SPEED POST
REGISTER

F.No.198/224-234/12-RA(CX)
F.No.195/1109-1119/12-RA(CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE
NEW DELHI-110 066

Date of Issue: 05.10.15

ORDER NO.103-124/2015-CX DATED 30.09.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed, under section 35 EE of the Central Excise, 1944 against the Order-in-Appeal No. 119-129/CE/ MRT-I/20112 dated 28.05.2012 passed by Commissioner of Customs & Central Excise (Appeals), Meerut-I

F.No.198/224-234/12-RA(CX)

Applicant : Commissioner of Central Excise & Customs, Meerut-I.

Respondent : M/s Jubiliant Life Sciences Ltd., Uttarakhand.

F.No.195/1109-1119/12-RA(CX)

Applicant : M/s Jubiliant Life Sciences Ltd., Uttarakhand.

Respondent : Commissioner of Central Excise & Customs, Meerut-I.

*****

ORDER

These revision applications are filed by the Commissioner of Customs and Central Excise, Meerut-I(hereinafter referred to as Department) and M/s Jubilant Life Sciences Limited (hereinafter referred to as Applicant) against the Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), Meerut-I with regard to Orders-in-Original passed by the Assistant Commissioner, Central Excise Division Dehradun, as detailed in table below:

TABLE-1

Sl. No.	RA File No.	Name of the Applicant	Order-in-Original No. & Date	Order-in-Appeal No. & Date
1	198/224-234/ 12-RA	Commissioner, Customs & Central Excise, Meerut-I	1) R -88/11 dt 19.05.2011, 2) R-98/11 dt 08.07.2011, 3) R-138/11 dt.24.08.2011, 4) R-170/11 dt 27.09.2011, 5) R-171/11 dt.27.09.2011, 6) R-192/11 dt.13.10.2011, 7) R-200/11 dt 24.10.2011, 8) R-241/11 dt 12.12.2011, 9) R-245/11 dt. 28.12.2011, 10)R-246/11 dt.28.12.2011, 11)R-247/11 dt 28.12.2011.	119-129/CE/MRT-I/ 2012 dated 28.05.2012
2	195/1109-1119/ 12-RA	M/s Jubilant Life Sciences Limited	1) R -88/11 dt 19.05.2011, 2) R-98/11 dt 08.07.2011, 3) R-170/11 dt 27.09.2011, 4) R-192/11 dt.13.10.2011, 5) R-200/11 dt 24.10.2011, 6) R-241/11 dt 12.12.2011, 7) R-246/11 dt.28.12.2011, 8) R-247/11 dt 28.12.2011.	

2. The brief facts of the cases are that the applicant are engaged in the manufacture of Medicines. The applicant had filed 8 rebate claims under Rule 18 of the Central Excise Rules, 2002 and 3 refund claims of the credit taken on inputs under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 5/2006-CE(NT) dated 14.03.2006.

2.1. The applicant had wrongly taken CENVAT Credit amounting to Rs. 3,59,55,776/- during the financial year 2008-09 and Rs. 27,00,115/- during the financial year 2009-10 and voluntarily reversed the same on 15.05.2009 and 29.05.2010 respectively. However, the interest amount of Rs. 35,89,241/- so accrued on the said wrongly availed CENVAT Credit and reversed subsequently, was not paid by the applicant as envisaged under the Rule 14 of Cenvat Credit Rules, 2004. The applicant has been regularly exporting the excisable goods on payment of Central Excise Duty and thereafter filing rebate claim under the Rule 18 of Central

Excise Rules, 2002 on such export. Some rebate claims of the applicant were pending with the department during the period when the party did not deposit their interest liability. The adjudicating authority recovered the pending interest liability of the party from the rebate/refund claim found admissible to them, by first sanctioning the rebate claims and thereafter appropriating the same towards the interest liability of the applicant party. The total liability of Rs. 35,89,241/- was recovered from the eleven rebate/refund claims of the applicant.

3. Being aggrieved by the said Orders-in-Original, the applicant filed appeals with Commissioner (Appeals). Commissioner (Appeals) vide Orders-in-Appeal No. 119-129/CE/MRT-I/2012 dated 28.5.12, set aside all the eleven Orders-in-Original, holding that there was no confirmed dues against the applicant for recovery as Government dues under Section 11 of the Act, and that the Assistant Commissioner was not legally correct while passing the order for appropriation of the sanctioned amount of rebate towards interest liability of Rs.35,89,241/-. However, regarding payment of interest on rebate claims against which the impugned interest amount had been adjusted by the original authority, Commissioner (Appeals) held that the rebates were sanctioned within time limit as prescribed in the Central Excise Act,1944 and therefore, claim for interest is not legally tenable. Accordingly, in the light of the said Order-in-Appeal, the rebate/refund sanctioning authority sanctioned the rebate/refund claim of Rs.35,89,241/- to the applicant vide Order-in-Original No. R-322/2012 dated 26.10.2012.

4. Being aggrieved by the impugned Orders-in-Appeal, both the Department and the Applicant have filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Grounds of R.A. No.198/224-234/12-RA filed by the Department

4.1.1 That the Commissioner (Appeals) has erred in his finding that any amount which is to be paid by the applicant can be adjusted by the department if the said amount has been confirmed after adjudication. It is nowhere provided in Section 11AB of Central Excise Act, 1944 that to adjust the government dues, the amount should have been adjudicated and only the adjudicated amount can be adjusted with dues to the applicant. That in the instant case the applicant on finding the credit inadmissible, suo-moto reversed the wrongly availed CENVAT credit on 15.05.2009 and 29.05.2010 i.e. much before the visit of audit team, which visited the unit from 16.09.2010 to 18.09.2010. It shows that party was aware of the fact that they had wrongly availed CENVAT credit. That the CBEC vide its Circular No. 897/17/2009-Cx dated 03.09.2009 has clarified that the interest shall be recoverable when credit has been wrongly taken, even if it has not been utilized. Thus the applicant's contention/plea that credit was never utilized has no force or relevancy in their case.

