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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, Cuff Parade,  
Mumbai- 400 005

F NO. 195/1384-1389/12-RA / 9u1  
195/499-506/13- RA

Date of Issue: 06/07/2018

ORDER NO. 183-196/2018-CX (WZ) /ASRA/Mumbai DATED 21.06.2018 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,  
1944.

Subject : Revision Application filed under Section 35 EE of the Central  
Excise Act, 1944 against Orders-in-Appeal as detailed in  
para (1) of the Order.

Applicant : M/s Intas Pharmaceuticals Ltd., 2nd Floor, Chinubhai Centre,  
Off. Nehru Bridge, Ashram Road,--Ahmedabad-382210

Respondents : (I) Commissioner of Central Excise, Ahmedabad-II.  
(II) Commissioner of Central Excise, Raigad.



ORDER

1. These revision applications are filed by the applicant M/s Intas Pharmaceuticals Ltd., against Orders-in-Appeal as detailed in table below :

Sl. No.	RA File No.	OIA No. & Date
1.	195/1384-1389/12	US/430-435/RGD/12 dt. 11.7.2012
2.	195/499-506/13	276-283/2012(AHD-II)CE/AK/Commr(A)AHD dt. 26.12.2012

2. Brief facts of these cases in common are that the applicant, a manufacturer exporter, filed rebate claims of duty paid on exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No 19/2004-CE(NT) dated 06.09.2004. The manufacturer had paid duty on said exported goods @ 10% under Notification No 2/2008-CE dated 01.03.2008 as amended. Similarly, the manufacturer had cleared said goods for home consumption on payment of duty at effective rate @ 4% upto 28.02.2011 and @ 5% w.e.f. 01.03.2011 under Notification No 4/2006-CE dated 01.03.2006 as amended. The original authority, after following due process of law held that duty was required to be paid on exported goods at the effective rate of duty in terms of the said Notifications as amended and rejected the rebate for goods cleared under total exemption and sanctioned the rebate claims to the extent of duty payable @ 4%/5% on FOB value of the goods.

3. Being aggrieved by the said Orders-in-Original, applicants filed appeals before Commissioners of Central Excise (Appeals), who upheld the impugned Orders-in-Original to extent of restricting cash rebate to 4%/5% of duty paid and allowing re-credit of excess duty paid in Cenvat Credit account.

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



- 4.1 The impugned order is not a speaking order & prima facie erroneous & thus liable to be set aside.
- 4.2 Both Notification No. Notification 2/2008-C.E., dated 01.03.2008 and Notification No. Notification 4/2006-CE., dated 01.03.2006 exist simultaneously and are mutually exclusive. Hence applicants can avail benefit of both the notifications at a time.
- 4.3 During the period in question effective rate of duty on goods falling under Heading 3004 was 5% read with Notification No. 4/2006-CE dated 01.03.2006. It is also not in dispute that by another Notification 2/2008-C.E., dated 01.03.2008, the rate of duty specified for goods falling under heading 3004 is 10%. There is nothing in either of the notification providing overriding effect. Therefore there is no violation of any of the provisions of Central Excise Act, 1944 read with any notification issued thereunder. Thus, both the notifications are mutually exclusive. When both the aforesaid Notifications co-exist simultaneously, the assessee has an option to choose between the aforesaid Notifications.
- 4.4 In any case once duty has been paid on goods exported and export of such goods is not in dispute there cannot be any ground to reject the rebate claim more particularly on such technical grounds that no duty was payable on goods exported.
- 4.5 They had correctly paid Central Excise Duty at the rate of 10.30%, under the said Serial Entry No.21 of the Table, to the Notification, 2/2008-C.E., dated 01.03.2008.
- 4.6 They rely on the following Case laws
- Mangalam Alloys Ltd., Vs, C.C.E., Ahmedabad, [2010 (255) ELT 124 (Tri- Ahmd),
  - CCE Baroda vs India Petro Chemicals Corporation Ltd.-1997(92) ELT 13 (SC),
  - HCL Ltd. VS CC New Delhi-2001(130) ELT 405 (SC),



- Share Medical care vs. UOI 2007 (209) ELT 321(SC),
- HYVA (India) Pvt. Ltd. Vs. CCE Belapur 2010 –TIOL- 1410 CESTAT Mum.

