

REGISTERED  
SPEED POST



F.No.195/594 & 1700/12-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue. 20-12-13

Order No. 1412-1413/13-cx dated 19-12-2013 of the Government of India, passed by Shri D. P. Singh, 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 Act,  
1944 against the Order-in-Appeal No.  
02/12 (H-IV) D/CE dt. 20-03-2012  
and 03/12 (H-IV) (D) CE dt. 28-08-2012  
passed by Commissioner of Customs and Central  
Excise, (Appeals-II), Hyderabad.
- Applicant : M/s. Dr. Reddys Laboratories Ltd., (FTO-3)  
Sy. No. 45 & 46, Bachupally Village,  
Qutbullapur Mandal, Range Reddy District,  
Hyderabad.
- Respondent : Commissioner of Central Excise,  
Hyderabad-IV.

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ORDER

These revision applications are filed by the applicant Dr. Reddys Laboratories Ltd., Sy. No. 45 & 46, Bachupally Village, Qutbullapur Mandal, Range Reddy District, Hyderabad against the Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals)-II, Hyderabad with respect to Orders-in Original passed by the Deputy Commissioner of Central Excise, Hyderabad-L, Division as detailed in following table:

S. No	Name of the Applicant	RA No.	Order-in-Appeal No. & Date	Order-in-Original Nos. date
1	2	3	4	5
1.	Dr. Reddys Laboratories Ltd., (FIO-III) Hyderabad	195/594/12-RA	2/12 (H-IV) (D) CE dt. 20-03-2012	462/11-R dtd. 30-09-2011
2.	_____do_____	195/1700/12-RA	3/12 (H-IV) (D) CE dt. 28-08-2012	3/12-R dtd. 03-01-2012

2. Brief facts of the cases are that the applicants are manufactures of P & P medicaments falling under chapters 30041030 of CETA 1985. They have exported the goods on payment of duty and filed rebate claims under rule 18 of Central Excise Rules, 2002 r/w Not. No. 19/04-CE (NT) dt. 06-09-2004. Brief facts of the cases are as under:-

2.1 R.A No. 195/594/12 (against Order-in-Appeal No. 2/12 dt. 28-03-2012).

2.1.1 The facts of the case are that DRL are manufacturers of 'P or P medicaments' falling under Chapters 30041030 of CETA,1985. They have exported goods namely "OLANZAPINE 20 mg USP Tablets valuing Rs. 411,332,668/- (1,31,01,840 numbers in 30s pack/100s pack/500s pack)" to their subsidiary M/s. Dr. Reddy's Laboratories Inc, New Jersey, USA vide ARE 1 No. 748/2011-12 dated 27.06.2011 on payment of duty of Rs. 21,18,36,117/- through their CENVAT Credit Account. Subsequently they filed rebate claim of Rs. 21,18,36,117 on 18-07-2011 before DCCE L-Div Hyderabad-IV. The lower authority vide the impugned order-in-original dtd. 30-09-2011 sanctioned the rebate claim of Rs. 21,11,04,0891- in cash and Rs.7,32,028/- allowed as credit in their Cenvat credit account.

2.1.2. The said Order-in-Original was received by CCE Hyderabad-IV vide Review order No. 01/12 dt. 05-01-2012 and DCCE L.Div- Hyderabad-IV has filed the appeal before Commissioner (Appeals) on the following grounds:-

(i) It is clarified in Board's Circular No. 203/37/96-CX dated 26.4.96 (reiterated in Board's Circular No. 510/06/2000-CX dated 03.02.2000), that the ARE-1 value should be arrived in terms of the provisions of Section 4 of the Central Excise Act, 1944 and that the same is relevant for sanctioning the rebate. Since, in the instant case, the consignment was cleared to the subsidiary unit of DRL, the sale price (ARE-1 value) can not be termed as 'transaction value' in terms of the provisions of Section 4 of the Central Excise Act, 1944 read with the provisions of 'Monopolies and Restrictive Trade Practice Act,1969'. When the goods are sold to or through a related person or an inter-connected undertaking, the provisions of Rule 9, 10 or 11 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 shall be followed in which case the transaction value is the value at which these goods are sold by the related person or inter-connected undertaking. In the present case, Customs Valuation (Determination of Value of Export Goods) Rules, 2007 do not seem to be applicable. The goods manufactured in India and cleared for DTA or Export are ought to be valued under Section 4 of the Central Excise Act, 1944. Though the AA resorted to Customs Valuation (Determination of Value of Export Goods) Rules, 2007 in respect of valuation of exported goods, the rebate sanctioned was in accordance with the Section 11 B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules 2002 and Notification No. 19/2004-CE (NT) dated 06.09.2004 which is a contradiction. Notwithstanding the question of application of Central Excise Valuation Rules or Customs Valuation Rules, the overvaluation for deriving the benefit of rebate/drawback/DEPB, is not to be permitted.

(ii) On verification of the prices on the Internet, it is observed that though Zyprexa (branded product of Olanzapine 20 mg) is available for US \$15, the Generic product is available for US \$0.69. Therefore, the export price of US \$ 7 quoted by M/s. Dr. Reddy's Laboratories Ltd., for its generic product appears to be abnormally high. Thus, prima facie the DRL resorted to overvaluation of goods and this appears to be with an intention to encash the Cenvat credit by way of rebate. The AA should have investigated or called for the sale price at which M/s. Dr. Reddy's Laboratories Inc., are selling in the USA before sanctioning the claim.

