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**GOVERNMENT OF INDIA**
**MINISTRY OF FINANACE**
**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. 195/641/13-RA /3185 Date of Issue: 25.06.2021

ORDER NO. 206 /2021-CX (WZ) /ASRA/MUMBAI DATED 31.5.21 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicants : M/s Timewell Technics Pvt. Ltd.

Respondents : Commissioner of Central Excise, Rajkot

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal Nos. 224 to 225/2005/77 to 78 (Raj)/Commr.(A)/Raj dated 16.03.2013 passed by the Commissioner(Appeals), Customs & Central Excise, Rajkot

**ORDER**

This Revision Application has been filed by M/s Timewell Technics Pvt. Ltd., 8, Parsana Society, 50 feet Road, Rajkot, Gujarat- 360 002 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. 224 to 225/2005/77 to 78 (Raj)/Commr.(A)/Raj dated 16.03.2013 passed by the Commissioner(Appeals), Customs & Central Excise, Rajkot.

2. The issue in brief is that,

2.1 The Applicant's unit at Verasal (Sharpur) was engaged in the manufacture of excisable goods viz. Quartz Watches falling under Chapter Sub-Heading No. 9102.90 of the Schedule annexed to the Central Excise Tariff Act, 1985. On scrutiny of the ER-1 Returns for the period from March, 2003 to June, 2003 it was noticed that the Applicant had cleared most of the products for export under claim of rebate of duty under Rule 18 of the Central Excise Rules, 2002. They had exported the watches worth Rs.1,87,82,725/- on payment of Central Excise duty of Rs.30,05,236/-at the rate of 16% adv. For domestic clearance, the Applicant was availing the benefit of MRP base valuation under Section 4A of the Act and clearing their goods by taking abatement of 35% from the MRP by virtue of Notification No. 13/2002-CE (NT) dated 01.03.2002 as amended by Notification No. 10/2003-CE dated 01.03.2003 and for export clearance they were paying the duty at the rate of 16% adv on assessable value under Section 4A of the Central Excise Act, 1944. Whereas the effective rate of duty for the goods i.e. Watches and Clocks of retail sale price not exceeding Rs.500/- per piece had been fixed unconditionally at the rate of 8 % Adv. vide Notification No. 10/2003-CE (NT) dated 01.03.2003, hence the Applicant was issued two Show Cause Notices dated 08.03.2004 for Rs. 421,590/- and dated 01.04.2004 for Rs. 10,81,028/- for recovery of the said amount being excess amount of the duty paid on the exported goods and erroneously granted as rebate to the Applicant.

2.2 The Adjudicating Authority Joint Commissioner, Customs & Central Excise, Rajkot vide Orders-in-Original Nos. 39-40/Joint Commissioner/2004 dated

18.10.2004 confirmed the demands of Rs. 421,590/- and Rs. 10,81,028/- respectively (Totaling to Rs. 15,02,618/- along with interest under Section 11AB of the Act).

2.3 Against the said Orders-in-Original, the Applicant filed an appeals before Commissioner (Appeals), Rajkot. The Commissioner (Appeals) vide Orders-in-Appeal Nos. 224 to 225/2005/77 to 78 (RAJ)/Commr. (A)/Raj dated 16.03.2005 rejected their appeals.

2.4 Aggrieved, the Applicant filed two separate appeals before the Tribunal vide Appeal No. E/1577 and 1578/2005 on 16.05.2005. At first stage the Hon'ble CESTAT vide Order No. A/833-834/WZB/2005/CIII / S/471-472/WZB/2005/CIII dated 21.06.2005 returned both their appeals as not maintainable on the ground of jurisdiction. The Applicant filed Misc. application for rectification of mistake before Tribunal stating that the issue involved is for rate of duty and not for rebate/refund, therefore under the jurisdiction of the Tribunal. After consideration, the Hon'ble CESTAT vide order No. M/582/WZB/06/C-11/FB 04.04.2006 re-called their earlier order and restored the appeals filed by the Applicant. After considering the submissions from both sides, the Hon'ble CESTAT vide Order No. A/2302-2303/WZB/AHD/08 dated 01.10.2008 allowed the appeal filed by appellant and held that the Applicant had correctly discharged their duty at 16% adv and rebate claim sanctioned was also proper.

2.5 Being aggrieved by the Order of the Hon'ble CESTAT, the Department filed Tax Appeal No. 1204 of 2010 before the High Court of Gujarat by taking the ground of jurisdiction of the Tribunal and the Hon'ble High Court vide Order dated 05.12.2012 held that this issue since pertains to rebate and the Tribunal had no jurisdiction and thereof in absence of jurisdiction, its order on merits consequently also fail. However, this will not affect the chances of the Applicant to approach appropriate authorities prescribed under the claw for the claim of the refund of rebate which shall decide the question in accordance with law without being influenced by any observation made hereinable.

