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SPEED POST

F.No. 195/815-837/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue 2/1/14

Order No. 1414-1436 / 2013-CX dated 26.12.2013 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 applications filed under Section 35 EE of the Central Excise Act, 1944 against orders-in-appeal 146-168/2012 (Ahd-II)/AK/ Commr(A)/Ahd dated 28.6.12 passed by the Commissioner of Central Excise (Appeals), Ahmedabad-II

Applicant : M/s. M/s Cadila Healthcare Ltd., Survey No. 417, 419 & 420, Sarkhej-Balva Road, National Highway No.08, Village-Moraiya, Taluka-Sanad, Ahmedabad(Gujarat) 382 210.

Respondent : Commissioner of Central Excise, Ahmedabad-II

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ORDER

These revision applications are filed by M/s. Cadila Healthcare Ltd., Ahmedabad against orders-in-appeal No.146-168/2012 (Ahd-II)/AK/Commr(A)/Ahd dated 28.6.12 passed by the Commissioner of Central Excise (Appeals), Ahmedabad-II with respect to Orders-in-Original passed by the Deputy Commissioner of Central Excise, Division-I, II, IV/V, Ahmedabad-II.

2. Brief facts of the case are that the applicant was paying central excise duty continuously @4% (@5% w.e.f. 1.3.2011) adv. on its products falling under Chapter 3004.90 of the Central Excise Tariff Act 1985 cleared for home consumption availing the benefit of Notification No.4/2006-CE dated 1.3.2006 as amended and paying duty @10% adv. on the same goods, if cleared for export under claim for rebate by virtue of Notification No.2/2008-CE dated 1.3.2008. The applicant had paid duty from the cenvat credit account against their clearance for export. The applicant had claimed rebate in respect of the duty paid on export clearances. The adjudicating authority had sanctioned cash rebate @4% or @5% adv + cess on the FOB value and remaining amount was sanctioned by way of credit in their cenvat account under Rule 18 of the Central Excise Rules 2002 read with Section 11B of the Central Excise Act 1944.

3. Being aggrieved by the said orders-in-original, applicant filed appeals before commissioner (appeals), who rejected the same.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 In respect of Medicaments of Heading, 3004 of the First Schedule to the said Tariff Act, the Indian Parliament has floated two different Notifications, namely (1) Notification, 4/2006-CE dated 1.3.06, with Sl. Entry No. 62-C, whereunder, Medicaments of Heading, 3004 of the First Schedule to the said Tariff Act, are

chargeable to total Central Excise Duty of 4.12% advalorem and (2) Notification, 2/2008-CE dated 1.03.08, with Sl. Entry No. 21, whereunder, same Medicaments of the same Heading 3004 of the First Schedule to the said Tariff Act, are chargeable to total Central Excise Duty, at the rate of 10.30 ad valorem.

4.2 This means that at the disposal of the rebate claim of the applicants, they have two different Tariff Notifications, both being approved by the Indias Parliament, for the same Medicaments of the Heading 3004, of the First Schedule to the said Tariff Act.

4.3 By now it is settled question of law that when the Legislature has enacted two different Tariff Notifications, in respect of same finished excisable goods, it is upto the Central Excise assessee, to choose one which is most beneficial to him, for a given consignment of the finished excisable goods. This being the position, as out of the two notifications namely, (1) Notification, 4/2006-CE dated 1.03.06 and (2) 2/2008-CE dated 1.03.08, the applicants, have selected Notification, 2/2008-CE dated 12.03.08 and paid Central Excise Duty accordingly, on the export goods and their selection cannot be denied by the Excise Authorities.

4.4 The original authority, has without appreciating the legality of the matter, wrongly issued directions, for recredit of Central Excise Duty, at the rate of 6.18% Credit in the Cenvat Credit Account of the applicants, in lieu of issuance of a cheque of an equal amount and therefore, his orders-in-original, were itself, were bad in law. Orders-in-appeal is also equally bad in law.

4.5 Chapter 9 of the Supplementary Instructions, issued by the Central Board of Excise & Customs on 1.09.01 which are valid today and wherein, the Central Board of Excise & Customs, has clearly maintained that the expression, "Refund", under Section 11-B of the Central Excise Act, also means rebate of duty, paid on export goods. In terms of the Para 7.2 of the said Chapter 9 of the Supplementary Instructions, a refund or rebate, is always to be given only by a Cheque and the adjudicating authority, does not have any jurisdiction to allow rebate, by way of cenvat credit in the cenvat credit account of the applicants.