That the applicant has deliberately avoided payment of interest in spite of being reminded by the department. That when all efforts gone in vain, the department has, therefore, rightly appropriated the rebated amount to adjust the dues of interest which had become confirmed dues immediately when party suo-moto reversed the wrongly availed Cenvat credit.

4.1.2 That the Commissioner (Appeals) has failed to appreciate that Rule 14 of CENVAT Credit Rules, 2004 clearly stipulates *"where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of Section 11A and 11AB of the Excise Act or Section 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries".*

That where credit has been taken or utilized wrongly the same is recoverable along with interest. Thus, it is apparent that the applicant was liable to pay an interest amounting to Rs.35,89,241/- on the Cenvat credit wrongly taken by them which they have failed to deposit even after being informed about the aforesaid provisions of law by the department. That the party was once again requested by the Superintendent, Central Excise, Range Roorkee vide his letter C.No.20-CE/JUB/RKE/10/1052 dated 01.02.2011 to pay the aforesaid interest but the applicant vide their letter dated 10.02.2011 refused to pay the aforesaid interest, under the plea that the said credit had been reversed before utilization.

4.1.3 That the Commissioner (Appeals) has relied on the judgment in the case of M/s Stella Rubber Works (Unit-II) Vs CCE (Appeals), Bangalore which is not squarely applicable in the present case because in this case, the applicant had reversed the credit on its own after having realized that the same was wrongly taken by them. Further, show cause notices are to be issued where the applicant is not in agreement with the department. Here the case is that the applicant itself reversed the Cenvat Credit amount voluntarily and once the credit is reversed by the applicant, he is legally bound to pay interest being automatic consequence. That the case of Intas Pharmaceuticals Ltd. Vs CCE, Ahmedabad is also not squarely applicable in the instant case as no stay and appeal was pending. Moreover, the Circular No.13/92-CX.6 dated 04.11.1992 is also not applicable in the present case as no appeal was filed against a confirmed demand.

4.1.4 That the CBEC vide its Circular No.942/03/2011-CX dated 14.03.11 has made it distinctly clear that *"the issue has now been conclusively settled by the Apex Court in the departmental appeal against the above mentioned judgment of P&H High Court. The Apex Court vide its judgment dated 21.02.11 in Civil Appeal No. 1976 of 2011 has set aside the aforesaid order of Hon'ble High Court. The Apex Court has ruled that "If the aforesaid provision is read as a whole we find no reason to read*

the word "OR" in between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of the three circumstances such credit becomes recoverable along with interest." In effect, therefore, the view taken by the Board in circular dated 03.09.09 has now been endorsed by the Apex Court"

4.1.5 That the Hon'ble CESTAT in the case of Interfit India Limited Vs. Commissioner of Central Excise, Madurai, 2011 (274) ELT 443(Tri-Chennai) has held that payment of interest is a statutory provision and it is mandatory when Cenvat Credit has been taken wrongly and reversed thereafter. That Hon'ble CESTAT (Principal Bench) in the case of Prem Cables (P) Limited Vs. Commissioner of Central Excise, Jaipur, 2012(274) ELT 397(Tri-Del.) has held that once duty is paid, assessee is legally bound to pay interest being automatic consequence.

4.2 Grounds of R.A.No. 195/1109-1119/12-RA filed by the Applicant , M/s Jubliant Life Sciences Ltd.

4.2.1 That the Commissioner (Appeals) has accepted the applicant's contention that appropriation of the sanctioned amount of rebate against interest liability was not proper since there was no confirmed demand against the applicant for recovery of Government dues. That once the issue of appropriation of rebate claim is settled in favour of the applicant, it implies that the amount should have been received by the applicant as soon as it was sanctioned by the Assistant Commissioner. That the original appropriation order appropriating the sanctioned rebate amount against unconfirmed demand was itself wrong, consequent to which the amount which was otherwise receivable by the applicant at that point of time only, got delayed. Thus, the present case is a case of non-payment of the sanctioned rebate within the prescribed period and therefore interest is payable under Section 11 BB of the Act.

4.2.2 That Commissioner (Appeals) has grossly erred in holding that there was no delay in grant of rebate as the rebates were sanctioned within the time limit although the sanctioned amount was appropriated against unconfirmed interest liability. That the Commissioner (Appeals) failed to appreciate the relevant legal provisions incorporated in Section 11B and 11BB of the Act. That in terms of sub-section (1) of Section 11B of the Act, an application for refund of duty paid is to be made to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise in prescribed form and the documents that may be necessary for deciding the application are also to be submitted. Perusal of sub-section (2) of Section 11B of the Act shows that, thereafter, the authority viz. Assistant Commissioner or Deputy Commissioner is required to hold inquiry and if at the end of the inquiry the authority is satisfied that whole or part of the duty paid is to be refunded then an order can be made accordingly by the authority. Thereafter, Section 11BB of the Act comes into operation. That in case any duty paid is found

refundable then if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under Section 11B of the Act, then interest on the amount is liable be paid on expiry of period of three months from the date of receipt of the application.

