198/79(I to IX)/17-RA
198/220(I to III)/16-RA
198/221/16-RA

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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and

Ex-Officio Additional Secretary to the Government of India

8th Floor, World Trade Centre, Cuffe Parade,

Mumbai- 400 005

F. No. 198/79(I to IX)/17-RA
F. No. 198/220(I to III)/16-RA /6551
F. No. 198/221/16-RA Date of Issue: 17.11.2022

ORDER NO. 1078-1090 /2022-CX(WZ)/ASRA/MUMBAI DATED 15.11.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SETION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl. No.	Revision Application No.	Applicant	Respondent
1	198/79(I to IX)/17-RA	Commissioner, Central Excise, Mumbai-I	M/s Cipla Ltd.
2	198/220(I to III)/16-RA	Commissioner, Central Excise, Mumbai-I	M/s Cipla Ltd.
3	198/221/16-RA	Commissioner, Central Excise, Mumbai-I	M/s Cipla Ltd.

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944 against the Order in Appeal No. SK/46-54/M-I/2017 Dtd. 22.03.2017, SK/64 to 66/M-I/2016 Dtd. 30.06.2016 & SK/68/M-I/2016 Dtd. 30.06.2016 passed by the Commissioner (Appeals), Central Excise, Mumbai-I.

ORDER

These Revision applications are filed by Commissioner, Central Excise, Mumbai-I (hereinafter referred to as 'applicant') against the Orders-in-Appeal as detailed in Table below passed by Commissioner (Appeals) of Central Excise Mumbai -I.

TABLE

Sr.No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Remark
1	198/79(I to IX)/17-RA	SK/46-54/M-I/2017 Dtd. 22.03.2017	1487/MTC-R/2016-17 dated 28.11.2016 1486/MTC-R/2016-17 dated 28.11.2016 1485/MTC-R/2016-17 dated 28.11.2016 1484/MTC-R/2016-17 dated 28.11.2016 1591/MTC-R/2016-17 dated 31.10.2016 1753/MTC-R/2016-17 dated 09.12.2016 1786/MTC-R/2016-17 dated 16.12.2016 0307/MTC-R/2016-17 dated 21.10.2016 1464/MTC-R/2016-17 dated 10.11.2016	Goods exported after six Months
2	198/220(I to III)/16-RA	SK/64 to 66/M-I/2016 Dtd. 30.06.2016	238/MTC-R/2014-15 dated 14.10.2014 239/MTC-R/2014-15 dated 14.10.2014 1330/MTC-R/2014-15 dated 04.08.2014	Goods exported after six Months
3	198/221/16-RA	SK/68/M-I/2016 Dtd. 30.06.2016	235/MTC-R/2014-15 dated 27.11.2014	Goods exported after six Months

2. The brief facts of the case are that the respondent M/s. Cipla Ltd., situated at Peninsula Business Park, Ganpatrao Kaam Marg, Lower Parel, Mumbai – 400 013 had filed rebate claims, under Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944.

3. In the instant revision application rebate claims were rejected/restricted by the original authority vide Orders-in-original mentioned at Table at para 1 above, as the Goods were exported after six months.

4. Being aggrieved by the said Orders-in-Original, respondents filed appeals before Commissioner (Appeals) who after consideration of all the submissions, set aside the Orders-in-Original and allowed the appeals with consequential relief.

5. Being aggrieved with these Orders-in-Appeal, applicants have filed these revision applications before Central Government under Section 35EE of Central Excise Act, 1944 mainly on the following grounds:-

5.1 Rule 18 of the Central Excise Rules, 2002 states as under :-

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

5.2 The relevant Notification No. 19/2004-CE (NT) dated 06.09.2004, issued under Rule 18 of the Central Excise Rules, 2002. The conditions specified in the said notification states that:-

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

5.3 Chapter 8 of the CBEC Manual deals with Export under claim of Rebate and Part 1 deals with export to all countries except Nepal and Bhutan. The conditions specified in para 1) of Part-1 is regarding conditions of export relevant to the subject matter and reads as under:-

"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse. This date will be indicated on the ARE-I and invoice issued for this purpose. However, the Commissioner of Central Excise has powers to extend this period, for reasons to be recorded in writing in any particular case. The exporter will be required to submit written request to the Commissioner specifying the reasons why they could not export within the stipulated six months period. The Commissioner should give his decision within seven working days of the receipt of the request. It should also be noted that such permissions should not be given in a routine manner".

The above instructions are clearly binding both on the Department including the adjudicator as well as the claimant. In Chapter 1 Part 1 of the said CBEC Manual the scope of the Manual has been explained. Paragraph No. 1.1 indicates that the instructions are supplemental to, and must be read in conjunction with the Act and the Rules.