4.6 Attention is invited to Circular No. 795/28/2004-CX dated 28.07.04 issued by the Central Board of Excise & Customs, which is in favour of the applicants. The Circular No. 937/27/2010-CX dated 26.11.10 already stand over-ruled by the decision of the Hon'ble CESTA Tribunal in the case, titled as HYVA (India) Pvt. Ltd. vs. CCE Belapur – 2010 TIOL-1410-CESTAT-MUM.

4.7 Case laws relied upon by the applicants are as follows:

- Mangalam Alloys Ltd vs. CCE Ahmedabad 2010 (255) ELT 124 Tri(Ahmd)
- CCE Baroda vs. India Petro Chemicals Corporation Ltd.-1997 (92) ELT 13 (SC)
- HCL Ltd. vs. CCE New Delhi – 2001 (130) ELT 405 (SC)
- Share Medical Care vs. UOI 207 (209) ELT 321 (SC)
- CCE Bangalore vs. Maini Precision Products Pvt. Ltd.-2010 TIOL 1663 Tri.(Bang.)
- HYVA (India) Pvt. Ltd. Vs. CCE Belapur 2010 TIOL 1410 CESTAT Mum.

5. Personal hearing was scheduled in this case on 28.11.13 & 16-12-2013. Nobody attended the hearings. The applicants vide letter dated 10.12.13 has requested to waive the personal hearing and decide the case as per submissions made by them in revision applications.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the original authority sanctioned the rebate claims of the duty paid at the rat eof 4% or 5% and allowed recredit of the balance amount of duty paid in the cenvat credit account of the applicant. Commissioner (Appeals) upheld the impugned orders-in-original. Now, the applicant has filed these revision applications on grounds mentioned in para (4) above.

8. It is observed that Central Government issued Notification No. 2/08-CE dated 1.03.08 which has an effect of reduction in general rate of Central Excise Duty on various products from 16% to 14%. Thereafter, this notification was amended by Notification No. 58/08-CE dated 7.12.08 reducing the said general rate from 14% to 10%. Vide Notification No. 4/09-CE dated 24.02.09, said Notification 2/08-CE was

further amended to reduce the general rate of duty from 10% to 8%. Finally the Notification No. 2/08-CE was amended by Notification No. 6/10-CE dated 27.02.10 to enhance the said general rate of duty from 8% to 10%. Pharmaceutical drugs and medicines falling under Chapter 30 of First Schedule to Central Excise Tariff Act, 1985 covered under serial entry No. 21 of table to Notification No. 2/08-CE dated 1.03.08 as amended, attracted general tariff rate of duty @10%. At the same time the Notification No. 4/06-CE dated 1.03.06 providing for effective Nil rate of duty was amended vide Notification No. 4/08-CE dated 1.03.08 by inserting Sr. No. 62A, 62B, 62C, 62D & 62E for CETH 3001, 3003, 3004, 3005 & 3006(except 3006.60 & 3006.92) prescribing effective rate of duty @8%. Even in Joint Secretary (TRU) DO Letter No. 334/1/2008-TRU dated 29.02.08, it was clearly stated that the excise duty on drugs and pharmaceutical products falling under Central Excise Tariff Headings (CETH) No. 3001, 3003, 3004, 3005 & 3006 (except 3006.60 and 3006.92) has been reduced from 16% to 8% and thus general effective rate for all goods of Chapter 30 is now 8%. Thereafter, said Notification No. 4/06-CE was amended vide Notification No. 58/08-CE dated 7.12.08 where under effective rate of duty was reduced to 4% which was prevalent during the period when said exports were made.

