IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.19607 to 19609 of 2006

M/s.Larsen & Toubro Ltd.,
ECC Division,
Mount Poonamallee Road
Manapakkam, Chennai - 89.

...Petitioner in the above W.Ps

Vs.

1. Union of India,
rep. By Joint Secretary,
Department of Revenue,
Ministry of Finance (Revision Application Unit) Jeevanthi Building,
Parliament Street, New Delhi.

2. Commissioner of Central Excise (Appeals)
Mahatma Gandhi Road,
26/1, Nungambakkam, Chennai - 34.

3. Asst. Commissioner of Central Excise,
Pondicherry.

4. Commissioner of Central Excise, Pondicherry

...Respondents in the above W.Ps

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the impugned proceedings of the first respondent passed in order File No.321, 322 and 323/2005 dated 31.8.2005 and quash the same.

For Petitioner: Mr.P.R. Renganath for
Mr.R.Raghavan

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

C O M M O N O R D E R

Heard Mr.P.R. Renganath, learned counsel for petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for respondents.

2. The petitioner is a company engaged in the manufacture of various goods including re-rolled products of iron and steel (in short 'goods'). The goods are subject to Duty in terms of Section 3 of the Central Excise Act, 1944 (in short 'Act').

3. The petitioner had claimed rebate in terms of Rules 12 (1) (a) and 12(1)(b) of the Central Excise Rules, 1944 (in short 'Rules') during the period July, 1998 to April, 1999 in respect of nine (9) export consignments. Just prior thereto, in 1997, the basis of levy of central excise duty was shifted, in terms of Section 3A of the Act from 'quantity of goods manufactured' (and removed) to the 'annual capacity of production'.

4. The claims were allowed vide order dated 14.09.1998 by the Assistant Commissioner of Central Excise (R3). Subsequently, the claims were sought to be reversed on the ground that the petitioner had made duel claims, both under Rule 12(1)(a) and 12 (1)(b) at the rate of Rs.300 per MT under the former and on the basis of 12% of value of inputs used in the export goods, under the latter. The proposal to show cause was to deny rebate under Rule 12(1)(b) and modify the claim under Rule 12(1)(a) to 12% of FOB value as against 300 MT, as claimed by the petitioner. The proposal relating to Rule 12(1)(a) was accepted and the petitioner objected only to the proposal under Rule 12 (1)(b). Orders were passed confirming both proposals, as against which statutory appeals were filed before the Commissioner of Central Excise (Appeals) (R2), which came to be allowed.

5. The Commissioner of Central Excise (R4), sought a revision of the appellate orders. In all, a total of four revision applications were filed by R4 before the Union of India (R1). The revision applications came to be allowed by R1 holding that the claim under Rule 12(1)(a) is to be restricted to actual duty paid and that the petitioner was not eligible for any claim under Rule 12(1)(b) at all. It is as against the aforesaid order that the present Writ Petitions have been filed.

6. The factual details of claims made, show cause notices (SCN) issued, orders-in-original (OIO) passed, appeals filed with appeal references, details of the orders in appeal (OIA), details of revision applications filed and orders passed have

been tabulated by the petitioner in the Writ Affidavit and are extracted herein for the sake of completion of the narration:

W.P.No.19607 of 2006:

Table 1

(A)	AR-5 No. & Date	1/03.07.98
(B)	Weight in Kgs	190.520
1(a)	Claim under Rule 12(1)(a) @ Rs.300/- per M.T. read with CEN 31.98 dt.24.8.98.	Rs.57,156/-
(b)	Claim under Rule 12(1)(b) read with CEN 42/94 dt.22.9.94 (i.e.) on invoice price of inputs used in export goods	Rs.2,66,300/-
2.	Date of A.C's order allowing claim (details)	14.09.98
(a)	Claim allowed under Rule -12(1)(a)	Rs.57,156/-
(b)	Claim allowed under Rule - 12(1)(b)	Rs.2,66,300/-
3.	Appeal if any filed against order at Sl.No.(2) above with gist of grounds in appeal	Nil
4.	Date of SCN issued for recovery of claim allowed	02.08.99
(a)	Demand in SCN and reasons for demand	Rs.24,299/- SCN states claim under Rule-12(1)(b) is not sustainable and claim under Rule 12(10(a) to be raised to 12% of FOB issues demand on this basis
5.	O.I.O. (of A.C.) with reference to SCN at Sl.No.(4)	21/2000 dt.6.3.2000
(a)	Amount demanded in the OIO	Rs.24,299/-
6.	L&T Appeal Ref.to CCE(A)	A.No.201/02
7.	O.I.A. with reference to above appeal	429 to 432/03 dt.08.08.03