5.4 From the above, it is clear that in order to be eligible for rebate, the exporter was under obligation to export the excisable goods within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or obtain a letter of extension from the jurisdictional Commissioner of Central Excise allowing them to export the said goods beyond the period of six months as per above provisions. Also, the exporter had not produced document regarding permission accorded by the Commissioner of Central Excise, having jurisdiction over the said manufacturer, extending the time period for export of the goods after six months, as provided under the said notification.

5.5 Hon'ble Supreme Court in the case of Union of India vs Kirloskar Pneumatic Company 1996 (084) EL 10401 S.C. had specifically held that:

"the question is whether items permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision

We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot he invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law"

5.6 Hon'ble Supreme Court in the case of Collector of Central Excise, Chandigarh vs M/s. Doaba Co-operative Sugar Mills Ltd. Jalandhar, 1988 (37) ELT. 478 (SC) had specifically held that:-

"But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed there under must be adhered to. The Authorities functioning under the Act are bound by the provisions of the Act"

5.7 It is clear from the above provisions and judgments that in the present case the appellant had not fulfilled the condition specified in the said section, rules, read with the relevant Notification Instruction, Circulars etc, issued for this purpose. The Commissioner (Appeal) has erred in not taking into consideration the nature of the discrepancies and the substantial unjustified lapse by exporting the goods beyond stipulated period of six months from the date of clearance from the factory of manufacture. Hence, the subject rebate claim filed by the exporter was liable for rejection.

6. A Personal Hearing was held in this case on 28.07.2022 and Shri Prashant M. Mhatre, Authorized Signatory appeared online for hearing on behalf of the respondent and submitted that extension was applied. He submitted that an additional submission is being made within a week. The respondents also filed submissions dated 28.07.2022 wherein they mainly contended as under :-

6.1 Hon'ble Commissioner (Appeals) referred observation of Hon'ble Supreme court in Suksha International Vs. UOI - 1989(39) ELT 503 (SC) the Hon'ble Supreme Court has observed that, an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other.

6.2 In case of UOI VS. A. V. Narsimhalu-1983 (13) E.L.T. 1534 (S.C.) the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice.

6.3 In the Formica India Vs Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification has they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they have done so, had elapse, while drawing a distinction between a procedural conditions of a technical nature and a substantive condition in interpreting statute, Similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. Vs Dy. Commissioner 1991 (55) E.LT.437 (S.C.).

6.4 Hon'ble commissioner, as regards rebate specifically noted that - "it is now a trite law that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapse, Procedure has been prescribed to facilitate
verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export.

6.5 In view of the above positions Hon'ble Commissioner (Appeals) vide Order in Appeal No SK/46 to 54/M-1/2017 dated 22.03.2017 has allowed our appeals with consequential relief.

6.6 However, till today Maritime Commissioner (Rebate) has not sanctioned our rejected rebate claim and filed impugned Revision Application to set aside the Order passed by Commissioner (Appeals).

6.7 Interpretation of notification no.19/2004-C.E.(N.T.) dated 06.09.2004: - It is submitted that rebate of duty on export of goods, subject to satisfaction of conditions of notification no.19/2004-C.E.dated 06.09.2004, is a beneficiary provision in interest of export business of the country and therefore required to be interpreted liberally. Lenient view is called for to boost the export performance of the country when factum of export of goods is not in dispute.

6.8 Substantial compliance to conditions for export of goods :-The appellants submit that there is substantial compliance to conditions governing export of goods. The physical export of goods and their duty paid character which are substantive conditions of notification are duly complied by the appellants. The factum of export has been admitted by the revenue. The export of disputed goods even though effected beyond the stipulated period of six month have fetched foreign exchange for the country.

6.9 Taxes not be exported along with goods :-It is settled law and express policy of the Government to ensure that domestic levies are not exported along with goods. In the instant case, if rebate is denied, simply for failure to export goods within stipulated time limit would result in taxing of exported goods or burdening the export goods with domestic levy. This is against the legislative intent to encourage exports.

6.10 Relaxation of conditions of notification governing export of goods :-As already stated above, the condition to export goods within six months from the date of clearance from their factory as stipulated in the notification is not very rigid but made flexible by empowering the Commissioner to extend the time limit to export the goods in deserving cases. Hence, when the physical export of goods is not under dispute, full condonation can be given to perceive the object and intent of Rule 18 of the Central Excise Rule, 2002. In other words, if physical export of goods is not under challenge, the stipulated time limit to export goods within six months can be relaxed and extended post facto.