4.2.3 That interest under Section 11BB is payable till the date of actual refund of the amount to the applicant. That mere sanctioning of the amount in the refund order does not absolve the department from payment of interest. That the department is liable to pay interest to the applicant for the entire period of delay starting from the expiry of three months from the date of filing the claim till the actual receipt of the claim. That in the present case, instead of the amount of sanctioned rebate being paid to the applicant, the same was appropriated against unconfirmed interest liability, which itself was not tenable. That once the appropriation of rebate has itself been held as untenable, the applicant would have received the amount immediately after the same was sanctioned. That due to the appropriation order of the Assistant Commissioner, the claim was withheld and not paid to the applicant. That interest under Section 11BB is admissible to the applicant right from the expiry of three months from the date of filing of applications till the date of actual receipt of payment.

4.2.4 The applicant has also relied upon following case laws:

- Intas Pharmaceuticals Ltd [2012 (276) ELT 251 (Tri)]
- Commissioner of C. Ex, Pune-III Vs. Sterlite Industries(I) Ltd. [2007 (212) ELT 520 (Tri.)]
- Nijrang Print Pack Pvt. Ltd. Vs. UOI [2005 (184) ELT 11 (Guj.)].
- Gujarat Paraffins Pvt Ltd. Vs. Joint Secretary, M.F., Govt. of India [2004 (178) EL T 125 (Guj.)

5. In response to the above Revision Applications, cross objections were filed by the Department and Applicant as under:

5.1 Response of Department dated 27.07.2015 to revision application filed by M/s Jubilant Life Sciences Limited:

5.1.1 The party has been regularly exporting the excisable goods on payment of central excise duty and thereafter filing rebate claim under the Rule 18 of Central Excise Rule 2002 on such export. Some rebate claims of the party were pending with the department during the period when the party did not deposit their interest liability.

5.1.2 As per the provision of Section 11 of the Central Excise Act, 1944, "In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made there under including the amount required to be paid to the credit of the Central Government under Section 11D, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover.....".

5.1.3 As some rebate claims of the party were pending with the department, the adjudicating authority recovered the pending interest liability of the party from the rebate claim found admissible to them, by first sanctioning the rebate claims and by then appropriating the same towards the interest liability of the party. The total interest liability of Rs.35,89,241 was recovered from the eleven rebate claims of the party.

5.1.4 Aggrieved with the above Order-in-Original, the party preferred an appeal before the Hon'ble Commissioner (Appeals), Central Excise Meerut-I. The Commissioner (Appeals), vide Orders-in-Appeal No. 119 to 129-CE/MRT-1/2012 dated 28.05.2012, set aside the above Order-in-Original and allowed the appeal with the consequential relief. Accordingly, in the light of the said order in appeal, the rebate sanctioning authority sanctioned the rebate claim of Rs.35,89,241.00 to the party vide Order-in-Original No. R-322/2012 dated 26.10.2012.

5.1.5 During the course of review of the said Order-in-Appeal No. 119 to 129-CE/MRT-1/20 12 dated 28.05.2012, it was observed that the said Order-in-Appeal does not appear to be proper, legal and correct and needs to be set aside. Accordingly, the department preferred a revision application before the Central Government against the said Orders- In- Appeal dated 28.05.2012 passed by the Commissioner (Appeals) Meerut-I

5.1.6 In the meantime the party filed an appeal before Hon'ble CESTAT, New Delhi who vide final order No. A/55027-55029/2013-SM(BR) dated 04-01-2013 allowed the appeal by way of remand order, observed that "In the present case also, refund has actually been sanctioned to the appellant but stand adjusted. And as such; the appellants are entitled to the refund claim as also interest on the delayed refund. However, I find that the interest issued was never agitated before the original adjudicating authority inasmuch as the refund was never sanctioned by him. As such, I set aside the impugned order and remand the same to the original authority for deciding the issue of interest and the quantum of interest, in the light of various decisions referred supra. The appellants are also at liberty to refer to and rely upon other decisions on the disputed issue."

5.1.7 Subsequent to the final order dated 04.01.2013 passed by the Hon'ble CESTAT the case was adjudicated by the Deputy Commissioner Central Excise Division Dehradun, who vide Order-in-Original No. R-273/2013 dated 19.08.2013 sanctioned the interest amount.

5.2 Response of M/s Jubilant Life Sciences Limited dated 02.11.2012 to revision application filed by Department is as under:

5.2.1 The Assistant Commissioner had appropriated refund granted under Rule 5 of the CENVAT Rules in 3 Orders-in-Original (138/11 dated 24.08.2011, 171/11 dated 27.09.2011 and 245/11 dated 28.12.2011) against alleged pending dues which were being contested by the Respondent. Thus, the issues arising out of the decision of the Commissioner (Appeals) to the extent these relate to the refund claim under Rule 5 of the CENVAT Rules are beyond the scope of the proceedings under Section 35 EE of the Central Excise Act, 1944. Therefore, the Revision application in respect of such orders is liable to be rejected at the threshold.

