.2018, more particularly in wake of the facts that the petitioner No.1 did not submit the original documents and in fact submitted duplicates and triplicates, which is in contravention of the Paragraph 3(b)(i) of the Notification dated 06.09.2004. It is contended that the view expressed by the Appellate authority and confirmed by the Revisional authority is in direct conflict with the decision of the Division Bench of this Court vide judgment dated 12.06.2013 passed in Special Civil Application No.17481 of 2012 and allied matter. It is submitted that the respondents have not doubted the claim of rebate and the same is supported by other documents, which establish such claim. It is submitted that the competent authority, while passing the order in original has taken care of these aspects and has also dealt with the provision of Paragraph No.3(b)(i) of the Notification, however, the Appellate Authority has reversed such findings, which run contrary to the judgment of this Court.

10. The third ground, which has been urged by learned advocate Ms.Thakore is relating to the limitation, on which the order in original has been set aside by the Appellate Authority and further confirmed in revision. She has submitted that initially an application was filed on 29.12.2017, which was returned by the respondents, and hence, after gathering the documents, again the petitioner No.1 filed the rebate claim on

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26.06.2018, which has been subsequently allowed by the competent authority by passing the order in original. However, the Appellate Authorities on the ground of limitation by counting the same from 26.06.2018 instead of 29.12.2017 has rejected the rebate claim on the ground that the same is barred by limitation in terms of Section 11(B) of the Act, 1944. It is submitted that the Appellate Authorities fell in error in counting the limitation from 26.06.2018 instead of 29.12.2017.

11. In support of her submissions, she has placed reliance on the judgment of the Coordinate Bench of this Court in case of Apar Industries Vs. Union of India (passed in Special Civil Application No.7815/2014). It is submitted that having returned the application claiming rebate and on the ground of technicalities, the subsequent rebate application after removal of defects would always relate back to the original filing. Thus, it is urged that the writ petition may be allowed by setting aside the impugned order.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :-

12. Opposing the aforesaid submissions advanced by learned advocate Ms.Thakore, learned Senior Standing Counsel Ms.Hardika Vyas has submitted that the impugned order does not warrant any interference, as the same has been passed in accordance with law. She has further submitted that the Order-in-Original sanctioning rebate of Rs.1,29,92,156/- is erroneous and contrary to Paragraph 3(b)(i) of the Notification dated 06.09.2004. It is contended that while filing the rebate application on 29.12.2017, the petitioner No.1 had failed to produce the original documents. In this regard, reliance is

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placed on Chapter 9 of the CBEC Manual (Old), particularly Paragraph No.2.4 thereof. It is further submitted that once the rebate claim was returned, it was open to the petitioners to immediately re-file the same. However, the petitioners re-filed the claim belatedly, attributing the delay to the shifting of its office from Mumbai to Hyderabad and the consequent loss of the original and duplicate copies of ARE-1. It is urged that such inaction on the part of the petitioners cannot enure to its benefit. Thus, it is contended that the rebate application could not have been entertained or sanctioned on two grounds; first, that the original application was filed without the requisite original documents; and second, that the subsequent application was filed beyond the prescribed period of limitation of one year. By placing reliance upon Paragraph 3(b)(i) of the Notification dated 06.09.2004, it is submitted that the Appellate Authority as well as the Revisional Authority have rightly recorded that the petitioner No.1 failed to comply with the mandatory requirements of the said provision and hence, the same is correctly set aside sanctioning the rebate.

ANALYSIS AND CONCLUSION :-

13. We have heard the learned advocates appearing for the parties, at length.

14. At the outset, it is evident from the pleadings as well as the material on record that the respondents do not dispute the substantive claim of the petitioners for rebate. The claim has been rejected purely on technical grounds.

15. Initially, the petitioners filed the rebate application on 29.12.2017. A bare perusal of the rebate claim dated

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29.12.2017 indicates that the petitioner no.1 had produced the relevant documents, namely: the application in Form C; a copy of the annexure containing the calculation sheet; original and duplicate copies of ARE-1 duly certified by the Customs authorities; and a duplicate copy of the excise invoices. Despite the same, the application was returned on the very same day, i.e. 29.12.2017, by the Assistant Commissioner, Kachchh, Gandhidham, assigning the sole reason that the petitioners had failed to comply with the conditions and procedures prescribed under paragraph 3(b)(i) of Notification No. 19/2004-Central Excise.