6.11 Non-compliance of the condition not fatal to revenue: -The appellants further submit, that, failure to export goods within time limit prescribed in notification

no.19/2004-C.E.(N.T.) dated 06.09.2004, is neither fatal to revenue or nor serious prejudice to revenue, when actual export of goods admitted by revenue.

6.12 Condition whether statutory, mandatory or directory or procedural ? :-It is submitted that there is no general rule as to when a provision of a notification is to be treated as mandatory or directory or procedural but will depend on the facts and circumstance of each case and object of the statute. The main object of Rule 18 is to grant rebate of duty paid on goods which are exported, subject to conditions specified in the notification no.19/2004-C.E.(N.T.) dated 06.09.2004. In the present case, even though physical export of disputed goods is not at all in question, the object of rule 18 is being defeated, by holding the condition to export goods within six months from the date of clearance from factory, as stated in the notification to be mandatory condition.

6.13 Doctrine of Substantial Compliance :-The learned Commissioner has relied on Apex court ruling in the case of Commissioner of Central Excise, Delhi versus Hari Chand Shri Gopal reported in 2010 (260) E.L.T. 3 (S.C.), to conclude that condition 2 (b) of Notification no.19/2004-C.E.(N.T.) dated 06.09.2004, is statutory and mandatory condition and not merely procedural condition. The said apex court ruling is not applied in proper perspective. In the aforesaid judgment, the apex court while distinguishing between mandatory and directory provisions observed as follows

(i) Some provisions of an exemption notification may be directory in nature and some may be mandatory - Provisions of substantive character and built in with certain specific policy objectives and provisions merely procedural and technical in nature, must be distinguished - Substantial compliance of enactment insisted where mandatory and directory requirements are lumped together - Mandatory requirements if complied with, enactment to be held as substantially complied with notwithstanding non-compliance of directory requirements. With respect to interpretation of conditional exemption it was held as follows

(ii) Exemption notification - Conditions exemption, interpretation of - Conditions to be complied with if exemption available on compliance

with conditions - Mandatory requirements of such conditions must be obeyed or fulfilled exactly - Some latitude can be shown at times on failure to comply with some requirements which are directory in nature and non-compliance of which would not affect essence or substance of notification granting exemption Thus, the basic principle laid down in above judgments of the Apex Court is that when the exemption Notification is subject to certain conditions, the fulfillment of substantive conditions is a must and if the substantive conditions have been fulfilled the observance or non-fulfillment of directory conditions which are of procedural or Technical nature can be condoned.

(iii) Rebate cannot be denied for technical breach of condition The appellants submit that non-adherence to time limit for export of goods after clearance from factory specified in the aforesaid notification is a technical breach not sufficient to deny the substantial benefit available to the appellants. The rebate sanctioning authority has failed to appreciate the physical export of goods and exercise discretionary power to relax conditions of said notification, so as, to have zero rated exports

6.14 Further, said matter has already been decided by Hon'ble High Court of Calcutta in the matter of M/s Kosmas Healthcare Pvt. Ltd V Asst. Comm. of C. Ex. Kolkata-I – 2013(297) E.L.T.345 (Cal.).

7. Government notes that in these revision applications the adjudicating authority rejected/restricted the Rebate Claims filed by the respondent on grounds which are common in these revision applications. On appeal filed by the respondent the Commissioner (Appeals) set aside the Orders-in-Original and allowed the appeals with consequential relief. In view of the aforesaid background and as the issues involved in all these Revision Applications being similar, Government now takes up these Revision Applications for decision vide common order.

8. Government observes that in these cases the rebate claims filed by the respondent were rejected/restricted by the adjudicating authority as the Goods were exported after six months.

Government observes that as per the condition 2(b) of notification 19/2004 CE (N.T.) dated 6.9.2004 issued under rule 18 of Central Excise Rules, 2002, *"the excisable goods shall be exported within six months from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allows,"*. In the present case Government observes that the applicant did not follow the proper procedure under notification 19/2004 CE (N.T.) dated 06.09.2004. The applicant has not obtained extension of validity of ARE-1. Further, aforementioned issue stands decided in Re: Cipla Ltd. vide GOI Order No. 40/2012-CX dated 16.01.2012. After discussing the issue at length, the Government at para 9 of its order observed as under: -

> *" 9. Government notes that as per provision of Condition 2(b) of notification No. 19/04-CE (NT) dated 06.09.04, the excisable goods shall be exported within 6 months from the date on which they were cleared for export from the factory of manufacturer or within extended period as allowed by commissioner of Central Excise. In this case, undisputedly, goods were exported after lapse of aforesaid period of 6 months and applicant has not been granted any extension beyond 6 months by Commissioner of Central Excise. This is a mandatory condition to be complied with. Since the mandatory condition is not satisfied the rebate claim on goods exported after 6 months of their clearance from factory is not admissible under Rule 18 read with Notification 19/04 CE (NT) dated 06.09.2004."*

In view of the foregoing, Government holds that the respondent is not entitled to rebate of duty paid on goods exported after six months of clearance from factory. Government holds that the impugned Orders-in-Appeal is not just & legal and is liable to be set aside.