5.2.2 As regards the remaining eight orders, it is submitted that the rebate claims sanctioned by the Assistant Commissioner were appropriated against the same unconfirmed demand of interest, which was being contested by the Respondent. Considering the rebate claims were sanctioned by the Assistant Commissioner but appropriated against the alleged pending dues, the present proceedings are not related to any dispute associated with rebate claims or interest thereon. The Commissioner (Appeals) has not rendered any decision on the issue of admissibility of the rebate claim but has interpreted the provisions of Section 11 of the Central Excise Act, 1944. The Commissioner (Appeals) has also held that there were no confirmed demands against the Respondents against which the rebate claims could have been appropriated. The Commissioner, Meerut-II, has also raised the issue of correctness of the orders of the Commissioner (Appeals), which requires interpretation of the CENVAT Rules, 2004. The aforesaid issues raised in the Revision Application are not in any way related to admissibility of the rebate claims or issues incidental to the rebate claim and cannot be decided in the proceedings under Section 35EE of the Central Excise Act, 1944. Therefore, the Revision Application is not maintainable against the remaining eight orders against which Appeal has been allowed by the Commissioner (Appeals) and needs to be dismissed at this stage itself. It is submitted that during the pendency of the stay application filed by the Commissioner, Meerut-I, the Assistant Commissioner has complied with the order of the Commissioner (Appeals) and paid the entire amount of Rs.35,89,241/- to the Respondent vide Order-in-Original No. 322/2012 dated 26.10.12. Considering that the amount involved in the dispute has already been paid to the Respondent, the Stay Application is not maintainable and is liable to be dismissed.

5.2.3 As regards the unconfirmed demand of interest of Rs.35,89,241/- against which the amounts were appropriated, it is submitted that the demand originated due to reversal of CENVAT credits by the Respondent. The CENVAT credits were taken on capital goods, inputs and input services which were exclusively related to expenditures incurred for setting up of projects during the period 2006 to 2008. Since the Respondent was entitled to such credit in accordance with the CENVAT Credit Rules, 2004 (CENVAT Rules), the Respondent availed credit and disclosed the same in their excise records. Since the Respondent had availed credit on such items, it did not claim any depreciation as per the restriction contained in Rule 4(4) of the CENVAT Rules.

5.2.4 The Respondent is primarily engaged in export of Medicines with very little clearance the Domestic Tariff Area (DTA). Consequently, the Respondent had huge accumulation of CENVAT credit which basically arose due to expenditures carried out on the project. Further, the overall duty liability on domestic clearances or export under rebate claim reduced subsequent to reduction in the excise duty rates from 8% to 4%. Thus, the Respondent realized that it would not be able to utilize the said credit. Therefore, the Respondent reversed the said credit in the excise records and instead exercised the option of capitalizing the said expenditure in the books of accounts. The company claimed depreciation of the same amount under Section 32 of the Income Tax Act, 1961.

5.2.5 The Respondents vide different letters, intimated the Superintendent of Central Excise, Roorkee about the details of reversal of CENVAT credit to the authorities. The authorities conducted audit of the Respondent in September 2010 and raised objection and demanded interest on such reversals.

5.2.6 The Respondent provided a detailed reply to the letter on 10.02.2011 contending that no interest is payable on such reversals. The Respondent submitted that 'interest' under the CENVAT Rules is governed by Rule 14 of the CENVAT Rules, which provides for recovery of CENVAT credit wrongly taken or utilized wrongly. The said provision is not applicable in the present case since it is not a case where credit has been taken irregularly or utilized wrongly. The Respondent was very much entitled for such credit in terms of the CENVAT Rules, but just because it was not able to utilize the credit, it reversed the otherwise eligible credit and informed the authorities about such reversal. There would have been irregular credit if the Respondent had taken the benefit of CENVAT credit and depreciation simultaneously. Thereafter, no show cause notice or order was passed for confirming the demand of interest under the provisions of the CENVAT Rules.

5.2.7 The Commissioner (Appeals) has rightly allowed the Appeal of the Respondents in the light of the decision of the Hon'ble Tribunal in the case of Stella Rubber Works (Unit-II) Vs. CCE (Appeals), Bangalore 2007 (211) ELT 433 (Tri.)

and the CBEC's Circular No. 13/92-CX.6, dated 04.11.1992 wherein it has been clarified that refund amounts due to an assessee should be appropriated by proper officers against confirmed demands, only when the time limit for filing appeal against such confirmed demands has expired. The above clarification further establishes the Respondents contention that the question of appropriation arises only when demands have been confirmed. Further the CBEC's Manual of Supplementary instructions on 'recovery of dues' governed by Section 11 of the Excise Act also supports this view. A reading of Part III of Chapter 18 of the CBEC's Manual clearly shows that recovery of dues can be made only against demand confirmed in the Order-in-Original/ Order-in-Appeal. Para 1.4 provides that a period of 3 months from the date of communication of the Order-in-Original/Order-in-Appeal is normally to be provided (one month for filing appeal and stay application and two months for obtaining orders) before taking coercive measures to recover the dues. This further substantiates the fact that confirmation of a demand by passing adjudication order is mandatory before invoking the recovery proceedings as per Section 11.

5.2.8 In the facts and circumstance of the case no interest was payable by the Respondents on such reversal of CENVAT credit. In this connection, reliance is placed on the decision of the Hon'ble Tribunal in the case of Rajalakshmi Textile Processors Pvt. Ltd. Vs. CCE, Salem [2008 (231) EL T 489 (Tri.)] . In this case the Appellant had validly taken credit on the inputs but reversed the said credit since it opted for availing the exemption under a particular notification, which required foregoing of credit. The department demanded interest on such reversal. The Tribunal held that this is not a case where credit has been 'wrongly taken' or 'utilized wrongly' and has been suo moto reversed by the Appellant long before the issuance of Show Cause Notice. It was held that interest cannot be demanded under Rule 14 of the CENVAT Rules read with Section 11AB of the Excise Act. In this regard, reliance is also placed on similar decision rendered in the case of Page Apparels Pvt. Ltd. Vs. CCE [2007 (208) EL T 108 (Tri.) where it has been held that no interest is attracted where credit has been validly taken and later on reversed before utilizing such credit.