4.7 It is upto the applicants, to select a particular Notification, out of the two Notifications, enacted by the Indian Parliament and Department cannot choose another Notification, out of the two and grant lesser rebate. This being the position, as out of the two Notifications, namely, (1) Notification 4/2006-C.E. dated 01.03.2006 and (2) 2/2008- C.E, dated 01.03.2008, they have selected Notification 2/2008-C.E., dated 12.03.2008 and paid Central Excise Duty accordingly, on the export goods and their selection cannot be denied by the Excise Authorities. In the premises, the Original Authority, has without appreciating the legality of the matter, wrongly issued directions, for re-credit 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 Order-in-Original, itself, was bad in law and being upheld by the Respondent, his Order-in-Appeal, is also equally bad in- law.

5. Personal hearing was scheduled in this case on 05.02.2018. Ms. Anjali Hirawat, Advocate appeared for personal hearing on behalf of applicant. The Advocate reiterated the submissions made in revision applications alongwith submissions made in written brief submitted on the day of hearing. It was pleaded that Order in Appeal be set aside and revision applications be allowed. None attended personal hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. Government observes that Revisionary Authority vide Order No. 151-165/2015 – CX dated 30.11.2015 rejected all the aforesaid revision applications as time barred without going into the merits of the case.

21



8. Aggrieved by the same order, the applicant filed Writ Petition No. 8076/2016 before Hon'ble Bombay High Court. Hon'ble Bombay High Court, vide its Order dated 02.08.2017 condoned the delay in filing the revision applications before the Government and quashed and set aside Revisionary Authority's Order No. 151-165/2015-CX dated 30.11.2015 and restored the Revision Applications to file and directed the respondent to deal with the same on its own merits and in accordance with law. Accordingly, Government has now taken up Revision applications No. 195/1384-1389/12-RA and 195/499-506/13-Ra which are having an identical issue, for decision, vide this common order. The remaining one Revision application bearing No. 195/498/2013-RA which contains a different issue is being decided vide a separate order.

9. Upon perusal of records, Government observes that the applicant filed rebate claims of duty paid on exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE (NT) dated 06.09.2004. The manufacturers had paid duty on said exported goods @ 10% under Notification No. 2/2008-CE dated 01.03.2008 as amended. Similarly, the manufacture had cleared said goods for home consumption on payment of effective rate of duty 4% upto 28.02.2011 and @ 5% w.e.f. 01.03.2011 under Notification No. 4/2006-CE dated 01.03.2006 as amended. The original authority after following due process of law, held that duty was required to be paid on exported goods at the effective rate of duty payable @4%/5% and rebate has been allowed to that extent only and the remaining duty paid was allowed to be re-credited in Cenvat account. The Commissioner (Appeals) upheld the impugned Orders-in-Original restricting rebate to payment of duty @4%/5%. Now, the applicants have filed these revision applications against the impugned Orders-in-Appeal on the grounds stated above.

10. Government observes that the aforementioned issue stands decided in an identical case of M/s Cipla Limited vide GOI order No. 1568-1595/2012-CX dated 14.11.2012. After discussing the issue at length, the Government at para 9 & 10 of its Order observed as under :-

9. *In view of position explained in foregoing para, Government finds that there is no merit in the contentions of applicants that they are*



*eligible to claim 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 01.03.2006 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 01.03.2006 as amended, on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944.*

*10. In view of above discussion, Government observes that in the instant cases rebate claims are admissible of the duty paid at effective rate of duty @ 4% or 5% in terms of Notification No. 4/06-CE dated 01.03.2006 as amended, on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per of Notification No. 4/06- is to be treated as voluntary deposit with the Government. In such cases where duty is paid in excess of duty actually payable as held by Hon'ble Apex Court in the cases discussed in para 8.8.2 and also held by Hon'ble High Court of Punjab and Haryana as discussed in para 8.8.3 above, the excess paid amount is to be returned / adjusted in Cenvat Credit account of assessee. Moreover, Government cannot retain the said amount paid without any authority of law. Therefore, Government allows the said amount to be re-credited in the Cenvat Credit account of the concerned manufacture.*

Government further observes that the same view is taken by the Revisionary Authority in its subsequent Orders No. 41-54/2013-CX., dated 16.1.2013 and Order No. 1318-1329/2013 – CX dated 15.10.2013 reported in 2014 (313) E.L.T. 954 (G.O.I.) and 2014 (311) E.L.T. 833 (G.O.I.) respectively, in the case of M/s Cipla Limited.