(iii) As per the condition No.2 (e) of the Notification No. 19/2004-CE (NT) dt. 06.09.2004 as amended, in case where rebate is granted, the market price of the excisable goods at the time of exportation should not be less than the amount of rebate of duty claimed. Though the appellants stated that there is no DTA sale, similar/identical goods namely 'OLEANZ RAPI', the branded Olanzapine 20 mg produced by M/s. Sun Pharmaceuticals Ltd., is sold at Rs. 104.50 for 10 tabs in the market. Based on the available market value of identical goods, the market value of 1,31,01,840 tablets exported by the DRL works out to Rs.13,69,14,228/-. Whereas the rebate granted is Rs. 21,18,36,117/- which is more than the market value of similar goods in Indian market and contrary to the condition of the above notification.

(iv) The Drug and Formulations Industries are covered under Section 233 B of Companies Act, 1956 and the costing of the products is to be arrived based on Standard Accounting Methods and the question of hidden costs being reason for substantially higher price than the cost of production is not acceptable. In the first place, there is no place for hiding the cost while arriving at the costing of the product. The AA has not given any finding whether he has examined the cost of production and whether the so called hidden costs did/did not form part of cost statement of Section 233 B of Companies Act, 1956 and the nature of the hidden cost. Instead the AA has accepted the same without any investigation.

(v) Even assuming that the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 are applicable, as per Rule 3 *ibid*, transaction value is acceptable only if the relationship has not influenced the price. The AA has not given any findings as to why the relationship has not influenced the price especially when there is a huge difference between the cost of production and the transaction value declared. When the goods are sold to related party, it is incumbent on the AA to examine and give findings as to why the transaction value is acceptable when there is a *prima facie* case for doubting the value considering the cost of production and market value of the goods exported.

2.1.3 Commissioner (Appeals) after considering all the submissions of both parties, allowed the appeals of department and held that lower authorities should have enquired the market price of the similar/identical goods and decided the eligibility of rebate that since the market price of similar/identical goods was found to be less

than the amount of rebate claims, the sanction of rebate claims was in violation of condition No. 2 (e) of Not. No. 19/04-CE (NT) dt. 06-09-2004 and liable to rejection. Commissioner (Apepals) set aside the impugned Orders-in-Original and disallowed the rebate claims as per departmental appeals.

## 2.2 R.A No. 195/1700/12 (against Order-in-Appeal No. 3/12 dt. 28-08-2012).

2.2.1 The facts of the case are that the applicants are manufacturers of 'P or P medicaments' falling under Chapters 30041030 of CETA, 1985. They have filed a rebate claim on 21-11-2011 for Rs.1,75,57,537/- in respect of exports made under drawback scheme to their subsidiary M/s. Dr. Reddy's Laboratories Inc, New Jersey, USA for the goods namely "Tacrolimus capsules 1 mg (16776000 No.s)" vide ARE 1 No. 1767/2011-12 dated 05.10.2011; Omeprazole DR capsules 20mg (1326000 No.s), Tacrolimus capsules 1mg (852000 No.s) and Nizatidine capsules 150 mg (462000 No.s) vide ARE.1 No.1780/2011-12 dated 8.10.2011; Finasteride tablets 5mg (1887840 No.s), Tacrolimus capsules 1mg (835200 No.s) and Tizandiine tablets 4 mg (1278000 No.s) vide ARE.1 NO.1841/2011-12 dt 17.10.2011; Zafirlukast tablets 20 mg (1427040 No.s) vide ARE.1 NO.1843/2011-12 dt 17.10.2011; Olanzapine ODT tablets 10 mg (358560 No.s) and Olanzapine ODT tablets 5 mg (576000 Nos) vide ARE.1 NO.1930/2011-12 dt 25.10.2011 for a total value of Rs. 34,09,23,058/- on payment of duty of Rs. 1,75,57,537/- through their CENVAT Credit Account. The lower authority vide the impugned order dt. 13-01-2012 has sanctioned the rebate of Rs.1, 75,48,551/- in cash and Rs.8,986/- allowed as credit in their Cenvat credit account.

2.2.2 The said Order-in-Original dt. 13-01-2012 was reviewed by CCE Hyderabad-IV vide Review order No. 04/12-dt. 20-04-2012 and DCCE L-Div Hyderabad-IV filed the appeal Commissioner (Appeals) on the following grounds:-

