# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# New Delhi

**PRINCIPAL BENCH-COURT NO-2**

**Excise Appeal No. 52491 of 2018-[SM]**

(Arising out of Order-in-Appeal No. 172(SM) CE/JPR/2018 dated 11.04.2018 passed by Commissioner (Appeals) Central Excise & CGST Jaipur)

**Aksh Optifibre Limited** **Appellant**
A-58-59, Shri Khatu Shyamji
Industrial Complex,
Reengus, Distt.-Sikar (Raj)

***Versus***

**Commissioner of Central Goods &**
**Service Tax, Customs and Excise, Alwar** **Respondent**
Á'Block, Surya Nagar, Alwar (Rajasthan)

**Appearance**
Ms. Rinki Arora,Advocate for the appellant

Shri P Juneja, Authorized Representative for the respondent

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**

**Final Order No. 51231/2019**

**Date of hearing/Decision: 28.05.2019**

## Per Anil Choudhary

The issue in this appeal is whether the appellant have wrongly claimed rebate under Rule 18 and whether the same was sanctioned erroneously vide Order-in-Original No. 44/rebate/2013 dated 16 August, 2013.

2. The brief facts are that the appellant is engaged in manufacture of telecommunication grade FRP rods and optical fibre cables. The appellant have exported their finished products being FRP rods falling under Tariff item No. 39169090. Being entitled under Rule 18 of Central Excise Rules for rebate, read with Notification No. 19/2004–CE (NT), read with Notification No. 92/2012–Cus, the appellant applied for rebate claim in respect of goods cleared under bond and exported during the period March 2013 and April 2013. The appellant had cleared goods for export on payment of duty debited in RG-23A part 2. Upon finding the rebate claim allowable, vide a Order-in-Original No. 44/rebate/2013 dated 16 August, 2013, the Assistant Commissioner was pleased to sanction the rebate of Rs. 14,69,984/-, payable in cash through their account with the bank, for the duty paid on goods exported. Further the refund of excess duty paid Rs. 1,05,355/-, paid on the exported goods, was also sanctioned and disbursed.

3. Subsequently, Show Cause Notice dated 8 August, 2014 have been issued stating that out of the total rebate claim sanctioned with respect to two documents ARA–1, Nos. 40 and 41/2013–14 dated 17th May 2013, totalling refund of Rs. 4,01,083/-, it was alleged that in terms of Notification No. 96/2009–Cus, as amended, the appellant an advance authorisation holder is required to fulfil the export obligation by exporting the quantity/value of resultant product as specified in the authorisation. Duty is required to be paid in case the export obligation is not fulfilled. Clause (i) of the said notification prescribes that the export obligation as specified in the said authorisation (both in value and quantity terms) is to be

discharged within the period specified in the said authorisation or within such extended period as may be granted by the regional authority by exporting resultant products, which are manufactured in India specified in the said authorisation and in respect of which facility under Rule 18 or sub-Rule 2 of Rule 19 of CER-2002 has not been availed. In other words, the legal provisions prescribe under the aforesaid Clause, precludes any availment of rebate facility under Rule 18 of CER. Further, as the notification is one of the export promotion schemes, it does not envisage any payment of Central Excise Duty on the resultant product. Hence, admissibility of rebate under the said clause, does not appear to have legal basis and contrary to the provision of Notification No. 96/2009–Cus as amended. Accordingly, the earlier sanctioned rebate claim was proposed to be demanded back for Rs. 04,01,083/-.

4. The Show Cause Notice was adjudicated on contest and the proposed demand confirmed with applicable interest holding that it was an erroneous sanction earlier. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who vide impugned order have been pleased to reject the appeal. Being aggrieved the appellant is before this Tribunal.

5. Heard the parties.

6. Having considered submissions and on perusal of the Show Cause Notice, I find that there is no allegation of violation of either the provisions of Notification No. 96/2009–Cus, nor violation of any provisions of Rule 18 of the Central Excise Rules, under which the rebate was sanctioned. The show cause is issued on the

presumptions that as the appellant have imported some raw material under advance authorisation, in terms of Notification No. 96/2009–Cus, and they had to discharge the prescribed export obligation. There is no allegation of any violation of the condition of fulfilment of export obligation, or none achievement of net foreign exchange earnings. In this view of the matter I find that the show cause Notice is misconceived and is not maintainable. Accordingly the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits if any, in accordance with law.

(Dictated and pronounced in open court)

**(Anil Choudhary)**
**Member (Judicial)**

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