8.	Rev.Appeal No.against OIA at Sl.No.(7)	F.No.198/114-116/03-RA CUS
9.	Order in R.A.	321-323/05 dt.31.8.2005

Table 2

(A)	AR-5 No. & Date	2/10.09.98	3/10.09.98	4/10.09.98
(B)	Weight in KGs	11.100	143.640	115.120
1(a).	Claim under Rule 12(1)(a) @ Rs.300/- per M.T. read with CEN 31/98 dt.24.08.98.	Rs.3,330/-	Rs.43,092/-	Rs.34,536/-
(b).	Claim under Rule 12(1)(b) read with CEN 42/94 dt. 22.09.94 (i.e.) on invoice price of inputs used in export goods.	Rs.19,140/-	Rs.2,47,684/-	Rs.1,98,507/-
2.	Date of A.C's order allowing claim (details)	05.01.99		
(a).	Claim allowed under Rule-12(1)(a)	Rs.3,330/-	Rs.43,092/-	Rs.34,536/-
(b).	Claim allowed under Rule-12(1)(b)	R.19,140/-	Rs.2,47,684/-	Rs.1,98,507/-
3.	Appeal if any filed against Order at Sl. No. (2) above with gist of Grounds in appeal	Nil		
4.	Date of SCN issued for recovery of claim allowed	01.07.99		

(a)	Demand in SCN and reasons for demand	Rs.4,851/-	Rs.62,773/-	Rs.50,310/-
		SCN states claim under Rule-12(1)(b) is not sustainable and claim under Rule-12 (1)(a) to be raised to 12% of FOB. Issues demand on this basis.		
5.	O.I.O (of A.C.) with reference to SCN at Sl.No.(3)	285/99 dt.09.12.99		
(a)	Amount demanded in the OIO	Rs.4,851/-	Rs.62,773/-	Rs.50,310/-
6.	L & T Appeal Ref. to CCE (A).	A.No.200/02 (A.No.97/2000-TRY)		
7.	O.I.A. with reference to above appeal	429 to 432/03 dt.08.08.03		
8.	Rev.Appeal No.against OIA at Sl.No.(7)	F.No.198/114-116/RA.CUS.		
9.	Order in R.A.	321-323/05 dt. 31.08.2005		

Table 3

(A)	AR-5 No. & Date	5/18.09.98	6/25.09.98	7/05.10.98	8/30.11.98	9/21.04.99
(B)	Weight in KGs.	66.650	149.590	117.590	73.060	63.720
1(a)	Claim under Rule 12(1) (a) @ Rs.300/- Per M.T. r/w CEN 31/98 dt.24.08.98	Rs.19,995/-	Rs. 44,859/-	Rs. 35,277/-	Rs. 21,918/-	Rs. 19,116/-

(b)	Claim under Rule 12(1) (b) r/w CEN 42/94 dt.22.9.94 (i.e.) 12% on inv. Price of inputs used in export goods.	Rs. 1,17,084/-	Rs. 2,63,762/-	Rs. 1,66,860/-	Rs. 1,03,672/-	Rs. 92,222/-
2.	Date of A.C's order allowing claim (details)	C.No.V/72/18/162/98 dated 31.8.99				
(a)	Claim allowed under R-12 (1)(a) @ 12% of FOB value	Rs. 1,04,878/-	Rs. 2,35,294/-	Rs. 1,85,234/-	Rs. 1,05,693/-	Rs. 87,330/-
(b)	Claim allowed under R-12 (1)(b)	NIL				
3.	Appeal if any filed against order at Sl.No.(2) above with gist of grounds in appeal. Appeal reference	L & T files appeal against rejection of claim under Rule-12(1)(b) Appeal Ref.A.No.197/02 (317/99-TRY)				
4.	Date of SCN issued for recovery of claim allowed	29.08.2000				