On scrutiny of the Order-in-Original it is observed that the sanction of rebate is not legal and proper to the extent of Rs.64,89,532/- for the generic product, "Olanzapine ODT tablets 10 mg (358560 Nos) and Olanzapine ODT tablets 5 mg (576000 No.s) exported vide ARE.1 NO.1930/2011-12 dt 25.10.2011 by the DRL to their subsidiary M/s Dr. Reddy's Laboratories INC, New Jersey USA for the following reasons:

i) It is clarified in Board's Circular No. dt. 26-04-96 (reiterated in Board's Circular No. 510/06/2000-CX dated 03-02-2000), that the ARE-1 value should be arrived in terms of the provisions of Section 4 of the Central Excise Act, 1944 and that the same is relevant for sanctioning the rebate. Since, in the instant case, the consignment was cleared to the subsidiary unit of DRL, the sale price (ARE-1 value) can not be termed as 'transaction value' in terms of the provisions of Section 4 of the Central Excise Act, 1944 read with the provisions of 'Monopolies and Restrictive Trade Practice Act, 1969'. When the goods are sold to or through a related person or an inter-connected undertaking, the provisions of Rule 9, 10 or 11 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 shall be followed in which case the transaction value is the value at which these goods are sold by the related person or inter-connected undertaking. In the present case, Customs Valuation (Determination of Value of Export Goods) Rules, 2007 do not seem to be applicable. The goods manufactured in India and cleared for DT A or Export are ought to be valued under Section 4 of the Central Excise Act, 1944. Though the AA resorted to Customs Valuation (Determination of Value of Export Goods) Rules, 2007 in respect of valuation of exported goods, the rebate sanctioned was in accordance with the Section 11 B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules 2002 and Notification No. 19/2004-CE (NT) dated 06.09.2004 which is a contradiction. Notwithstanding the question of application of Central Excise Valuation Rules or Customs Valuation Rules, the overvaluation for deriving the benefit of rebate/drawback/DEPB, is not to be permitted.

(ii) On verification of the prices on the Internet, it is observed that though Zyprexa (branded product of Olanzapine 10 mg) is available for US \$ 3.13, the Generic product is available for US \$ 0.48. Similarly, though Zyprexa (branded product of Olanzapine 5 mg) is available for US \$ 2.05, the Generic product is available for US \$ 0.50. Therefore, the export price of US \$ 3.65 for Olanzapine ODT Generic for the 10 mg and US \$ 2.20 for Olanzapine ODT Generic for the 5 mg quoted by Mis. Dr. Reddy's Laboratories Ltd., for its generic product appears to be abnormally high. Thus, prima facie the DRL resorted to overvaluation of goods and this appears to be with an intention to encash the Cenvat credit by way of rebate. The AA should have investigated or called for the sale price at which M/s. Dr. Reddy's Labs Inc., are selling in the USA before sanctioning the claim.

(iii) As per the condition No.2 (e) of the Notification No. 19/2004-CE (NT) dt. 06-09-2004 as amended, in case where rebate is granted, the market price of the excisable goods at

the time of exportation should not be less than the amount of rebate of duty claimed. Though the appellants stated that there is no DTA sale, similar/identical goods namely 'OLEANZ RAPI', the branded Olanzapine 10 mg and 5 mg produced by M/s. Sun Pharmaceuticals Ltd., is sold at Rs.55/and 28.50/ respectively for 10 tabs in the market. Based on the available market value of identical goods, the market value of 9,34,560 tablets exported by the DRL works out to Rs.36, 13,680/-. Whereas the rebate granted is Rs.64,89,532/- which is more than the market value of similar goods in Indian market and contrary to the condition of the above notification.

(iv) The Order No.03/2012-Rebate dated 13.1.2012 passed is not legal and proper to the extent of Rs.64,89,532/- for the generic product Olanzapine ODT tablets 10 mg (358560 Nos) and Olanzapine ODT tablets 5 mg (576000 No.s) vide ARE.1 No.1930/2011-12 dt 25.10.2011 by DRL to their subsidiary MIs Dr. Reddy's Laboratories Inc, New Jersey, USA and needs to be appealed against. In a similar case of rebate concerning the same goods in respect of the same assessee, the Commissioner (Appeals) vide OIA No 02/2012 (H-IV) (D) CE dated 20.3.2012 has allowed the appeal filed by the department and set aside the order-in-original No.462/2011- Rebate dated 30.09.2011 passed by the Deputy Commissioner of Central Excise, Hyderabad-L Division.

2.2.3 Commissioner (Appeals) after considering all the submissions of both parties, vide Order-in-Appeal dt. 28-0-2012 allowed the appeal of department and held that lower authority should have enquired the market price of the similar/identical goods and decided the eligibility of rebate that since the market price of similar/identical goods was found to be less than the amount of rebate claims, the sanction of rebate claims was in violation of condition No. 2 (e) of Not. No. 19/04-CE (NT) dt. 06-09-2004 and liable to rejection. Commissioner (Appeals) set aside the impugned Orders-in-Original and disallowed the rebate claims as per departmental appeals.

3. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these two revision applications as mentioned in table of para I under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

3.1 The Commissioner (Appeals) erred in not appreciating/considering the various submissions made by the applicants during the course of personal hearing. Applicants refer to the various queries/clarifications sought by the jurisdictional Deputy Commissioner and also the jurisdictional Superintendent for verification of the rebate claim and the issues involved therein, before sanctioning the rebate and the information provided by them for each and every query/clarification raised/sought.