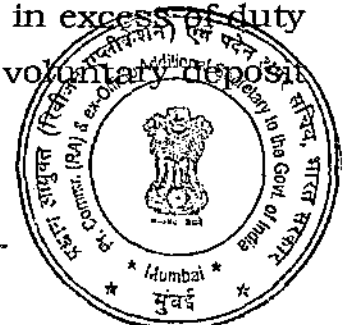
*W*



11. Government finds it pertinent to mention here Hon'ble Bombay High Court's observations vide its order dated 17.11.2014 in Writ Petition No. 2693 of 2013 filed by M/s Cipla Limited against Revisionary Authority's Orders No. 41-54/2013-CX., dated 16.1.2013 mentioned supra. While dismissing the petition filed by M/s Cipla Limited, Hon'ble Bombay High Court in its Order dated 17.11.2014 observed as under

8. *The question was of the amount paid in excess of duty at the above effective rate and in terms of the Notification. The Revisional Authority referred to such sum being lying with the Government as a deposit. The judgments of Punjab & Haryana High Court were referred and the opinion was that the Government cannot retain the amount paid without any authority of law. The direction to allow the amount to be re-credited in the Cenvat credit account of the concerned manufacturer does not require any interference by us because even if the impugned order of the Appellate Authority and the Order-in-Original was modified by the Joint Secretary (Revisional Authority), what is the material to note is that relief has not been granted in its entirety to the first respondent. The first respondent may have come in the form of an applicant who has exported goods, either procured from other manufacturer or manufactured by it. Looked at from any angle, we do not find that any observation at all has been made which can be construed as a positive direction or as a command as is now being understood. It was an observation made in the context of the amounts lying in excess. How they are to be dealt with and in what terms and under what provisions of law is a matter which can be looked into by the Government or even by the Commissioner who is before us. That on some apprehension and which does not have any basis in the present case, we cannot reverse the order or clarify anything in relation thereto particularly when that it is in favour of the authority. For all these reasons, the Writ Petition is misconceived and disposed of.*

12. As such Government is of considered view that the reliance placed by the applicant on various case laws, is thus out of place. Government therefore holds that the 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. 4/2006-C.E., dated 1.3.2006 as amended, as applicable on the relevant date on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% is to be treated as voluntary deposit.



made by manufacturer with the Government. The excess paid amount may be allowed to be re-credited in the Cenvat credit account of the manufacturer subject to compliance of the provisions of Section 12B of Central Excise Act, 1944. The impugned orders are modified to this extent.

13. These revision applications are disposed of in terms of above.

14. So ordered.

*(Handwritten Signature)*  
21/6/18

(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. <sup>183-196</sup> /2018-CX (WZ) /ASRA/Mumbai Dated 21.06.2018

To,

M/s Intas Pharmaceuticals Ltd.,  
2<sup>nd</sup> Floor, Chunilal Centre,  
Off Nehru Bridge,  
Ashram Road,  
Dist. Ahmedabad. 382 210

**Attested**

*(Handwritten Signature)*  
6/7/18

एस. आर. हिरुलकर  
S. R. HIRULKAR  
(A-C)

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate.
2. The Commissioner of CGST, (Appeals) Raigad, 5<sup>th</sup> Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. Principal Commissioner, CGST, Ahmedabad South Commissionerate, Central Excise Bhavan, Ambawadi, Ahmedabad-380 015,
4. Commissioner (Appeals), CGST, Ahmedabad South Commissionerate, Central Excise Bhavan, Ambawadi, Ahmedabad-380 015,
5. Assistant Commissioner, Vastrapur Division, CGST, Ahmedabad South, Central Excise Bhavan, Ambawadi, Ahmedabad-380 015
6. Sr. P.S. to AS (RA), Mumbai
7. Guard file
8. Spare Copy.