6. Personal hearing scheduled in this case on 27.07.2015 was attended by Shri Pratap Singh, Assistant Commissioner, Division Roorkee, Dehradun on behalf of the department applicant, who reiterated the grounds of Revision Application. Shri J. Devarajan, Vice President, Indirect Taxation attended the personal hearing on behalf of the applicant party who also reiterated the grounds of Revision Application filed by them. With regard to Department's Revision Application, the applicant party stated that they had on their own reversed the amount in question and question of payment of interest does not arise and that the Department's appeals in cases of refund under Rule 5 of the Cenvat Credit Rules, 2004 lies with CESTAT. Regarding

jurisdiction issue, Department's representative stated that Rectification of Mistake has been filed by them in CESTAT against CESTAT's Order A/55027-29 dated 04.01.2013 that it has decided case beyond jurisdiction. However, the representative of the Applicant placed on record CESTAT's Order 59392-95/2015-SM(BR) dt. 04.10.2013 disposing of the ROM that Department's appeal was not sustainable.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

8. On perusal of records, Government observes that in terms of Revision Applications filed by the Department and the Applicant, a total of eleven Orders-in-Original and related Orders-in-Appeal are in dispute pertaining to eight claims filed under Rule 18 of the Central Excise Rules, 2002 and three claims to refund filed under Rule 5 of the Cenvat Credit Rules, 2004. All eleven refund/rebate claims were sanctioned, but the sanctioned amount was appropriated vide impugned Orders-in-Original against recovery of interest pending from the Applicant under Section 11 AB of the Act read with Rule 14 of Cenvat Credit Rules 2004. The Commissioner (Appeals) vide Orders-in-Appeal No.119-129-CE/MRT-I/2012 dated 28.05.2012, set aside the orders passed by the original adjudicating authority by disallowing adjustment of interest liability of Rs.35,89,241/- against the admissible rebates/refund but at the same time did not accede to the Applicant's request for interest on the rebate claims. Being aggrieved by the impugned Order-in-Appeal, both the Department and the Applicants have filed their Revision Applications on the grounds mentioned in para 4 above. The Department is aggrieved that the said order does not appear legal and correct for grounds stated in para 4.1. The Applicant has filed revision application against denial of interest vide impugned Orders-in-Appeal in respect of eight Orders-in-Original pertaining to rebate under Rule 18 ibid on the grounds stated in para 4.2.

9. Government further observes that the applicant also filed an appeal before CESTAT, New Delhi, in respect of interest on three claims for refund of unutilized Cenvat Credit under Rule 5 of the Cenvat Credit Rules, 2004 which was not allowed by Commissioner (Appeals) under Order-in-Appeal No.119-129-CE/MRT-1/2012 dated 28.05.2012 pertaining to Orders-in-Original No. R-138/11 dated 24.08.2011, R-171/11 dated 27.09.2011 and R-245/11 dated 28.12.2011. The CESTAT in its final Order No.A/55027-55029/2013-SM(BR) dated 04.01.2013 set aside the impugned Orders-in-Appeal and remanded the same to the original authority for deciding the issue of interest and the quantum of interest payable on the refund claim. However, miscellaneous applications for rectification of mistake were filed by the applicant and the Department with regard to the said order of CESTAT, which was decided

vide Stay/Misc Order No.MO/59392-59395/2013-SM(BR) dated 04.10.2013, in which the Tribunal held that the mistake pointed out by the applicant was that it was the refund of credit of duty in respect of goods exported by them in terms of provision of Rule 5 of Cenvat Credit Rules. The said order has used the expression 'rebate' at some places instead of 'refund' and, therefore, it was held that wherever the word rebate comes, same shall be replaced by 'refund'. As regards Revenue's application for rectification of mistakes, CESTAT held that :

"4. *I find* that *same is to the effect that inasmuch as the issued involved was rebate of duty, the Tribunal has no jurisdiction to pass the order and the applicant should challenge the order passed by the Commissioner (Appeals) before Government of India by way of filing a revision application.*

5. I find that the impugned order of Commissioner disposed of 11 appeals. 8 appeals relate to rebate claims in respect of which the applicant have filed revision application before revisionary authority. As 3 appeals relate to refund of Cenvat Credit of duty in terms of Rule 5, in respect of which the lower authorities have allowed the same and the appropriation of the same against pending due was set aside by the Commissioner (Appeals), the present appeals were filed by the applicant in respect of interest amount. Inasmuch as the issue relate to interest of refund of Cenvat Credit in terms of Rule 5 of Cenvat Credit Rules, the objection of the Department as regards the jurisdiction is not sustainable. Their application is accordingly rejected",

Thus the non-payment of interest in respect of only 8 rebate claims has to be decided by the Revisionary Authority in the Applicant's case.

10. The Applicant has also contended that three Orders-in-Original pertain to refund claim under Rule 5 of CENVAT Credit Rules and are beyond the scope of proceedings under Section 35 EE of the Act. As regards the remaining eight orders, the present proceedings in Department's Revision Application are not related to any dispute associated with rebate claims or interest thereon. The applicant has thus contended that the Revision Application of the Department is not maintainable.