(a)	Demand in SCN and reasons for Demand	Rs. 84,883/-	Rs. 1,90,435 /-	Rs. 1,49,977 /-	Rs. 83,775/-	Rs. 68,214 /-
		The SCN states that the claim under Rule-12 (1)(a) 12% of FOB value is subject to actual duty paid. Hence restricts the claim to that extent and demands recovery of balance amount sanctioned.				
5.	O.I.O. (of A.C.) with reference to SCN at S.No. (4)	37/2001 dated 29.11.2001. This order confirms demands as proposed in SCN dt.29.08.2000 referred in Sl.No.4(a) above. This order also rejected petitioner's contention that the SCN is barred by limitation.				
6.	L & T Appeal ref. to CCE (A) with reference to order @ Sl.No.(5)	A.No.208/02 (31/02-TRY)				
7.	O.I.A. with reference to above appeals at Sl.Nos.(3) & (6)	429 to 432/03 dt. 08.08.2003 Allows appeals 197/02 & 208/02 in favour of L & T.				
8.	Rev. Appeal No. against OIA at Sl. No.(7)	F.No.198/114-116/RA-CUS/				
9.	Order in R.A.	321-323/05 dated 31.08.2005				

W.P.No.19608 of 2006:

Table-1

(A)	AR-5 No.& Date	1/03.07.98
(B)	Weight in KGs	190.520
1 (a)	Claim under Rule 12(1)(a) @ Rs.300/- per M.T.read with CEN 31/98 dt. 24.8.98	Rs.57,156/-
(b)	Claim under Rule-12(1)(b) read with CEN 42/94 dt. 22.9.94 (i.e.) on invoice price of inputs used in export goods.	Rs.2,66,300/-

2.	Date of A.C.s order allowing claim (details)	14.09.98
(a)	Claim allowed under Rule-12(1)(a)	Rs.57,156/-
(b)	Claim allowed under Rule-12(1)(b)	Rs.2,66,300/-
3.	Appeal if any filed against order at Sl.No.(2) above with gist of grounds in appeal.	Nil
4.	Date of SCN issued for recovery of claim allowed	02.08.99
(a)	Demand in SCN and reasons for demand	Rs.24,299/- SCN states claim under Rule12(1)(b) is not sustainable and claim under Rule-12(1)(a) to be raised to 12% of FOB. Issues demand on this basis.
5.	O.I.O. (of A.C.) with reference to SCN at Sl.No.(4)	21/2000 dt. 6.3.2000
(a)	Amount demanded in the OIO	Rs.24,299/-
6.	L&T Appeal Ref. to CCE (A)	A.No.201/02
7.	O.I.A. with reference to above appeal	429 to 432/03 dt.08.08.03
8.	Rev. Appeal No. against OIA at Sl. No.(7)	F.No.198/114-116/03-RA.CUS
9.	Order in R.A.	321-323/05 dt.31.08.2005

Table 2

(A)	AR-5 No. & Date	2/10.09.98	3/10.09.98	4/10.09.98
(B)	Weight in KGs	11.100	143.640	115.120
1(a).	Claim under Rule 12(1)(a) @ Rs.300/- per M.T. read with CEN 31/98 dt.24.8.98	Rs.3,330/-	Rs.43,092/-	Rs.34,536/-