8.1 The Joint Secretary (TRU) CBEC in his D.O. Letter DOF No. 334/1/2008-TRU dated 29.02.08 explained the changes made in excise and customs duties through Finance Bill, 2008 introduced in Lok Sabha on 29.02.08. In para 1, 2 & 3, he informed as under:-

> "*1.* *Central Excise*
>
> *2.* *General Cenvat Rate: (Notification No. 2/2008-CE)*
>
> *2.1 The general rate of excise duty (CENVAT) has been reduced from 16% to 14%. This reduction applies to all goods that hitherto attracted this general rate of 16%. In some cases, a deeper reduction has been made, the details of which are indicated in the subsequent paragraphs. These changes have been carried out by notification. The other ad volorem rates of 24%, 12% and 8% have bee retained.*

2.2 Since the reduction in the general rate has been carried out by notification, the possibility of the same product / item being covered by more than one notification cannot be ruled. In such a situation, the rate beneficial to the assessee would have to be extended if he fulfils the attendant conditions of the exemption.

3. Drugs and Pharmaceuticals

3.1 Excise duty on drugs and pharmaceuticals falling under Heading Nos. 3001, 3003 (export Menthol crystals), 3004, 3005 and 3006 (except 3006 60 and 3006 92 00) has been reduced from 16% to 8%. Thus, the general effective rate for all goods of Chapter 30 is now 8%. However, certain specified items such as life saving drugs continue to be fully exempt. Excise duty has been fully exempted on Anti-AIDS drug ATAZANAVIR, and bulk drugs for its manufacture."

The Joint Secretary (TRU) CBEC has made it amply clear that reduction in General Tariff Rate has been carried out by Notification and therefore there could be a possibility of same item being covered by two notifications and directed that the rate beneficial to assessee may be extended. In the instant case, the respondent has availed both the rates of duty, which is not allowed in TRU letter. Here basically the issue involved is whether rebates of duty paid at tariff rate or effective rate is to be allowed and not exactly regarding applicability of two notifications for payment of duty.

8.2 It is felt that it is necessary to go into background to find out the reason behind the issue of these two notifications. Notification No. 4/2006-CE dated 1.03.06 when issued, originally did not prescribed any concessional rate of duty to medicaments of Chapter Heading 3004 and a concessional rate of duty @8% was prescribed by amending the said notification vide notification no. 4/2008-CE dated 1.03.08 and the same was further reduced to 4% vide amending the said notification vide notification no. 58/2008-CE dated 7.12.08. On the other hand, the tariff rate of duty for the Chapter heading 3004 was 16% adv. However subsequently reduction in general tariff rate of duty was effected as under:

The Hon'ble Finance Minister in his speech while presenting the Union Budget for 2008-09 in the Parliament stated that:-

"PART-B

VIII. PROPOSALS TAX

"Para 144. The manufacturing sector is the backbone of any economy. It is consumption that drives production and it is production that drives investment. Having carefully studied current trends of production and consumption, I believe there is a need to give a stimulus to the manufacturing sector. Hence, I propose to reduce the general CENVAT rate on all goods from 16 per cent to 14 per cent."

This proposed reduction in general tariff rate cenvat duty was carried out vide notification no. 2/2008-CE dated 1.03.08.

Further, the Hon'ble Finance Minister in his speech while presenting the Union Budget for 2009-10 in the Parliament stated that:

"PART B
PROPOSALS TAX

116. Hon'ble Members are aware that the Government announced a series of fiscal stimulus packages, one of the key elements of which was the sharp reduction in the ad valorem rates of Central Excise Duty for non-petroleum products by 4 percentage points across the board on 7th of December, 2008 and by another 2 percentage points in the mean Cenvat rate on the 24th February, 2009.

117. ....

118. ....

119. ....

120. With --- --- further convergence of central excise duty rates to a mean rate – currently 8 per cent. I have reviewed the list of items currently attracting the rate of 4 per cent, the only rate below the mean rate. There is a case for enhancing the rate on many items appearing in this list to 8 per cent, which I

propose to do, with the following major exceptions: food items; and drugs, pharmaceuticals and medical equipment. Some of the other items on which I propose to retain the rate of 4 per cent are : paper, paperboard & their articles; items of mass consumption such as pressure cookers, cheaper electric bulbs, low priced footwear, water filers / purifiers, CFL etc.: power driven pumps for handling water and paraxylene."