3.2 The Commissioner (Appeals) erred in not appreciating the observations made by the rebate sanctioning authority on following counts:-

- a) The Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000 is not relevant as the Central Excise Act, 1944 and the same extends only to the whole of India in terms of section 1(2) *ibid*.
- b) Provisions of Customs valuation (Determination of price of Excisable goods) Rules, 2007 which came into existence w.e.f. 13-09-2007 vide Notification No. 95/2007-Cus (NT) have to be resorted to in respect of Exports. The value shall be "transaction Value" within the meaning of sub-section (1) of section 14 of the Customs Act, 1962.
- c) The Deputy Commissioner's observation that it is to be understood that the entire process of launching a new product involves huge expenditure.
- d) Hidden costs (Additional cost according to the applicants) are also have to be considered for arriving at the sale price of such innovation product.
- e) The rebate sanctioned by the Adjudicating Authority only after satisfying himself with the documents produced and the exportation of the goods cleared under the said ARE-1 held that the applicant is eligible for rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE dt. 06-09-2004, as amended.
- f) The rebate amount was sanctioned by the adjudicating authority subject to the condition that the applicants should submit the BRC within one year from the date of export and accordingly the applicants submitted the same under acknowledgment.



3.3 The Department's contention that the generic product is available for US \$ 0.69 per tablet and therefore the export price of US \$ 7 quoted by the applicants appears to be abnormally high was based on the verification of prices on the Internet. In this regard it is to submit that though the Department claimed that on verification of the internet the Generic product is available for US \$ 0.69, it is not clearly stated whether the price verified/claimed by them is in the US market or in any other country during the exclusivity period. In the absence of such confirmation, their contention that Applicants' export price of the tablet is abnormally high is not correct and unsustainable taking into consideration the price of US \$ 33 per tablet sold by the innovator ( Eli Lilly) in the US Market. In this regard Applicants further submit that on verification of IMS data base which is a paid website, there are only 2 generic players in the market in addition to the innovator M/s. Eli Lilly during the exclusivity period i.e., from October, 2011 onwards till completion of 180 days. The other Generic player in addition to their company was M/s. PRASCO LABS, who was authorized by the innovator to market the generic version during the exclusivity period. Based on the data downloaded from IMS site, it is very clear that the selling prices of the 3 companies from October, 2011 to January, 2012 are much higher than their export price per tablet @ US \$ 7. The details in a tabular form is given below for ready reference in addition to their enclosing an excel statements with volumes and values per tablet rate together with the snap shots downloaded from the website as proof.

OLANZAPINE 20MG TABLETS - COMPARITIVE SALE PRICE PER TABLET  
IN US\$

Month	ELI LILY	Prasco Labs	Dr. Reddy's/Teva
Oct, 2011	33.83	27.19	21.95
Nov, 2011	32.41	20.22	20.11
Dec, 2011	32.98	19.37	19.98
Jan, 2012	32.81	19.22	19.90

3.4 The 180 days exclusivity to market the product in USA, is ranted to generic companies by the US FDA on first to file the Abridged New Drug Application (ANDA)

with paragraph IV certifications on complying/satisfying with the requirements. During this exclusivity period, only the Generic company and the innovator are eligible to market the product in addition to any other Authorized company, who is authorized to market the generic version by the Innovator. In case of Olanzapine 20 mg tablet, there is one company M/s. Prasco Labs authorized by M/s. Eli Lilly (innovator) other than their company during the exclusive period. For ready reference, applicants also submitted the details pertaining to what is exclusivity, Authorized Generics, who can market the product during the exclusivity period down loaded from US FDA website, and other sites together with the copy of the Grant of 180 days exclusivity letter issued by US FDA to their company.

3.5 As regards RA No. 195/1700/12 against Order-in-Appeal No. 3/12 dt. 28-08-2012, department's contention that generic product is available for US \$ 0.48 and 0.50 per tablet and therefore export price of US \$ 3.65 and 2.20 quotes by the applicants appears abnormally high was based on the verification of prices on the internet. In this regard it is to submit that though department claimed that on verification of the internet the generic product is available for USD 0.48 and 0.50, it is not clearly stated whether the prices verified/claimed is in the US market or in any other country during the exclusivity period. In the absence of such confirmation, their contention that export price of the tablet is abnormally high is not correct. In this regard, applicants submit Commissioner (Appeals) has not considered their contention and only gone by the department contention that the similar product manufactured by local manufacture for Indian market is available and is sold at Rs. 55/- and Rs. 28.50/ per 10 tablets in the market.

3.6 In this regard, applicants submit that they have made the above submissions before the Commissioner (Appeals). Most unfortunately the Commissioner (Appeals) did not consider the same. Without examining the details given by the Applicants, he has only gone by the Department's contention that the similar product manufactured by the local manufacturer for Indian market is available and is sold at Rs. 104.50 per 10 tablets in the market. Applicants submit that, thus, the Commissioner (Appeals) erred in not considering and not discussing anything about the applicants submission

before coming to the conclusion that the price charged by the applicant is abnormally high.

3.7 Assuming but without admitting that while clearing the goods for export to a related party, one should pay duty as per Rule 9, 10 or 11 of the valuation Rules, 2000, Applicants should have paid the duty on the average price of 4 months sale in USA i.e., about 20 USD per Tablet which works out to 3 times of the duty what was paid by the applicants at the time of export. Had the applicants paid the duty as per the point raised by the Commissioner in the review order, the department certainly would not have sanctioned the rebate and might have rejected on some other ground.