9.1 Commissioner(Appeals), has granted refund considering the infirmities to be procedural infarctions, however, the relevant Notification No. 19/2004-CE (NT) dated 06.09.2004, issued under Rule 18 of the Central Excise Rules, 2002, has a specific condition which states that:-

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

Chapter 8 of the CBEC Manual stipulates the conditions of export relevant to the subject matter and reads as under:-

> *"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse. This date will be indicated on the ARE-I and invoice issued for this purpose. However, the Commissioner of Central Excise has powers to extend this period, for reasons to be recorded in writing in any particular case. The exporter will be required to submit written request to the Commissioner specifying the reasons why they could not export within the stipulated six months period. The Commissioner should give his decision within seven working days of the receipt of the request. It should also be noted that such permissions should not be given in a routine manner".*

The above instructions are substantial and clearly binding both on the Department including the adjudicator as well as the claimant.

9.2 Government observes that the applicant has, citing various case laws, argued very forcefully about the order rejecting the refund being against Government policy. The policy of the Government and its purposes cannot overwhelm the statute and the delegated legislations which are the essential machinery put in place to give effect to the objectives of granting export incentives. Government concurs with the view that technical lapses must be dealt with pragmatically. However, the present case is one where a substantial procedure has not been followed. Leniency to an applicant who has not at all followed the procedures laid down under the notification would be a disservice to the diligent applicant who has painfully followed

procedures. Such leniency could be counterproductive when a decision is taken as a precedent. It would be pertinent to mention here that there are vast powers vested in the courts of law in terms of the Constitution of India. The courts may in their wisdom exercise such powers and grant relief where their Lordships may deem fit. However, the powers exercised by the Government in revisionary proceedings, in the instant case are in terms of Section 35EE of the Central Excise Act, 1944. The Government cannot exceed the scope of the CEA, 1944 and the rules, notifications in the revisionary proceedings.

9.3. It is held in the case of UOI v/s Ind-Swift Laboratories Ltd reported in 2011 (265) ELT. 3 (S.C) that a taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same the Hon'ble Supreme Court has referred to another decision of the Supreme Court Court in Commissioner of Sales Tax, UP v. Modi Sugar Mills Ltd. reported in (1961) 2 SCR 189 wherein this Court at Para 10 has observed as follows:-

> *"10. .... In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."*

9.4 Hon'ble Supreme Court in case of UOI VS. Dharmendra Textiles 2008 (231) ELT 3 (SC) has observed that –

> *"it is a well settled principle in law that the Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent".*

9.5 Further, the Hon'ble Supreme Court in case of Excon Building Material Mfg. Co. Pvt Ltd. Vs. CCE, Bombay - 2005 (186) E.L.T. 263 (SC) held that -

> *"It is well settled that where the wording of notification are clear, then the plain language of the notification must be given effect to".*

9.6 Government finds support from the observations of Hon'ble Supreme Court in the cases of M/s. ITC Ltd. v. CCE reported as 2004 (171) E.L.T. 433 (S.C.), and M/s. Paper Products v. CCE reported as 1999 (112) E.L.T. 765 (S.C.) that the simple and plain meaning of the wordings of statute are to be strictly adhered to. Time limit is a substantive requirement. Failure to comply with the same cannot be ignored while considering any claim of the applicant.

10. In the light of the above observations and respectfully following the judgments of the Hon'ble Supreme Court cited above, Government sets aside the impugned Order-in-Appeal No. SK/46-54/M-I/2017 Dtd. 22.03.2017, SK/64 to 66/M-I/2016 Dtd. 30.06.2016 & SK/68/M-I/2016 Dtd. 30.06.2016 passed by the Commissioner (Appeals), Central Excise, Mumbai-I and allows the instant Revision Application.

15/11/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 1078-1090 /2022-CX (WZ) /ASRA/Mumbai Dated 15.11.2022

To

M/s Cipla Limited,
Cipla House, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400013.

Copy to :

1. The Commissioner, CGST & CX, Mumbai Central.
2. The passed by the Commissioner CGST & CX (Appeals-I), Mumbai-I.
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4. Sr. P.S. to AS(RA),Mumbai.
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