Further, the Hon'ble Finance Minister in his speech while presenting the Union Budget for 2010-11 in the Parliament stated that:

"PART – B
INDIRECT TAXES

142. Unlike the time I presented the last Budget, symptoms of economic recovery are more widespread and clear-cut now. The three fiscal stimulus packages that the Government introduced in quick succession have helped the process of recovery significantly. The improvement in our economic performance encourages a course of fiscal correction even as the global situation warrants caution. Therefore, I propose to partially roll back the rate reduction in Central Excise Duties and enhance the standard rate on all non-petroleum products from 8 per cent to 10 per cent ad valorem. –"

From above, it is noted that intention of legislature behind said two notifications is best revealed in the above said budget speeches of Hon'ble Finance Minister. It is quite clear that Notification No. 2/08-CE dated 1.3.08 as amended from time to time was issued to reduce/alter the general tariff rate of duty.

8.3 Government observes that the instructions issued by CBEC regarding assessment of export goods are quite relevant to decide the issue involved in these cases. The instructions contained in para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual on Supplementary Instructions may be perused which are extracted as under:

"4. Sealing of goods and examination at place of dispatch

4.1 The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in the Annexure-14 to Notification No. 19/2004-Central Excise (NT) dated 6.9.2004(See Part 7). The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and / or Central Excise Rules, 2002. The value shall be the "transaction value" and should conform to Section 4 or section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the FOB value indicated by the exporter on the Shipping Bill."

The plain reading of said para, reveals that the export goods shall be assessed to duty in the same manner as the good cleared for home consumption are assessed. Further the classification and rate of duty should be as stated in schedule of Central Excise Tariff Act, 1985 read with any exemption notification and/or Central Excise Rules, 2002. These CBEC Instructions clearly stipulate that applicable effective rate of duty will be as per the exemption notification. The said instruction is issued specifically with respect to sanctioning of rebate claim of duty paid on exported goods and therefore the whole issue will have to be examined in the light of these instructions. As explained above, Notification No. 2/08-CE dated 1.03.08 as amended prescribed General Tariff rate of duty @10% which was in fact brought down from 16% to 14% and then to 8% and finally to 10% by different amending notifications. The notification No. 4/06-CE dated 1.03.06 as amended prescribed effective rate of duty from initial rate of 0% to 8% and finally to 4% by different amending notifications. As such it is not correct to say that it is a case of applicability of two notifications only and assessee is at liberty to choose any one notification which is beneficial to him. In this case, notification No. 2/08-CE as amended provided for General tariff rate of duty and Notification No. 4/06-CE as amended provided for effective rate of duty and they have to be strictly construed as such. Therefore they have to be read together as stipulated in para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual. In fact, this confusion has arisen since in this case the General tariff rate was reduced through Notification when

special economic stimulus package was announced in 2008 by Government to deal with ongoing economic recession. Government, therefore is of the view that duty was payable @4%/5% as the case may be on the exported goods also and rebate cannot be granted on the duty paid in excess of effective rate prescribed in the Notification No. 4/06-CE dated 1.03.06 as amended, as stipulated in the above said CBEC Instructions.

8.4 Further, it is also noticed that applicants are clearing goods for home consumption on payment of duty @4% or 5% in terms of Notification No. 4/06-CE as amended. The above said CBEC Instructions state that export goods are to be assessed in the same manner as the goods for home consumption. So, applicant has to assess all goods whether cleared for export or home consumption in a same manner. He cannot assess export goods as higher rate of duty @10% and good cleared for home consumption at lower rate of duty @4% or 5%. He has to choose any one notification and assess all clearance of goods in the same manner even if there are two effective rates of duty as per two notifications. In this case, the situation is different since Notification No. 2/08-CE as amended prescribed duty at General Tariff rate of 10% whereas effective rate of duty is 4% or 5% vide Notification No. 4/06-CE as amended. Even the Joint Secretary (TRU) CBEC D.O. Letter dated 29.02.08 stipulated that rate of duty beneficial to assessee have to be extended. The said letter has not allowed payment of duty under both notifications. Assessee could have opted for one notification for all clearance even if it is considered as case of applicability of two notifications.

8.5 Government notes that departmental authorities are bound by CBEC Circulars / Instructions and they have to comply with the same. Hon'ble Supreme Court has held in the case Paper Products Ltd. vs. CCE 1999 (112) ELT 765 (SC) that circulars issued by CBEC are binding on departmental authorities, they cannot take a contrary stand and department cannot repudiate a circular issued by Board on the basis that it was inconsistent with the statutory provision. Hon'ble Apex has further held that department's actions have to be consistent with the circulars, consistency and discipline

are of far greater importance than winning or losing court proceedings. In view of said principles laid by Hon'ble Supreme Court, Government upholds the applicability of above said CBEC Instructions in this case.