3.8 The applicants placed reliance on the decision of the Tribunal in the case of S. Chandra shekaran vs. Commissioner of Cus & C.Ex, Hyderabad as reported in 2001 (132) ELT 751 (Tri-Chennai) wherein it has been held that goods exported being unconventional heavy specially made to ordered goods, excessive mark-up is normal elementary market strategy, proof that Bank remittance equivalent to declared FOB value having been received without demur, FOB value to be acceptable as genuine and the said decision of the Tribunal was affirmed by Hon'ble Supreme Court in the case of Commissioner of Cus, Air Cargo, New Delhi Vs., J.N. Exports as reported in 2003 (154) EL T 353 (SC). Unfortunately, the Commissioner (Appeals) simply brushed aside the applicants stand by mentioning at Para 7.6 of the order that the case law is not applicable to the applicants case since it was rendered with regard to dispute in discrepancy of the description of the goods removed for export and declared in the export documents and over invoicing of the export goods under Advance License benefit. On this ground alone the order of the Commissioner (Appeals) merits to be set aside as he has not properly appreciated the situation of export value declared and the value realized towards export proceeds and restricted himself to the scheme and not the context /concept.

3.9 Applicants further submit that in so far as the contention that market value of the goods exported should not be less than the rebate granted in terms of condition

No.2 (e) of the Notification No.19/2004-CE (NT) dated 06.09. 2004 and the Department's contention, while clearly noting that there is no DTA sale of the said product manufactured and exported by them, on the basis of sale value of some other manufacturer concluding and contending that the said value of the other manufacturer was less than the rebated amount is not justified in the absence of any evidence with regard to similarity / identity, Market conditions and quality parameters especially to meet the stringent regulatory requirements to market the product in U.S between the goods manufactured and exported by the applicants and the other manufacturer of manufactured exclusively for Indian market i.e., M/s. Sun Pharmaceuticals. It is also to be noted in this regard that the applicant has clearly intimated the Adjudicating Authority (AA), the reasons for higher price because of its exclusivity of sale for a given period and that the possibility of reduction in prices once the exclusivity period is over and if other generic players are entered into market. The Commissioner (Appeals) without appreciating this fact, simply come to a conclusion that the rebate claim should be restricted to available market value is totally unwarranted and not sustainable. Applicants further submit that though the condition 2(e) of Notification No.19/2004-CE (N.T) state that the market value should not be less than the rebate claim, it was neither mentioned anywhere in the Notification nor defined under the Central Excise Act, 1944 as to what is the Market value and what are the factors to be considered to arrive at the market value. In the absence of such parameter or definition, simply taking into account the selling price in Indian market of a similar product manufactured by other manufacturer without considering the fact of the applicants exported product meant for launching first time in USA Market and that too after getting the exclusive marketing rights for 180 days in addition to the innovator is having no basis and the Appellate Authority totally failed in appreciating whether the product manufactured by the other manufacturer price of which taken into consideration for the purpose of market value is capable of being marketed in USA without any approval from US FDA and does the same can be sold in USA during the exclusive period of 180 days granted to the applicants. In the absence of any such finding and simply setting aside the rebate sanction orders by the Commissioner (Appeals) is not at all

sustainable. and the Order -in- Appeal No. 02/2012(H-IV)(D)CE dated 20.03.2012 merits to be set aside on this ground alone.

3.10 Applicants further submit that the data with regard to the prices of the innovator, the other authorized company and the Applicants is seen, it clearly establishes that the Applicants have not over invoiced and the price of their exported product is very competitive when compared to the prices of the innovator and the other Authorized company. Applicants further submit that once it is held that the product of the local manufacturer and the exported product of the applicants are different and cannot be treated as similar /identical in view of the various stringent requirements of US market, quality parameters and exclusivity period that are associated with the exported product, in such circumstances 2(e) of Notification No.19/2004-CE(NT) dated 6.9.2004 does come into the picture, particularly keeping in view the fact that applicants does not have domestic sale of the Export product.

4. Personal hearing was scheduled in this case on 05-03-2013, 20-03-2013, 25-06-2013 & 28-11-2013. Hearing held on 05-03-2013 was attended by Shri S.Suryanaryana, Director of the applicant company on behalf of the applicant who reiterated the grounds of Revision Application. Hearing held on 25-06-2013 was attended by Shri S.Suryanaryana, Director and Shri V.S. Satyanarayan Reddy, Associate Director on behalf of applicants who stated that Show Cause Notice issued subsequently for recovery of impugned sanctioned claims by the Commissioner of Central Excise, Hyderabad-IV has now been confirmed vide Order-in-Original No. 53/2012- Adj. (Comm.) CE dtd. 30-10-2012 passed by CCE Hyderabad-IV. They have filed appeal against said order in CESTAT, Bangalore. The applicant vide their letter dated 27-11-2013 stated that their appeal against the said order of Commissioner is still pending in CESTAT.

5. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal. Since the similar issue is involved in both the cases, these revision applications are taken up together for decision by this common order.