2.6 Being aggrieved by the order of Hon'ble High Court, the Applicant filed a Special Leave Petition (Civil) No. 10269 of 2013 before the Supreme Court

of India. The Hon'ble Supreme Court vide Order No. 22.03.2013 dismissed their Special Leave Petition.

3. As directed by the Hon'ble High Court vide order dated 05.12.2012, the Applicant filed the current Revision Application on the following grounds:

(i) The Revision Application is filed before the Revisionary Authority in view of the Hon'ble High Court judgment in Tax Appeal No. 1204/2010 by order dated 05.12.2012 as up held by the Hon'ble Supreme Court order dated 22.03.2013. This appeal is filed within 3 months of the receipt of the Hon'ble Supreme Court order dated 22.03.3013 received by the Applicant on 05.04.2013.

(ii) The Applicant had correctly discharged the duty @16% and rebate claim sanctioned is also proper, legal and just. They had discharged the Central Excise duty at tariff rate of 16% and had not availed the benefit of partial exemption Notification No. 10/2003-CE dated 01.03.2003. It is the well settled legal proposition that out of two rates of duty/exemption notifications, the one which is beneficial to the assessee is allowed/preferred and the department in this case cannot make mandatory to avail the benefit of partial exemption notification. In this they relied on the following case laws;

(a) Commissioner of C.Ex. Bhopal Vs Minwool Rock Fibres Ltd. [2012 (278) ELT 581 (S.C.)] *"Classification of goods - Two competitive headings of Excise/Customs Tariff- Heading beneficial to assessee to be adopted [pars 13]"* ;

(b) Share Medical Care Vs UOI [2007 (209) ELT 321 (S.C.)] - *"Exemption - Option to choose - If applicant is entitled to benefit under two different Notifications or under two different heads, he can claim more benefit and it is duty of authorities to grant such benefits if applicant is entitled to such benefit - Section 25 of Customs Act, 1962 [para 16] ]";*

(c) H.C.L. Ltd Versus Collector of Customs, New Delhi [2001(130) ELT 405 (S.C.)] - *"Exemption notifications - Option - Where there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater relief regardless of the fact that that notification is general in its terms and the other notification is*

*more specific to the goods - Impugned order set aside and appeals allowed - Section 25 of Customs Act, 1962. (pars 1]".*

(iii) The Notification No. 10/2003-CE dated 01.03.2003 issued under Section 5A of the Central Excise Act, 1944 has been amended by the Government after the CESTAT had rendered various decisions to the effect that manufacturer can choose to pay duty even if the goods are fully exempted unconditionally. The fact that no provision has been made in Section 5A of the Central Excise Act, 1944 while amending the same, to prohibit manufacturers from paying duty in case of unconditional partial exemption at higher rate, the fault cannot be found with the Applicant for discharging the higher rate of duty. In view of this, the Applicant had correctly discharged the duty on exported goods which had been rightly rebated. Hence the Department cannot force the Applicant to pay the duty at concession rate under Notification No. 10/2003-CE dated 01.03.2003 issued under Section 5A of the Central Excise Act, 1944.

(iv) The plea of the Department that the value should be the transaction value under Section 4 or 4A of the Central Excise Act, 1944 does not hold ground particularly when no Maximum Retail Price (MRP) is required to affixed on exported goods and also clarified under Section 48(3) of the Standards of Weights and Measures Act, 1976.

(v) The similar clarification has also been issued by the CBEC vide Circular No. 625/16/2002-CX dated 28.02.2002. Hence, the items meant for export are not covered under the Standards of Weights and Measures Act, 1976 and are not required to MRP base assessment under Section 4A of the Central Excise Act, 1944. In this matter Applicant rely on the following case laws.

(a) Indo Nissin Foods Ltd. Vs Commr. of C.Ex. Bangalore-I [2008 (230) ELT 143 (Tri.-Bang.)];

*"Valuation (Central Excise) - Exported goods - Whether valued under Section 4 or 4A of Central Excise Act, 1944 -- Tribunal's decision in the case of Gillette India Ltd [2006 (193) ELT 331 (Tribunal)] holding that export consignments required to be valued in terms of transaction value under Section 4 ibid and not in terms of Section 4A ibid, even if the goods under export are specified*

*under Section 4A(1) ibid followed - Here, goods exported to Bhutan to he valued under Section 4 and not 4A ibid.[para 8.1] ".*

(b) Gillette India Ltd Vs Commr. of C.Ex., Jaipur [2006 (193) ELT 331 (Tri. - Del.)]