8.6 Applicant has relied upon number of case laws to the proposition that it was upto the assessee to choose a notification which is most beneficial to him. Government notes that in the cases cited namely CCE Baroda vs. India Petro Chemicals and HCL Ltd. vs. CC New Delhi, Hon'ble Supreme Court has held that when two notifications co-exit simultaneously, then assessee has the option to choose any one of the notifications beneficial to him. Hon'ble Apex Court has categorically held that in such a situation assessee has option to choose any one notification. Apex court has not stated that assessee can avail both the notifications simultaneously. Whereas in the instant case applicant has not chosen one notification for all the clearance but decided to avail benefit of both the notification. The apparent motive of clearing export goods at higher rate of duty @10% and goods for home consumption at 4% is to encash the accumulated cenvat credit. In terms of above said judgements also, the applicant is required to choose one notification whereas he has acted otherwise. Moreover, the said judgements are not in the context of sanctioning of rebate claims in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 6.09.04 of the duty paid either at general tariff rate or at the effective rate. The cited case laws mainly relate to admissibility of exemption notification benefit in case of dispute of classification / eligibility of claimant. None of the said judgement are on the issue of sanctioning rebate of duty paid on exported goods. For applicability of the cited precedents "Government is of the opinion which is guided by the observations of Hon'ble Supreme Court in para 10 of the judgement in case of Escorts Ltd. vs. CCE Delhi-II 2004 (173) ELT 113 (SC) observed, which inter alia stipulates precedent – circumstantial flexibility - One additional or different fact may make a world of difference between conclusion of two cases – Disposal of two cases by blindly placing reliance on a decision, not proper - In para 11 of said judgment following observations are made :-

"11. The following words of Lord Denning in the matter of applying precedents have become locus classicus:-

> " ...."*Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect in deciding such cases. One should avoid temptation to decide cases by matching the colour of one case against the colour of another ....".*

Therefore, there cannot be any strict statutory relied upon citation which can be taken as guiding precedents because each one of above citation have different background of factual merits pertaining to manufacturers manufacturing goods of different sub-headings following different set of Notifications, choosing different beneficial schemes and changing thereof in between a given financial year thereby leading to arise of different question of law.

8.7 Government further notes that following case laws lend support to the view that rebate is to be allowed of the duty paid on exported goods at effective rate prescribed in the notification and the excess paid amount as duty from the cenvat credit is to be refunded in the cenvat credit account.

8.7.1 Hon'ble Supreme Court has held in the case of CCE vs. Parle Exports 1988 (38) ELT 741 (SC) that when a notification is issued in accordance with power conferred by statute, it has statutory force and validity and therefore exemption under notification is, as if it were contained in the Act itself. Apex Court has clearly observed that any exemption notification specifying effective rate has to be complied with. In this regard, Hon'ble CESTAT Ahmedabad Bench in its judgement in the case of Mahindra Chemicals vs. CCE Ahmedabad 2007 (208) ELT 505 (T. Ahd.) while relying on above said Apex Court judgement has held that exemption notification has to be construed as if this rate was prescribed by statute and when the legislature has decided to exempt certain goods by notification, the exemption cannot be negated by an assessee by opting for payment of duty.

8.7.2 Hon'ble Supreme Court has also held in the case of M/s Belapur Sugar and Allied Industries Ltd. vs. CCE 1999 (108) ELT 9 (SC) that even if duty paid under ignorance of law or otherwise, the rebate cannot be refused since party has paid the duty. Further, Hon'ble Apex Court has held that if the duty paid shown to be not leviable or entitled for rebate, the revenue has to refund, adjust, credit such amount to the assessee as the case may be.

8.7.3 Government also notes that Hon'ble High Court of Punjab & Haryana has examined the identical issue in the case of M/s Nahar Industrial Enterprises Ltd. vs. UOI 2009 (235) ELT 22 (P & H) where in assessee had paid duty on export goods at tariff rate of 16% ignoring the exemption notification No. 29/04-CE and 30/04-CE both dated 9.07.04 prescribing duty @4% and nil respectively. Hon'ble High Court has upheld the Government of India Revision Order upholding the order of original authority. In this case, original authority had allowed rebate of duty paid at effective rate of 4% and allowed re-credit of balance amount in the cenvat credit account of assessee.