6. Government observes that the applicants filed rebate claims of Rs. 21,18,36,117/- and 1,75,57,531/- for the duty paid on exported goods Olanzapine Tablets and other tablets. The original authority sanctioned rebate of Rs. 21,11,04,089/- and 1,75,48,551/- respectively in cash and remaining amounts was allowed to be re credit in their cenvat credit account. The above said rebate sanctioning orders were reviewed by jurisdictional CCE Hyderabad-IV and DCCE L-Div Hyderabad-IV filed appeals before Commissioner (Appeals) mainly on the ground that the declared value of Olanzapine was abnormally high and the applicants resorted to overvaluation of goods; that the rebate claims of duty paid on exported goods namely Olanzapine were more than market price of said goods Olanzapine and hence the rebates were not admissible in terms of para 2 (e) of the Notification No. 19/04-CE (NT) dtd. 09-07-2004. The Commissioner (Appeals) decided the cases in favour of department. Now, the applicant has filed revision applications on grounds mentioned in para (4) above.

7. Applicant has contested the impugned orders on the ground that the declared value rejected on the basis of price of similar/identical product manufactured by the companies in India as well as companies abroad is not correct and the value declared by them in ARE-1 form is the correct transaction value and therefore the rebate is admissible of duty paid by them.

8. Government notes that in the instant cases of rebate claims, the main issue involved relates to interpretations of condition 2 (e) of Not. No. 19/04-CE (NT) dt. 06-09-2004, the determination of market value for the purpose of said condition 2 (e) and determination of assessable value of exported goods in terms of section 4 of Central Excise Act, 1944.

8.1 As per rule 18 of Central Excise Rules 2002, where any goods are exported, Central Government may by notification, grant rebate of duty paid on such excisable goods and the rebate shall be subject to such conditions or limitation if any, and fulfilment of such procedure as may be specified in the notification. The

Notification No. 19/04-CE (NT) dt. 06-09-2004 issued under rule 18 stipulates conditions, limitations and procedures to be followed with for being eligible for grant of rebate claim. As per said notification, rebate shall be granted subject to fulfilment of conditions, limitations and procedure specified there in.

8.2 The condition specified in para 2 (e) of said notification is as under:-

*" that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed. "*

In order to ensure the fulfilment of said condition, the rebate sanctioning authority has to ascertain market price of excisable goods at the time of exportation. In case the market price is found less than the rebate claimed, then the rebate claim becomes inadmissible for violation of said condition 2 (e).

8.3 In these cases, the applicant manufacturer, have exported said goods to their subsidiary units outside India and there are no domestic sales. In such a situation the market price of identical products manufactured by other manufacturers in India has been taken as market price of impugned goods. The appellate authority in impugned Order-in-Appeal has mentioned that similar/identical goods namely ' OLEAN RAPI', the branded Olanzapine 20 mg, 10 mg and 5 mg produced by M/s. Sun Pharmaceutical Ltd. is sold at Rs. 104.50, Rs. 55/- and Rs. 28.5 for 10 tablet, respectively, which was taken as market price of the said goods.

8.4 The applicant has argued that value declared by them in ARE-1 which is charged to the subsidiary unit abroad is to be taken as market price. This argument is not acceptable, since the market price as the time of exportation in India is required to be ascertained. Moreover, the value as given in ARE-1 form is not accepted as assessable value in terms of section 4 of Central Excise Act, 1944 and the same was also challenged. Therefore, Commissioner (Appeals) has rightly taken the market price of the impugned goods on the basis of identical/similar product produced by M/s. Sun Pharmaceuticals Ltd.

9. Government notes that the value of excisable goods to be exported is to be determined under section 4 of Central Excise Act, 1944 and this value is relevant for the purpose of rule 18 of Central Excise Rules, 2002. In this case goods i.e medicament, Olanzapine was exported to subsidiary unit of the applicant company in USA. Government observes that the CCE Hyderabad-IV issued show cause notice vide O.R No. 136/2012- Adjn. (Comm.) CE dt. 03-05-2012 and O.R. No. 150/2012- Adjn. (Comm.) CE dt. 05-06-2012 to the applicants for recovery of erroneously sanctioned rebate claims vide impugned Order-in-Original No. 462/2011 dt. 30-09-2011 and 03/2012-rebate dtd. 13-01-2012. Commissioner, Central Excise, Hyderabad-IV vide Order-in-Original No. 53/2012-Adj. (Comm.) CE dt. 30-10-2012, determined the value of exported goods under section 4 of Central Excise Act, 1944 decided the rebate claims and also confirmed the demands of erroneous sanctioned rebate claims. Relevant paras of the said order dt. 30-10-2012 reproduced as under:-

" 19. Sanction of rebate claim of the duty paid on export goods is subject to the provisions of Notification No,19/2004 CE(NT) dated 06,09,2004, Condition 2(e) of the said notification requires that the market price of excisable goods at the time of exportation is not less than the amount of rebate of duty claimed, In the instant case, on verification of the prices of the identical goods through internet, it is noticed that the goods exported by Dr. Reddy's Laboratories were priced higher than the market price of a manufacturer of similar goods, M/s. Sun Pharmaceuticals Ltd, especially when the goods are exported to their subsidiary company. Since the relationship influences the transaction value, the export price on which duty of excise has been paid cannot be considered as transaction value, Verification of the export prices with reference to cost of production and the prices of identical goods clearly leads to conclusion that it is a clear case that the export goods are overpriced so as to get undue benefit of rebate of duty of excise in cash, In the instant case, condition 2(e) of Notification No,19/2004 CE(NT) has not been satisfied as the market value of similar goods manufactured by M/s. Sun Pharmaceuticals is much less as compared to the export value of the assessee.....