(b)	Claim under Rule-12(1)(b) read with CEN 42/94 dt. 22.9.94 (i.e.) on invoice price of inputs used in export goods	Rs.19,140/-	Rs.2,47,684/-	Rs.1,98,507/-
2.	Date of A.C's order Allowing Claim (details)	05.01.99		
(a).	Claim allowed under Rule-12(1)(b)	Rs.3,330/-	Rs.43,092/-	Rs.34,536/-
(b).	Claim allowed under Rule-12(1)(b)	Rs.19,140/-	Rs.2,47,684/-	Rs.1,98,507/-
3.	Appeal if any filed against Order at Sl.No.(2) above with gist of Grounds in appeal	Nil		
4.	Date of SCN issued for recovery of claim allowed	01.07.99		
(a).	Demand in SCN and reasons for demand	Rs.4851/-	Rs.62,773/-	Rs.50,310/-
		SCN states claim under Rule-12(1)(b) is not sustainable and claim under Rule-12(1) (a) to be raised to 12% of FOB. Demand issued		
5.	O.I.O. (of A.C.) with reference to SCN at Sl.No.(3)	285/99 dt. 9.12.99		
(a)	Amount Demanded in the OIO	Rs.4,851/-	Rs.62,773/-	Rs.50,310/-
6.	L & T Appeal Ref. to CCE(A)	A.No.200/02 (A.No.97/2000-TRY)		
7.	O.I.A. with reference to above appeal	429 to 432/03 dt. 08.08.03		
8.	Rev.Appeal No. against OIA at Sl.No.(7)	F.No.198/114-116/RA.CUS.		

9.	Order in R.A.	321-323/05 dt.31.8.2005

Table-3

(A)	AR-5 No.& Date	5/18.09.98	6/25.09.98	7/05.10.98	8/30.11/98	9/21.04.99
(B)	Weight in KGs	66,650	149,590	117,590	73,060	63.720
1 (a)	Claim under Rule 12 (1)(a) @ Rs.300/- Per M.T. r/w/ Cen 31/98 dt. 24.08.98	Rs.19,995/-	Rs.44,859/-	Rs.35,277/-	Rs.21,918/-	Rs.19,116/-
(b)	Claim under Rule 12 (1) (b) r/w CEN 42/94 dt. 22.9.94 (i.e.) 12% on inv. Price of inputs used in exort goods.	Rs.1,17,084/-	Rs.2,63,762/-	Rs.1,66,860/-	Rs.1,03,672/-	Rs.92,222/-
2.	Date of A.C's order allowing claim (details)	C.No.V/72/18/162/98 dated 31.08.99				
(a).	Claim allowed under R-12(1)(a) @ 12% of FOB value	Rs.1,04,878/-	Rs.2,35,294/-	Rs.1,85,234/-	Rs.1,05,693/-	87,330/-

<table>
<tr><td>(b)</td><td>Claim allowed under R-12(1)(b)</td><td colspan="5">NIL</td></tr>
<tr><td>3.</td><td>Appeal if any filed against order at Sl.No. (2) above with gist of grounds in appeal.

Appeal reference</td><td colspan="5">Appeal filed against rejection of claim under Rule-12(1)(b)

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<tr><td>4.</td><td>Date of SCN issued for recovery of claim allowed.</td><td colspan="5">29.08.2000</td></tr>
<tr><td rowspan="2">(a)</td><td rowspan="2">Demand in SCN and reasons for Demands.</td><td>Rs.84,883 /-</td><td>Rs.1,90,435/-</td><td>Rs.1,49,977/-</td><td>Rs.83,775 /-</td><td>Rs.68,214/-</td></tr>
<tr><td colspan="5">The SCN states that the claim under Rule-12(1)(a) @ 12% of FOB value is subject to actual duty paid. Hence restricts the claim to that extent and demands recovery of balance amount sanctioned.</td></tr>
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<tr><td>6.</td><td>L & T Appeal Ref. to CCE (A) with reference to order @ Sl.No. (5)</td><td colspan="5">A.No.208/02 (31/02-TRY)</td></tr>
</table>

7.	O.I.A. with reference to above	429 to 432/03 dt. 08.08.2003 Allows appeals 197/02 & 208/02 in favour of L & T
8.	Rev.Appeal No. against OIA at Sl.No(7)	F.No.198/114-116/RA-CUS/
9.	Order in R.A.	321-323/05 dated 31.08.2005

W.P.No.19609 of 2006:

Table 1

(A)	AR-5 No.& Date	1/03.07.98
(B)	Weight in KGS	190.520
1(a)	Claim under Rule 12(1) (a) @ Rs.300/- per M.T.read with CEN 31/98 dt. 24.8.98.	Rs.57,156/-
(b)	Claim under Rule -12(1)(b) read with CEN 42/94 dt.22.9.94 (i.e.) on invoice price of inputs used in export goods	Rs.2,66,300/-
2.	Date of A.C's. order allowing claim (details)	14.09.98
(a)	Claim allowed under Rule - 12 (1)(a)	Rs.57,156/-
(b)	Claim allowed under Rule - 12 (1)(b)	Rs.2,66,300/-
3.	Appeal if any filed against order at Sl.No.(2) above with gist of grounds in appeal	Nil
4	Date of SCN issued for recovery of claim allowed	02.08.99
(a)	Demand in SCN and reasons for demand	Rs.24,299/- SCN states claim under Rule-12(1)(b) is not sustainable and claim under Rule - 12(1)(a) to be raised to 12% of FOB. Issues demand on this basis.
5.	O.I.O (of A.C) with reference to SCN at Sl.No.(4)	21/2000 dt.6.3.2000

(A)	AR-5 No.& Date	1/03.07.98
(a)	amount demanded in the OIO	Rs.24,299/-
6.	A&T Appeal Ref.to CCE(A)	A.No.201/02
7.	O.I.A.wih reference to above appeal	429 to 432/03 dt.08.08.03
8.	Rev.Appeal No. against OIA at Sl.No.(7)	F.No.198/114-116/03-RA.CUS
9.	Order in R.A.	321-323/05 dt.31.08.2005

Table 2

(A)	AR-5 No.& Date	2/10.09.98	3/10.09.98	4/10.09.98
(B)	Weight in KGS	11.100	143.640	115.120
1(a)	Claim under Rule 12 (1) (a) @ Rs.300/- per M.T.read with CEN 31/98 dt. 24.8.98.	Rs. 3,330/-	Rs. 43,092	Rs. 34,536/-
(b)	Claim under Rule -12 (1)(b) read with CEN 42/94 dt.22.9.94 (i.e.) on invoice price of inputs used in export goods	Rs. 19,140/-	Rs. 2,47,684/-	Rs. 1,98,507 /-
2.	Date of A.C's. order allowing claim (details)	05.01.99		
(a)	Claim allowed under Rule - 12(1)(a)	Rs. 3,330/-	Rs. 43,092/-	Rs. 34,536/-
(b)	Claim allowed under Rule - 12(1)(b)	Rs. 19,140/-	Rs. 2,47,684	Rs. 1,98,507 /-
3.	Appeal if any filed against order at Sl.No.(2) above with gist of Grounds in appeal	Nil		
4	Date of SCN issued for recovery of claim allowed	01.07.99		

(A)	AR-5 No.& Date	2/10.09.98	3/10.09.98	4/10.09.98
(a)	Demand in SCN and reasons for demand	Rs. 4,851/-	Rs. 62,773/-	Rs. 50,310/-
		SCN states claim under Rule-12(1)(b) is not sustainable and claim under Rule - 12(1)(a) to be raised to 12% of FOB. Demand issued accordingly.		
5.	O.I.O (of A.C.) with reference to SCN at Sl.No.(3)	285/99 dt.9.12.99		
(a)	Amount demanded in the OIO	Rs. 4,851/-	Rs. 62,773/-	Rs. 50,310/-
6.	L&T Appeal Ref. to CCE(A)	A.No.200/02 (A.No.97/2000-TRY)		
7.	O.I.A.with reference to above appeal	429 to 432/03		
8.	Revenues' Appeal No.against OIA at Sl.No.(7)	F.No.198/114-116/RA.CUS		
9.	Order in R.A.	321-323/05 dt.31.8.2005		

Table - 3

(A)	AR-5 No. & Date	5/18.09.98	6/25.09.98	7/05.10.98	8/30.11.98	9/21.04.99
(B)	Weight in Kgs.	66.650	149.590	117.590	73.060	63.720
1 (a)	Claim under Rule 12(1)(a) @ Rs.300/- Per M.T. r/w CEN 31/98 dt.24.8.98	Rs. 19,995/-	Rs. 44,859/-	Rs. 35,277/-	Rs. 21,918/-	Rs. 19,116/-