11. At the outset, Government proceeds to examine the issue of jurisdiction in terms of Section 35EE of the Central Excise Act, 1944 wherein a Revision Application against the Order of Commissioner(Appeals) passed under Section 35 A ibid lies with Government only if such orders relate to cases as mentioned in provision to sub-section (1) of Section 35(B) of the Act. Sub-section (1) of Section 35 B of Central Excise Act, 1944 reads as under:-

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under Section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Central Excise either before or after the appointed day, under Section 35A, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) ***if such order relates to -***

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) ***a rebate of duty of excise*** *on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;*

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998.
(emphasis supplied)

Further, Section 35 EE of Central Excise Act, 1944 states that *"(1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1)of Section 35 B, annul or modify such order:*

[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees]"

Explanation – For the purpose of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

12. From the above, it is seen that if the order relates to a rebate of duty of excise on goods exported then Central Government may amend or modify the order. In this regard, Government finds that in eight cases the claims clearly pertain to rebate of excise duty under Rule 18 of Central Excise Rules, 2004 claimed on export of goods. The related issue which is subject matter of dispute is whether pending dues can be adjusted against the rebate claims. Any decision in matter will have an impact on the sanction and disbursal of the rebate claim. Therefore, Government finds no force in the plea of the applicant that Revision Applications pertaining to the eight rebate claims filed by the Department are not maintainable.

13. However, Government finds that the three refund claims filed under Rule 5 of the Cenvat Credit Rules, 2004 against which the pending dues have been adjusted, do not fall within the purview of provisions contained in Section 35EE read with proviso to Section 35(B) (1) of the Central Excise Act, 1944 under which the instant revision application has been made. Thus the Revision Applications pertaining to Orders-in-Original R-138/11 dated 24.08.2011, R-171/11 dated 27.09.2011 and R-245/11 dated 28.12.2011, filed by the Department before Central Government in terms of Section 35 EE of Central Excise Act 1944 is beyond jurisdiction. As such, the Department is at liberty to file an appeal before the appropriate authority under Section 35 B of Central Excise Act, 1944 in respect of the three refund claims.

14. Government now proceeds to examine the case on its merits with regard to the eight Revision Applications where the pending dues were adjusted against rebate claims sanctioned under Rule 18 ibid. The main issues to be decided in Revision are as under:

(i) Whether in terms of the statutory provisions, it is a requirement that only confirmed dues can be adjusted against payments due to the applicant viz. the rebate claims in this case and (ii) whether interest is due to the applicants on the rebate claims sanctioned to the applicant if no adjustment of pending dues is admissible.

15. Government observes that the Orders-in-Original categorically state that the applicant had wrongly taken credit of Rs.3,59,55,776/- during the financial year 2008-09 which was reversed by them on 15.05.2009 and similarly the credit of Rs.27,11,115/- was wrongly taken by them on during 2009-10 which was reversed on 29.05.2010. However, the interest due on the said amounts was not paid by them. Similarly, it was also noticed by the audit team that the claimant had availed excess Cenvat Credit to the tune of Rs.3,29,277/- by way of credit on invoice of

100% EOU and double credit on single invoice. On being pointed out by audit, the applicant reversed the amount but failed to pay interest.

16. Government finds that the above observation of the original authority that the credit had been wrongly taken by the applicant was not challenged by the applicant before the Commissioner(Appeals). It is, therefore, a settled position that credit wrongly taken was reversed by the applicant on which no interest was paid by them. The only ground on which the orders of the original authority were challenged before the Appellate Authority was whether appropriation of an amount which is pending against the assessee, but has not been confirmed/adjudicated by an order, is allowed as per law. The Commissioner(Appeals) allowed the applicant's appeal holding that as there was no confirmed demand, the Assistant Commissioner was not legally correct in passing the appropriation order.

17. Government observes that Section 11(1) of the Central Excise Act, 1944 which provides authority for recovery of sums due to Government reads as under:

"Section 11. Recovery of sums due to Government – (1)In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder including the amount required to be paid to the credit of the Central Government under Section 11(D), the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to levy such duty or require the payment of such sums may deduct or require any other Central Excise Officer or a proper officer referred to in Section 142 of the Customs Act, 1962 (52 of 1962) to deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such other officer, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue:

Provided *that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change."*

From a plain reading of the above provision of law, it emerges that if any duty and any other sums of any kind payable to Central Government under any provisions of the Central Excise Act, 1944 or rules made thereunder are pending, the same may be deducted from the amount if any payable to such person.

18. Government observes that the Commissioner (Appeals) in his order has stated that appropriation from any amount payable to the assessee can be made only against the confirmed demands. In this regard, the Government finds that the applicant has voluntarily reversed the Cenvat Credit wrongly taken during the financial years 2008-09 and 2009-10 as noticed on its own and in some cases as pointed out by Department Audit team. The applicant at no stage has averred that the credit has been wrongly reversed by them. Payment of interest on the credit so reversed under Rule 14 ibid is therefore, a natural outcome of such reversal. The reversal of the credit itself not being in dispute interest follows. Once credit has been reversed, the applicant is legally bound to pay interest which is an automatic consequence. In fact, interest is a civil liability and is mandatorily payable for retaining the amount due to the public exchequer. Further, from a reading of the provisions of Section 11 and Section 11AB ibid dealing with interest on delayed payments, no show cause notice is required to be issued for recovery of interest or for adjustment of any amount due to the Government from the amount payable to the assessee.