22. The sanctioning authority sanctioned an amount of Rs. 21,11,04,089/- in cash vide Order-in-Original No. 462/11-rebate dated 30-09-2011. In respect of the other rebate claim sanctioned vide Order-in-Original No. 03/2-12-Rebate dt. 13-01-2012, even though the notice proposes to recover Rs. 1,75,57,537/- from the assessee, I find that the dispute relates to sanctioned of Rebate of Rs. 64,89,532/- relating to



Olanzapine ODT tablets of 10mg and 5mg exported vide ARE-1 No. 1930/11-12 dt. 25-10-2011 only and not others. Accordingly, out of Rs. 1,75,57,537/- sanctioned as rebate in the impugned order, I restrict myself to the rebate amount of Rs. 64,89,532/- sanctioned erroneously in cash.

23. The assessee has requested that the rebate may be restricted to the extent of present market value. Condition 2(e) of Notification No.19/2004 CE(NT), reads as under:

"that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed."

The Notification provides for granting of rebate of duty of the whole of the duty paid on all excisable goods exported to any country other than Bhutan with certain conditions and limitations. Therefore, the rebate claims shall be sanctioned within the parameters laid down by the said Notification. In the instant case, it is clearly seen in condition 2(e) that the market price of the excisable goods at the time of exportation shall not be less than the amount of rebate of duty claimed. The assessee exported the generic product whereas the branded goods of Olanzapine 20mg i.e., "OLEANZ RAPI" manufactured by M/s Sun Pharmaceuticals Ltd are sold at Rs.104.50 for 10 tablets in the market. Since the generic product and the branded goods are not comparable, I am not inclined to accept the request of the assessee. The assessee themselves have stated that there are no sales of these generic products manufactured by them in the Indian market. They have also provided the cost of their product as under:

Cost of one lakh 'Olanzapine-20 mg' tablets 30s- Rs.1,28,267/-  
 Cost of one lakh 'Olanzapine-20 mg' tablets 100s- Rs.86,467/-  
 Cost of one lakh 'Olanzapine-20 mg' tablets 50 Os- Rs.75,199/-.

Sr. No. Sr. No.	ARE-1 No. ARE-1 No.	Date Date	Description Description of goods	Nature Nature of pack	Quantity Quantity
1	748/11-12	27-06-2011	Olanzapine 20 mg	30's Pack	10923840 Nos. (364128 Packs)
2	748/11-12	27-06-2011	Olanzapine 20 mg	100's Pack	744000 Nos. (7440 Packs)
3	748/11-12	27-06-2011	Olanzapine 20 mg	500's Pack	1434000 Nos. (2868 Packs)
4	1930/11-12	25-10-2011	Olanzapine 10 mg	80's Pack	358560 Nos. (11952 Packs)
5	1930/11-12	25-10-2011	Olanzapine 5 mg	30'S Pack	576000 Nos. (19200 Packs)

Since, the assesseees have exported the impugned goods only to their subsidiary company the transaction value cannot be treated as fair transaction value as already discussed above. Further, in view of the condition 2(e) of Notification No.19/2004-CE(NT) and by following the principles of Rule 11 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Rule 8 of the said Rules, I am of the considered opinion that the rebate amount shall not exceed the duty amount calculated on the one hundred ten percent of cost price of the generic products exported by them. Since the assesseees have not furnished the cost of one lakh tablets of Olanzapine 10mg and 5mg of 30's pack exported by them under the cover of AREI No. 1930/2011-12, I have proceeded to work out the cost price of the said goods on pro-rata basing on the Olanzapine 20mg of 30's pack.

S. No.	ARE-1 No.	Date	Description of goods	Qty. Exported (Nos.)	Cost Price and cost price on pro-rate basis (Rs.)	Assessable Value (110% of cost price) Rs.	Eligible rebate amount @ 5.15% Rs.
1	748/11-12	27-06-2011	Olanzapine 20 mg	10923840	14011682	15412850	793762
2	748/11-12	27-06-2011	Olanzapine 20 mg	744000	643314	707645	36444
3	748/11-12	27-06-2011	Olanzapine 20 mg	1434000	1078354	1186190	61089
4	1930/11-12	25-10-2011	Olanzapine 10 mg	358560	229958	252955	13027
5	1930/11-12	25-10-2011	Olanzapine 5 mg	576000	184704	203175	10464
				Total	1614812	17762815	914786

From the above statement, it is very clear that the assesseees are entitled for rebate in cash amounting to Rs.9,14,786/- relating to the goods exported under ARE1 Nos.748/2011-12 dated 27.06.2011 and 1930/2011-12 dated 25.10.2011 as against the rebate amount of Rs.21,75,93,621/- (Rs.21,11,04,089/- + Rs.64,89,532/-) sanctioned in cash vide Orders-in-Original Nos.462/2011 -Rebate dated 30.09.2011 and 03/2012-Rebate dated 13.01.2012.