(A)	AR-5 No. & Date	5/18.09.98	6/25.09.98	7/05.10.98	8/30.11.98	9/21.04.99
(b)	Claim under Rule 12(1)(b) r/w CEM 42/94 dt.22.9.94 (i.e.) 12% on inv. Price of inputs used in export goods.	Rs. 1,17,084/-	Rs. 2,63,762/-	Rs. 1,66,860/-	Rs. 1,03,672/-	Rs. 92,222/-
2.	Date of A.C's order allowing claim (details	C No.V/72/18/162/98 dated 31.8.99				
(a)	Claim allowed under R-12(1)(a) @ 12% of FOB value	Rs. 1,04,878/-	Rs. 2,35,294/-	Rs. 1,85,234/-	Rs. 1,05,693/-	Rs. 87,330/-
(b)	Claim allowed under R-12(1)(b)	NIL				
3.	Appeal if any filed against order at Sl.No.(2) above with gist of grounds in appeal. Appeal reference.	L&T files appeal against rejection of claim under Rule-12(1)(b) Appeal Ref.A.No.197/02 (317/99-TRY)				
4.	Date of SCN issued for recover of claim allowed.	29.08.2000				

<table>
<tr><td>(A)</td><td>AR-5 No. & Date</td><td>5/18.09.98</td><td>6/25.09.98</td><td>7/05.10.98</td><td>8/30.11.98</td><td>9/21.04.99</td></tr>
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<tr><td>6.</td><td>L & T Appeal
Ref. To CCE (A).with reference to order @ Sl.No.(5)</td><td colspan="5">A.No.208/02 (31/02-TRY)</td></tr>
<tr><td>7.</td><td>O.I.A. With reference to above appeals at Sl.Nos.(3) & (6)</td><td colspan="5">429 to 432/03 dt.08.08.2003
Allows appeals 197/02 & 208/02 in favour of L & T.</td></tr>
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<tr><td>9.</td><td>Order in R.A.</td><td colspan="5">321-323/05 dated 31.08.2005</td></tr>
</table>

7. Two Notifications are relevant to appreciate the issue at hand: Notification No.42/94-CE (NT) dated 21.09.1994 that deals with grant of rebate on materials used in the manufacture of goods for export outside India, i.e., inputs for exports and Notification No.31/98- CE (NT) dated 24.08.1998 that grants a rebate of duty on export of non-alloy steel ingots/billets and hot re-rolling products to any Country, except Nepal and Bhutan. The proviso to the latter Notification states that no rebate of duty paid under Section 3A of the Act on materials used on such exports shall be claimed.

8. The issue of grant of rebate to a manufacturer/exporter on excise duty, where duty has been paid on the final product as well as on the inputs that have gone into manufacturing of the products where such products were ultimately exported, came up for consideration before a Division Bench of the Supreme Court in the case of Spentex Industries Ltd. Vs. Commissioner of Central Excise [(2015) 324 ELT 686]. At paragraph 9, the Bench crystallises the lis before it as follows:

> 9. Obviously, the controversy that arises is qua interpretation that is to be accorded to Rule 18. The Rule stipulates that the Central Government may, by notification, grant rebate of duty paid on such excisable goods OR duty paid on material used in the manufacturing or processing of such goods. The word 'OR' which is used in between the two kinds of duties in respect of which rebate can be granted is the bone of contention and it is to be interpreted whether it postulates grant of one of the two duties or both the duties can be claimed. It is also to be noted at this stage itself that Rule 18 is only an enabling provision which empowers the Central Government to issue a notification for grant of these rebates and prescribes the procedure for claiming such rebate(s).