8.8 Applicants have relied upon CBEC Circular No. 795/28/2004-CX dated 28.07.04 and 937/27/2010-CX dated 26.11.10 in support of their claim that they can avail both the notifications.

In this regard, Government observes that subsequent to Budget, 2004 number of changes were made in the excise duty structure on Textiles and Textiles Articles. Regarding issue No. 1, CBEC clarified in Circular No. 795/28/2004-CX dated 28.07.04 as under:

"*Issue No. 1:*

Can a manufacture of Textiles or Textiles articles avail full exemption under No. 30/04-CE dated 9.07.04 as well as clear similar or dissimilar goods on payment of duty under Notification No. 29/04-CE dated 9.07.04 simultaneously?

Clarification:

Notification No. 29/04-CE (prescribing optional duty at the rates of 4% for pure cotton goods and 8% for other goods) and Notification No. 30/04-CE(prescribing full exemption) are independent notifications and there is no restriction on availing both simultaneously. However, the manufacturer should maintain separate books of account for goods availing Notification No. 29/04-CE and for goods availing Notification No. 30/04-CE"

In this case, both the Notifications prescribed effective rates of duty. Notification No. 30/04-CE prescribed nil rate of duty provided manufacturer does not avail cenvat credit on inputs. This clarification does not say that duty can be paid at tariff rate when the exemption notification is existing. Simultaneously availment of these notifications is allowed in the said circular as they pertain to different situation like whether he is availing cenvat credit or not. This circular is of no help to the applicant as in their case there are no two conditional notifications prescribing two effective rates. Moreover, there is no such circular issued in case of pharmaceutical products pertaining to Notification in question allowing their simultaneous availment. The other Circular No. 937/27/2010-CX dated 26.11.10 is not applicable as in the instant case there is no applicability of provisions of Section 5A(1A) of Central Excise Act, 1944.

8.9 Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.9.2008 in CWP Nos.2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. Vs. UOI reported as 2009 (235) ELT-22 (P&H) has decided as under:-

"Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat Credit is appropriate. As such the excess

paid amount/duty is required to be returned to the respondent in the cenvat credit account of the concerned manufacturer and the original authority already recredited the said amount in cenvat account of the applicants.

9. In view of position explained in foregoing para, Government finds that the applicants are not eligible to claim of rebate of duty paid @10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption notification No. 4/06-CE dated 1.03.06 as amended. As such Government is of considered view that rebate is admissible only to the extent of duty paid at the effective rate of duty i.e. 4% or 5% in terms of Notification No. 4/06-CE dated 1.03.06 as amended.

The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per Notification No. 4/06-CE is to be treated as voluntary deposit with the Government and the excess paid amount is to be returned / adjusted in cenvat credit account of assesse, which has already been done by original authority. Government finds no infirmity in impugned orders and therefore, upholds impugned orders-in-appeal.

11. These revision applications are thus rejected being devoid of merit.

12. So ordered.

(D P Singh)
Joint Secretary (Revision Application)

M/s Cadila Healthcare Ltd.
417-419, 420 National Highway No.8A
Sarkhej Bavla Road, Vill:Moraiya
Tal: Sanand, Dist: Ahmedabad-382210

Attested

(भागवत शर्मा/Bhagwat Sharma)
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

F.No. 195/815-837/12-RA

GOI Order No. 1414-1436 /13-CX dated 26.12.2013

Copy to:

1. Commissioner of Central Excise & Customs, Ahmedabad-II Commissionerate, Central Excise Bhavan, Ambawadi, Ahmedabad – 380 015.
2. Commissioner of Central Excise & Customs (Appeals-I), Ahmedabad-II, Central Excise Bhavan, Near Polytechnic, Ambawadi, Ahmedabad – 380 015.
3. The Deputy Commissioner of Central Excise, Division-IV, Ahmedabad-II, Vidya Chambers, Paldi Char Rasta, Paldi, Ahmedabad – 382210.
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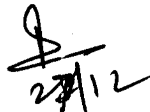

(B.P.SHARMA)
OSD (Revision Application)