24. In view of the foregoing discussions, I hold that DRL are entitled for cash rebate of Rs.8,91,295/- (Rupees Eight Lakhs Ninety One Thousand Two Hundred Ninety Five only) in respect of the goods exported under ARE1 No. 748/2011-2012 dated 27.06.2011 as against the amount of Rs.21,11,04,089/- sanctioned in cash vide Order-in-Original No.462/2011-Rebate dated 30.09.2011. Similarly, I hold that DRL are entitled for rebate in cash amounting to Rs.23,491/- (Rupees Twenty Three Thousand Four Hundred Ninety One only) relating to the goods exported under ARE-I No.1930/2011-12 only, relating to the goods exported under ARE-I No.1930/2011

12 dated 25.10.2011 as against the amount of Rs.64,89,532/- sanctioned as rebate in cash vide Order-in-Original No. 03/2012-Rebate Dated 13.01.2012. Accordingly, I hold that an amount of Rs.21,02,12,794/- (Rupees Twenty One Crores Two Lakhs Twelve Thousand Seven Hundred Ninety Four only) sanctioned erroneously in cash in excess of the eligible amount vide Order-in-Original No.462/2011-Rebate dated 30.09.2011 is liable to be recovered from M/s. DRL Similarly, I hold that an amount of Rs.64,66,041/- (Rupees Sixty Four Lakhs Sixty Six Thousand Forty One only) sanctioned erroneously in cash in excess of the eligible amount vide Order-in-Original NO.03/2012-Rebate dated 13.01.2012 is liable to be recovered from M/s. DRL. Having concluded that the amounts are recoverable from M/s. DRL, the provisions relating interest under section 11AA of Central Excise Act, 1944 automatically arises. "

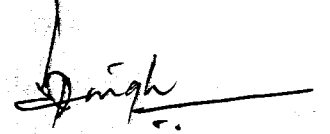
9.2 From above, Government notes that, Commissioner of Central Excise, Hyderabad-IV has already decided the valuation issue rebate claims and ordered for recovery of erroneously sanctioned rebate claims as stated above. The applicant has filed the appeal against said Order-in-Original No. 53/12 dt. 30-10-2012 passed by Commissioner of Central Excise & Customs before Hon'ble CESTAT. Applicant has stated that no stay has been granted by Hon'ble Tribunal till date against said Order-in-Original No. 53/12 dtd. 30-10-2012. Under such circumstances the Order-in-Original dated 30-10-2012 determining valuation of goods and sanctioning rebate claims cannot be agitated before Central Government since in terms of section 35B (1) of Central Excise Act 1944 appeal against order passed by Commissioner of Central Excise lie before Hon'ble CESTAT.

10. Government lowerer observes that the original authority vide impugned Orders-in-Original sanctioned cash rebate of Rs. 21,11,04,0891/- and Rs. 1,75,57,537/-. The appellate authority while allowing the appeals filed by department observed that the original authority should have enquired the market price of impugned goods as the market price of the similar/identical products is less than the rebate claim. However, the Commissioner (Appeals) did not determine the transaction value of the impugned goods. The transaction value of the impugned goods was decided by Commissioner of Central Excise, Hyderabad-IV vide Order-in-Original No. 53/12 dt. 30-10-2012 and vide the said order, the rebate claims of Rs. 8,91,295/- and 23,491/- were held admissible. The Commissioner (Appeals) by

allowing department's appeals implicitly held rebate claims inadmissible in toto. However, the said order No., 53/12 dtd. 30-10-2012 of Commissioner of Central Excise, Hyderabad-IV was not before Commissioner (Appeals) while deciding the impugned (Appeals). The CCE Hyderabad IV has already held in this Order-in-Original dated 30-10-2012 that the applicants are eligible for rebate claims of Rs. 8,91,295/- and Rs. 23,491/-. In these cases. Government therefore modifies the impugned Orders-in-Appeal to the extent that rebate claim of Rs. 891295 and Rs. 23491/- is admissible to the applicants in these cases.

11. The Revision Applications are disposed off in above terms.

12. So, Ordered.

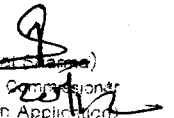


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Dr. Reddys Laboratories Ltd., (FTO-3)  
Sy. No. 45 & 46, Bachupally Village,  
Qutbullapur Mandal, Range Reddy District,  
Hyderabad- 500090.

ATTESTED




(भगवत शर्मा/Bhagwan Singh)  
सहायक आयुक्त/Assistant Commissioner  
C B E C -O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi

Order No.142-143/13-Cx dated 19.1.2013

Copy to:

1. The Commissioner of Central Excise & Service Tax, Hyderabad-I, Opp. L.B. Stadium Road, Basheer Bagh, Hyderabad-500004.
2. The Commissioner (Appeals-III), Central Excise & Service Tax, L.B. Stadium Road, Basheer Bagh, Hyderabad-500004.
3. The Deputy Commissioner of Central Excise, Hyderabad-B Division, Hyderabad-500004.
4. Dr. Reddys Laboratories Ltd., FTO-III, Survey No. 45 & 46, Bachupally Village,, Qutbullapur Mandal, Range Reddy District, Hyderabad- 500090.
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED

  
(B.P.Sharma)

OSD (REVISION APPLICATION)