16. No particulars were furnished as to the exact deficiency in the rebate application, except for a general reference to paragraph 3(b)(i) of the said Notification. Paragraph 3(b)(i) of the Notification dated 06.09.2004 reads as under:–

> *"3. (b) (i) Claim of the rebate of duty paid on all excisable goods shall be lodged [before the expiry of the period specified in section 11B of Central Excise Act, 1944(1 of 1944)) along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or as the case may be, the Maritime Commissioner,"*

17. A plain reading of Paragraph 3(b)(i) of the Notification indicates that a claim for rebate of duty paid on excisable goods is required to be lodged before the expiry of the period specified under Section 11B of the Act, 1944, along with the original copy of the application before the competent authority.

18. From the affidavit on record, the submissions advanced before this Court, and the findings recorded in the appellate

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order, it emerges that the rebate application was returned on the ground that the petitioner no.1 had filed duplicate copies of ARE-1 on the basis of quadruplicate copies and had stated that the original ARE-1 forms were lost during the shifting of its office from Mumbai to Hyderabad.

19. The competent authority, while passing the Order-in-Original, examined the rebate claim in detail, referring to the ARE-1 invoices, the amount of duty paid, assessable value, shipping bill numbers, FOB value, country of destination, and date of export. These particulars have not been doubted either by the Appellate Authority or by the Revisional Authority. The Order-in-Original records a threadbare examination of the documentary evidence. Upon such examination, the Assistant Commissioner, CGST Division, Anjar–Bhachau, vide order dated 25.09.2018, recorded that the petitioner No.1 had submitted quadruplicate copies of the relevant ARE-1 forms along with self-attested copies of invoices issued under Rule 11 of the Rules, 2002. It was further held that the goods were exported directly from the factory within six months from clearance and that the rebate claim was filed within one year from the date of entry of goods into the Andhra Pradesh Special Economic Zone at Atchutapuram (APSEZ), Visakhapatnam. Accordingly, it was categorically held that the claim was not barred by limitation under Section 11B of the Act, 1944.

20. The competent authority further observed that the duplicate copies of ARE-1 had not been received from the Customs authorities and that, as per the indemnity bond

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submitted by the claimant, the original and duplicate copies had been misplaced in transit. In lieu thereof, the claimant submitted quadruplicate copies along with an indemnity bond. It was also recorded that the triplicate copies of ARE-1 were received from the jurisdictional Range Superintendent, duly certified and signed, and that the Range Officer had verified the rebate claim as well as the particulars of duty payment through the CENVAT Credit account in respect of the exported goods.

21. Upon such detailed examination, the Assistant Commissioner sanctioned rebate of Rs.1,29,92,156/- and rejected rebate of Rs.3,04,442/- pertaining to ARE-1 No.180 dated 06.02.2017, ARE-1 No.183 dated 10.02.2017, and ARE-1 No.195 dated 28.02.2018.

22. The Appellate Authority set aside the Order-in-Original on two grounds: first, that the petitioner No.1 had not produced the original ARE-1 documents; and second, that the subsequent filing of the rebate claim was barred by limitation.

23. Insofar as the first ground regarding submission of duplicate documents is concerned, reference may be made to the judgment of the Division Bench of this Court dated 12.06.2013 passed in Special Civil Application No. 17481 of 2012, wherein the Court, while examining an analogous issue concerning exporters who had submitted duplicate copies of ARE-1 while claiming rebate, held as under:–

> *"[6.3] 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 ARE1s, the Revisional Authority has*

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observed that what has weighed with the Revisional Authority is that production of original/duplicate copy of ARE1 is mandatory and of compulsory nature which is required as per the procedure required to be followed statutorily and that original/duplicate copies of ARE1s 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 ARE1 along with the rebate claim is not the only requirement. As observed herein above, along with the rebate claim, an exporter claiming rebate of duty is required to produce 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 ARE1, 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 ARE1 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, exporter shall be entitled to the rebate of duty.

[6.4] 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 fulfillment 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 ARE1 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 nonproduction of one or two documents required to be produced as per the procedure. Merely because for some valid

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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, exporter shall be entitled to the rebate of duty. Thus, as stated herein above, production of original and duplicate copies of ARE1 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 ARE1 which are required to be produced along with the rebate claim as per the procedure is required to he held directory and not mandatory. However, while holding so, it is observed that even if nonsubmission of original and duplicate ARE1s, the export is required to be established and proved with all conditions and limitations for claiming rebate of duty under Rule 8 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 nonsubmission or original and duplicate ARE1s 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 issue under Rule 18 are satisfied and in fact the excisable goods have been exported on payment of duty from its factory or warehouse and other limitations and conditions are satisfied. In the present case, as stated herein above, on facts and on appreciation of other documents like mate receipt, shipping bills, bills of lading etc., Commissioner (Appeals) had given the finding which is reproduced herein above 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."