*"Valuation (Central Excise) - MRP based valuation - Exports are excluded from application of Standards of Weights and Measures Act, 1976 and rules made thereunder, and there is no requirement to mention MRP - In this view, their valuation has to be done only under Section 4 of Central Excise Act, 1944, and not under Section 4A ibid. [para 5] ".*

(vi) From the above, it is quite evident that the goods i.e. wrist watch meant for export are not covered under the Standards of Weights and Measures Act and are not assessed to MRP under Section 4A of the Central Excise Act, 1944, so the exemption Notification No. 10/2003-CE dated 01.30.2003 was not applicable in the Applicant's case as Notification No. 10/2003-CE dated 01.03.2003 which gives effective rate of Central Excise duty for specified goods, with respect to watches read as under:

| S.No. | Chapter or heading No. or sub-heading No. | Description of goods | Rate under the First Schedule |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 7. | 91 | Watches and clocks of retail sale price not exceeding Rs. 500/- per piece | 8% |

The 8% duty is applicable to watches and clocks of Retail Sale Price not exceeding Rs.500/- per piece will be inapplicable in their case as the watches exported out of India will not be assessed/ valued in rupees but in the foreign currency. Hence, in view also, the applicability of the exemption Notification No. 10/2003-CE dated 01.03.2003 to the exported goods does not arise and the Applicant has therefore correctly discharged the duty on the watches at full rate.

(vii) The total duty paid by the Applicant with respect of the exported goods is liable to be paid in cash as clarified by the CBEC vide Circular No. 687/3/2003-CX dated 03.01.2003. In this matter they rely on the following case laws.

(a) IN RE: Auro Spinning Mills [2012 (276) ELT134 (GOI)];

(b) IN RE: P.R.S. Permacel Pvt. Ltd [2006 (202) ELT 153 (GOI).

(viii) In an identical case of M/s. Ajanta Manufacturing Ltd. where-in the CESTAT had held that their product energy saving lamp was cleared by the unit by paying full rate of 16% instead of concessional rate of 8% under Notification No. 6/2006-CE and had availed the benefit of refund under area based Notification No. 39/2001-CE dated 31.7.2001. The department preferred an appeal to Hon'ble Supreme Court being the dispute regarding the rate of duty and exemption notification, where-in the Hon'ble Supreme Court in C.A. No. 7739- 42/2009 held as under:

*" ORDER*

*Having heard learned counsel for the appellant, we are of the view that no ground is made out for our interference with the impugned order. Admittedly, the respondent had paid duty @ 16% and, therefore, there is no reason why the refund should be restricted only to 8% on the ground that the assessee had paid duty at a higher rate than the rate at which the duty was otherwise leviable. Accordingly, the appeals are dismissed, leaving the parties to bear their own costs."*

(ix) EXEMPTION NOT AVAILED, DUTY PAID : REVENUE NEUTRAL

It has been alleged that the Applicant shall have to avail the Notification No. 13/2002-CE(NT) read with Notification 10/2003-CE(NT) and shall pay the duty at the rate 8% instead of 16 %. The Applicant submitted that the tariff rate for the said goods was 16% and they has paid the duty at the rate 16% on export and they can forego the benefit for the particular transaction, the especially for export. In this they relied on the following cases.

(a) Commr. of C.Ex. & Cus. Vadodara Vs Narmada Chematur Pharmaceuticals Ltd. [2005 (179) ELT 276 (SC)];

(b) Commr. of C.Ex. & Cus.(Appeasl), Ahmedabad Vs Narayan Polysplast [2005 (179) ELT 20 (SC)];

(c) Orissa Extrusions Vs Collector of C.Ex. Bhubaneswar [ 2000 (115) ELT 30 (SC)].

It has been consistently held that for availing the benefit of the modvat scheme the assesse can forego the exemption. In the present case, the Applicant had availed the modvat credit and paid full rate of duty.

(x) The Commissioner(Appeals) had observed that the adjudicating authority had rightly relied on the Supplementary Instructions issued by the Board under Chapter 8. But is very strange that nothing such has been written in the said Chapter 8 of Supplementary Instructions. The Commissioner(Appeals) has erred in relying on flimsy and assumed wordings, which is not written anywhere in the said Chapter. This is an apparent mistake on records and for which the order must be set aside.

(xi) Similarly, the Commissioner(Appeals) had erred in not relying on the Board's Circular No. 625/16/2002-CX, dated 28.02.2002. The Commissioner(Appeals) has wrongly mentioned the Circular dated 28.03.2003 in second Para of page 6 of the impugned order. It should be Circular dated 28.02.2002. Further the case on which the Applicant relied was not for export but for home consumption. Further the said Circular was dealing more than one aspect, for distinguishing the authenticity of the said board's Circular, the Commissioner has favorably construed the precedent of the said case. The said Circular clearly provides at Para 1, that for certain situation the provision of Section 4A cannot be applied, and one of that is for Export.