9. The Bench notices Notification No.19/2004 - C.E.(NT) dated 06.09.2004 and Notification No.21/2004 - C.E. (NT) also dated 06.09.2004, relevant portions of which are extracted below:

> 11. The Central Government has issued Notification No. 19/2004-CE(NT) dated September 06, 2004 which deals with grant of rebate of whole of duty on excisable goods exported. The opening portion of this Notification, which needs to be taken note of, is as under:
>
> > "In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (N.T.), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] insofar as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter-

xxx xxx xxx"

13........Notification No. 21/2004- CE(N.T.); dated September 06, 2004 issued by the Government for claiming rebate of whole of the duty paid on excisable goods used in the manufacture or processing of exported goods, as is clear from the reading of the opening para thereof:

> "In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 41/2001-Central Excise (N.T.), dated the 26th June, 2001 [G.S.R. 470(E) dated the 26th June 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter."

10. Form A.R.E.-2 that was prescribed under Notification No.21/2004 - C.E. (NT) dated 06.09.2004 to enable the assessee to claim both kinds of rebate was also noticed by the Supreme Court. The relevant portion of Form in A.R.E.-2 is as under:

'Form A.R.E. 2 Combined application for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods and removal of dutiable excisable goods for export under claim for rebate of finished stage Central Excise Duty or under bond without payment of finished stage Central Excise Duty leviable on export goods.

To The Superintendent of Central Excise, (Address) ….................(full postal address)

1. Particulars of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise from whom rebate shall be claimed/with whom bond is executed and his complete postal address__________

2. I/We_________of _____ propose to export the under mentioned goods (details of which are given in Table 1 below) to ____ (country of destination) by air/sea/land/post parcel under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods.

3. *The finished goods being exported are not dutiable.

Or

We intended to claim the rebate of Central Excise Duty paid on clearances of goods for export under notification No. 19/2004-Central Excise (N.T.), dated the 6th September, 2004 issued under Rule 18 of Central Excise Rules, 2002.'

11. The Bench at paragraph 16 dilates on the historical perspective of the Scheme for grant of rebate noticing specifically Rules 12 and 13 that provide for two methodologies to enable an exporter to obtain relief from payment of excise duty, the one on the inputs and the other on excisable goods that are exported. Thus, duality or concurrent claim was permissible and was always part of the statutory scheme. The principal of contemporanea expositio was also invoked by the Bench and the observations of the Court in Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd. [(1979) 3 SCC 373] as extracted below were cited to lend support to the issuance of two Notifications both giving effect to Rule 18 of the Rules.

"9. It may be stated that it was not disputed before us that these two documents which came into existence almost simultaneously with the issuance of the notification could be looked at for finding out the true intention of the Government in issuing the notification in question, particularly in regard to the manner in which outstanding transactions were to be closed or liquidated. The principle of contemporanea expositio (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the same will not always be decisive of the question of construction. (Maxwell 12th Edn. p. 268). In Crawford on Statutory Construction (1940 Edn.) in para 219 (at pp. 393-395) it has been stated that administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight it is highly persuasive. In Baleshwar Bagarti v. Bhagirathi Dass (1908) ILR 35 Cal 701 at 713 the principle which was reiterated in Mathura Mohan Saha v. Ram Kumar Saha, ILR 43 Cal. 790: (AIR 1916 Cal. 136) has been stated by Mukerjea J. thus:

"It is a well-settled principle of construction that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction."

12. After an exhaustive discussion, the Bench concludes holding that the petitioner (in that case) was entitled to claim both rebates and that no restriction was envisaged thereof.

13. Respectfully following the judgment of the Supreme Court as aforesaid, the impugned orders are set aside and these Writ Petitions are allowed. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

ska/sl
To

1. Union of India,
rep. By Joint Secretary,
Department of Revenue,
Ministry of Finance (Revision
Application Unit) Jeevanthi Building,
Parliament Street, New Delhi.

2. Commissioner of Central Excise (Appeals)
Mahatma Gandhi Road,
26/1, Nungambakkam, Chennai - 34.

3. Asst. Commissioner of Central Excise,
Pondicherry.

4. Commissioner of Central Excise, Pondicherry

+1 CC to Mr.R. Raghavan, Advocate sr 78770.
+1 CC to Mr.A.P. Srinivas, Advocate sr 78901.

W.P.No.19607 to 19609 of 2006

EV(CO)
SP(11/02/2020)