19. Government further finds that it is a settled issue that for recovery of interest, there is no need to issue any Show Cause Notice. Since the liability is statutory in nature and the provisions under Section 11AB ibid, the interest charging Section do not provide any mention envisaging such procedure. This view of the Government finds support in following case laws which are squarely applicable to the present case.

19.1 The Tribunal in the case of Needle Industries (I) (P) Ltd Vs Commissioner of Central Excise, Salem-2010(256)ELT 767 (Tri-Chennai), where facts of the case are similar to the present case has held that no separate Show Cause Notice is required for recovery of interest or for adjustment of any amount due to the Government from the amount payable to the assessees.

19.2 In the case of Interfit India Ltd Vs. Commissioner of Central Excise, Madurai 2011 (274) ELT 443 (Tri.-Chennai), it has been held that payment of interest is a statutory provision and is mandatory when Cenvat credit has been taken wrongly.

19.3 The Principal Bench of the Tribunal in the case of Prem Cables Pvt. Ltd Vs. Commissioner of Central Excise, Jaipur 2012 (278) ELT 397 (Tri.-Del) also endorsed the view that once duty paid assesse is legally bound to pay interest as an automatic consequence.

19.4 In the case of Atul Ltd. Vs. CCE, Daman 2009(246) ELT 744 (Tri.Ahmd), it was *inter alia* held that interest payable as it is a statutory liability.

19.5 The Tribunal in the case of Micro Precision Vs. CCE, Bangalore-III 2009 (243) ELT 583 (Tri.-Bang.) held that interest being statutory, non-issue of Show Cause Notice for delayed payment, only technical.

19.6 In the case of Divi's Laboratories Ltd. Vs. Commissioner of Customs and Central Excise (A-III), Hyderabad, 2009 (242) ELT 566 (Tri.-Bang.) the Tribunal on the issue of whether Show Cause Notice required for recovery of interest ruled that assesse is duty bound to pay interest without waiting for any Show Cause Notice.

19.7 The above view further finds support in the decision of the Hon'ble Bombay High Court in Commissioner of Central Excise & Customs, Aurangabad Vs. M/s Padmashri VV Patil SSK Ltd. 2007 (215) ELT 23 (Bom) where the Court has held that interest is chargeable in all cases of non-payment or short-payment and that even if no notice issued interest liable to be paid for delay.

19.8 The Apex Court in the case of Commissioner of Central Excise Vs. International Auto Ltd. 2010 (250) ELT 3 (SC) has held that payment by assesses in default by own ascertainment or as ascertained by Central Excise Officer not exempt from interest chargeable under Section 11 AB ibid.

19.9 Government in its Order 153-154/2013-CX dated 25.02.2013 in the case of Aurobindo Pharma Unit-V, Hyderabad has also earlier held that as per provisions of Section 11AB ibid, interest is automatically payable for delayed payment of duty.

20. Government also finds that the case laws and Board's Circular relied upon by the Commissioner (Appeals) and referred to by the Applicant in the cross objections to the Department's Revision Application are not applicable to the facts and circumstances of the present case. The Commissioner (Appeals) has relied on the judgment of Stella Rubber Works (Unit-II) Vs. CCE (Appeals) Bangalore 2007 (211) ELT 433 (Tri) which is not applicable to present case as it pertains to a scenario where period of filing appeal against a confirmed demand is not over. Similarly the ratio in the case of Intas Pharmaceuticals Vs. CCE, Ahmedabad 2012 (276) ELT 251(Tri.-Ahmd.) is also not applicable in the present case as it is not a case where any stay or appeal is pending. Moreover, CBEC's Circular No.13/92-CX.6 dated 04.11.1992 is also not applicable on the present case as no appeal was filed against a demand.

21. Government also observes that it is a matter of record in the grounds of Revision Application filed by the Department that the applicant vide letter dated 10.02.2011 refused to pay the aforesaid interest under the plea that the said credit had been reversed prior to utilization. This has not been refuted by the applicant in

the cross objection filed by them. Government further observes that Rule 14 of Cenvat Credit Rules, 2004 stipulates as under:

"where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of Section 11 A and 11 AA of the Excise Act or Section 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries".

Further, Government observes that CBEC's Circular No.897/17/2009-CX dated 03.09.2009 has clarified that the interest shall be recoverable when credit has been wrongly taken, even if it has not been utilized. Further, CBEC vide its Circular No.942/03/2011-CX dated 14.03.2011 on Hon'ble High Court's decision in the case of Ind-Swift Labs Vs. Union of India 2009 (240) ELT 328 (P&H) has made it distinctly clear that :

> *"the issue has now been conclusively settled by the Apex Court in the departmental appeal against the above mentioned judgment of P&H High Court. The Apex Court vide its judgment dated 21.02.11 in Civil Appeal No. 1976 of 2011 has set aside the aforesaid order of Hon'ble High Court. The Apex Court has ruled that "If the aforesaid provision is read as a whole we find no reason to read the word "OR" in between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of the three circumstances such credit becomes recoverable along with interest." In effect, therefore, the view taken by the Board in circular dated 03.09.09 has now been endorsed by the Apex Court".*

22. Thus it is clear that where credit has been taken or utilized wrongly, the same is recoverable along with interest. Government finds that the applicant's contention that interest is not payable as credit was not utilized is not tenable. This view further finds support in the various decisions of the Hon'ble High Courts and the Tribunal as discussed below:-

22.1. Hon'ble Chennai High Court in the case of Commissioner of Central Excise, Chennai-IV Vs Sundaram Fasteners Limited -2014(304)ELT 7(Mad.) has held that :