24. Thus, the Coordinate Bench has held that merely because an exporter is unable to produce the original and duplicate

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copies of ARE-1 along with the rebate claim, the same would not by itself be fatal, provided other contemporaneous documents such as mate's receipts, shipping bills, bills of lading, etc., are produced and from such supporting documents it stands established that the excisable goods have in fact been exported on payment of duty from the factory or warehouse. In such circumstances, the exporter would be entitled to rebate of duty. It has further been observed that there may be more than one valid reason for non-production of one or more documents prescribed under the procedural requirements. Merely because certain documents, though prescribed, are not produced, the claim cannot be rejected if, on the basis of other material on record, the exporter is able to establish compliance with the substantive conditions of export and payment of duty. The production of original and duplicate copies of ARE-1 is not the sole determinative requirement.

25. In the present case, the petitioner No.1 has produced quadruplicate copies of ARE-1 along with an indemnity bond and other supporting documents such as invoices and shipping bills, etc. These documents have not been doubted by the respondents. From the material on record, it appears that the competent authority, while passing the Order-in-Original, committed no error or illegality in sanctioning the rebate of Rs. 1,29,92,156/-.

26. At this stage, reference may also be made to Chapter 8, Part-IV of the CBEC Manual(old), which reads as under:–

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> *"**PART-IV***
> ***MISCELLANEOUS***
> ***1. Time limit for disposal***
> *The rebate sanctioning authority should point out deficiency, if any, in the claim within 15 days of lodging the same and ask the exporter to rectify the same within 15 days. All Queries/deficiencies shall be pointed out once Collectively and piecemeal queries should be avoided. The claim of rebate of duty on export of goods should be disposed of within a period of two months."*

27. The provisions of Part-IV of Chapter 8 of the CBEC Manual, which deals with the time limit for disposal of rebate claims, stipulate that all queries and deficiencies should be pointed out collectively at one time and that piecemeal queries ought to be avoided. It is further provided that rebate claims on export of goods should ordinarily be disposed of within a period of two months. We may at this stage, mention that the reliance placed by the senior standing Counsel on Chapter-9 of the CBEC Manual (Old), is misconceived, since the same deals with 'refunds' and not 'rebates'. The Introduction to Chapter-9 clarifies that "A separate Chapter No.8 deals with the rebate of Central Excise Dupty". Thus, the case of the petitioners will be governed by Chapter-8 and not Chapter-9.

28. Thus, when the petitioners initially filed the rebate application, it was incumbent upon the respondent officers to point out any deficiencies so as to enable the petitioners to cure the same.

29. At this stage, reference may be made to the observations of the Coordinate Bench in the case of ***United Phosphorus Limited (supra)***, wherein, while examining the provisions of Section 11B of the Act, 1944 in the context of a refund claim, it was held that *"the course adopted by the Assistant*

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Commissioner of returning the claim application without making an order thereon amounts to refusal to perform the statutory duty imposed on him to consider the application and make an order thereon in accordance with law." It was thus held that it was the duty of the Assistant Commissioner to consider the claim application and pass an order under Section 11B of the Act, 1944 and the relevant Rules.

30. In the present case, therefore, the Assistant Commissioner, Kachchh, Gandhidham, instead of returning the application on 29.12.2017, ought to have pointed out the specific deficiencies, thereby enabling the petitioners to rectify them. This constitutes yet another irregularity in the process adopted by the respondents.

31. Insofar as the second ground of rejection, namely limitation, is concerned, reference may be made to the decision of the Coordinate Bench of this Court dated 17.12.2015 passed in Special Civil Application No.7815 of 2014 in the case of ***Apar Industries Limited (supra)***, which reads as under:–

> *"6. Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications /declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner re-presented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the*

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circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules."

32. Thus, the Appellate Authority fell in error in rejecting the rebate claim on the ground of limitation, more particularly in wake of the fact that the original application was within time, and the same has been returned on the ground of technical defect, and the claim/application was not rejected. There was no order passed on the application rejecting the claim, but the same was returned. Hence, the Assistant Commissioner in his Order-in-Original dated 25.09.2018 has precisely held that claim was within time.

33. On an overall appreciation of the facts, and the legal precedent, we find merits in the writ petition. Hence, it succeeds and is accordingly ***allowed***. The impugned order(s) are hereby quashed and set aside. The Order-in-Original dated 25.09.2018, which is partly in favour of the petitioner, is revived to such extent. It is noted that pursuant to the Order-in-Original passed by the competent authority, the petitioners have already been paid the sanctioned amount. Therefore, no further directions are required to be issued. Rule is made absolute accordingly. No order as to costs.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(PRANAV TRIVEDI,J)

MAHESH/21