> *"Under Rule 14 of Cenvat Credit Rules, 2004 on happening of any of three circumstances viz., credit taken or credit utilized wrongly or credit has been erroneously refunded then such credit becomes recoverable along with interest-Reversal of credit would not amount to "no credit" being taken-Interest on wrong credit payable under Rule 14 ibid and Section 11 AB of Central Excise Act, 1944 irrespective of utilization of credit".*

22.2 In the case of Dr. Reddy's Laboratories Ltd. Vs Commissioner of Central Excise & Service Tax, Hyderbad-2013(293)ELT 81(Tri Bang), the Tribunal held that :

"6. At this stage, there is only one ruling that is applicable to the instant case and the same is the one handed down by the Apex Court after interpreting the provisions of Rule 14. The ruling is to the effect that the word 'or' appearing between the words "taken" and "utilized" cannot be read as 'and'. The effect of this ruling is unambiguously clear. Where an amount of inadmissible Cenvat Credit was taken by a manufacturer of excisable products or a provider of output service but later on reversed, he has to pay interest under Rule 14 for the period from the date of taking of credit to the date of its reversal, whether or not the credit was utilized. This is the clear result of the interpretation given by the Apex Court to the provisions of Rule 14. It is binding on this Tribunal under Article 141 of the Constitution of India."

23. Government has perused the decision of the Hon'ble Tribunal in the case of Rajlakshmi Textile Processors Pvt. Ltd. Vs. Commissioner Central Excise, Salem, 2008 (231) ELT 489 (Tri) relied upon by the applicant in support of their contention that no interest is payable on the credit reversed by them. Government finds the facts and circumstances of the case are different and not applicable to the instant case inasmuch while the decision of the CESTAT pertains to a case where the credit has not been wrongly taken, in the present case there is no dispute that the credit was wrongly taken and the inadmissible credit was reversed by the applicant.

24. From the foregoing, Government observes that the applicant was aware that they had taken inadmissible CENVAT Credit and suo motu reversed the same and also upon pointing out by the audit team and did not contest the reversal before the Department. So question of issue of any Show Cause Notice or confirmed demand thereof did not arise as it is not a case that applicant was not in agreement with the Department. In these cases, Applicant had reversed the Cenvat credit without issue of any Show Cause Notice but did not pay interest on the plea that the said credit had been reversed prior to utilization. As held in the preceding paras, interest is automatically payable for delayed payment of duty. As the Applicant has reversed the credit belatedly, therefore it was obligatory on the part of assesse to make payment of interest also without waiting for any Show Cause Notice and confirmation of demand thereafter. Therefore, Government does not find any infirmity in the impugned Orders-in-Original and upholds the adjustment of the pending dues under Section 11 ibid towards the rebate claim sanctioned under Rule 18 ibid. As such, orders of Commissioner (Appeals) with respect to disallowing appropriation of the pending dues against the 8 rebate claims are required to be set aside. Accordingly, Revision Applications filed by the Department with regard to eight rebate claims are allowed.

25. The Applicant has also filed Revision Applications claiming interest on delayed payment of rebate in respect of the eight cases under consideration whereunder the rebate was sanctioned on merit, however, the same has been adjusted against pending interest liability. In these cases, the rebate has been

sanctioned within the stipulated time limit. However, the same was adjusted against pending interest liability. Such adjustment against sanctioned rebate against pending liability has also been held legal and proper in the preceding paras. Hence, question of delayed payment and consequent interest on the rebate claims does not arise. Under such circumstances, Government holds that the request of the Applicant for payment of interest on delayed payment of rebate is not maintainable. Accordingly, the Revision Applications filed by the Applicant stand rejected as devoid of merit.

26. In view of above discussion, Government modifies the impugned Orders –in-Appeal to the extent discussed above.

27. Revision Applications are thus disposed off in above terms.

28. So ordered.

(RIMJHIM PRASAD)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

1. The Commissioner of Central Excise & Customs, Meerut-I,
   Opposite Choudhary Charan Singh University),
   Mangal Pandey Nagar, Meerut-250005 (UP)

2. M/s Jubilant Life Sciences Limited,
   Village Sikandarpur Bhainswal, Bhagwanpur,
   Roorkee (Uttarakhand).

ATTESTED

शैलेन्द्र कुमार
Shailesh Kumar
अवर सचिव (रा. का)
Under Secretary (RA)

G.O.I. ORDER NO.103-124/2015-CX DATED 30.09.2015

Copy to:

1. The Commissioner of Central Excise & Customs, Meerut-I, Opposite Choudhary Charan Singh University), Mangal Pandey Nagar, Meerut-250005 (UP)
2. M/s Jubilant Life Sciences Limited, Plot No.1-A, Sector 16-A, Noida-201301, District Gautam Budh Nagar (UP)
3. M/s Jubilant Life Sciences Limited, Village Sikandarpur Bhainswal, Bhagwanpur, Roorkee (Uttarakhand).
4. The Commissioner (Appeals) Central Excise, Meerut-I, Mangal Pandey Nagar, Opposite Choudhary Charan Singh University), Meerut-250005 (UP)
5. The Assistant Commissioner, Central Excise, Dehradun, E-Block, Nehru Colony, Hardwar Road, Dehradun
6. PA to JS(Revision Application)
7. Guard File
8. Spare Copy.

ATTESTED

((SHAUKAT ALI)
UNDER SECRETARY(RA)

Shaukat Ali
Under Secretary (RA)