(xii) Exemption Notification No.10/2003-CE is applicable in respect of watches and clocks of retail price not exceeding Rs. 500/- per piece, even though export price of watches may be less than Rs. 500/- as observed by the Commissioner(Appeals). In this regard the Applicant submitted that, Rupee is currency of India, retail price cannot be affixed on the export goods therefore the exemption notification cannot be applied to watches sold in other countries and for the same reason the Standard of Weight and Measures Act also cannot be made applicable in respect of goods exported out of India. Since Indian Government has no control over sale price in respect of exported goods, it is clear that exemption notification is

inapplicable to exported goods. Whether the Applicant are encashing the Cenvat credit or not is not relevant. In any case, it is well settled legal position that the assessee has an option not to avail the exemption and the same cannot be thrust upon the assessee and it is for the assessee to choose the scheme which is most beneficial to him.

(xiii) The rebate had been granted to the Applicant, but not reviewed. That means the Department is of the opinion that, once the goods have been exported, the rebate of duty paid shall be granted, irrespective whether rightly paid or not this is violation of principal of promissory estoppels. Therefore also the order is to be said aside. This ground has not been considered by the appellate authority.

(xiv) The Applicant had actually exported the goods, therefore the rebate of duty shall be granted to the Applicant. The export is not denied by the Department and hence the rebate is not challengeable.

(xv) The Applicant prayed that the order of Commissioner(Appeals) may be set aside with consequential reliefs.

4. Personal hearing was fixed for 29.12.2017, 27.08.2019 and 18.09.2019, no one appeared on behalf of the Applicant and on behalf of the Department, the Assistant Commissioner(RRA), CGST, HQ, Rajkot vide letter dated 26.08.2019 submitted the para-wise comment. Still in view of a change in the Revisionary Authority, hearing was granted on 09.02.2021, 22.02.2021, 18.03.2021 and 25.03.2021 however none appeared for the hearing. Hence the case is taken up for decision based on records.

5. On the revision application, the Assistant Commissioner(RRA), CGST, HQ, Rajkot vide letter dated 26.08.2019 submitted the following para-wise comments:

(i) It is well settled position of law that an assessee is legally bound to avail the exemption or concession provided in a Notification unless a specific option is given for not availing the same. The Hon'ble Apex Court in the case of M/s. Ichalkaranji Machine Centre P. Ltd. Vs CCE [2004 (174) ELT 417] at para Nos. 13 & 14 has held that – *"when the benefit of the exemption/concessional*

*rate of duty is available it is incumbent upon the assessee to avail such benefit, to thwart misuse of the said notification".* Further an assessee cannot pay duty at different rates in respect of same product, whether the clearances are domestic or export The case laws referred by the Applicant are not applicable in this case as they pertain to issues of dispute in classification of goods or disputes relating to availing of benefit under different notification which is not the issue in the present case.

(ii) As discussed in above para, the provisions of Central Excise Act, 1944 are very clear in this regard. An assessee does not have any option to forgo the exemption or concession provided in an exemption notification and pay duty on his own. Hence the Applicant is required to pay duty at concessional rate under Notification No. 10/2003-CE dated 01.03.2003 issued under Section 5A of the Central Excise Act, 1944. Also. as per the provisions contained in the Chapter 8 of CBEC's Excise Manual of Supplementary Instructions, - *"The goods for exportation should 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. The value shall be transaction value and should confirm to Section 4 or Section 4A, as the case may be of Central Excise Act. 1944. Such value may be less than, or equal to, or more than the FOB value indicated by the exporter."* The relevant Notification No. 10/2003-CE is absolute and unconditional and nowhere it states that the rate of duty for home consumption and export would be different and that the assessee had option to pay full rate of duty on the finished goods exported.

(iii) The provisions of Section 48(3) of the Standards of Weights and Measures Act, 1976 prescribes that provisions relating to quotation of price, indication of weight or measure or number of packages or dimension can be made by an exporter as per the requirement of exporter. The said provisions nowhere grant any exemption from compliance of the said provisions. Therefore, the reliance placed by the appellant seeking exemption from the statutory provisions of Standards of Weights and Measures Act, 1976 in respect of export goods is misplaced.

(iv) As regards to the reliance placed by the Applicant on Board's Circular No. 625/16/2002-CX. Dated 28.02.2002, there are no comments to offer.

(v) The provisions of Board's Circular No. 687/03/2003-CX dated 03.01.2003 referred by the Applicant are not relevant in this case as they pertain to the issue of payment of duty - whether in cash or from Cenvat Credit account. The limited issue involved in this case is whether the Applicant's action of clearing the goods meant for export on payment of full rate of duty. i.e. 16% is proper or not in the backdrop of circumstances where the appellant is clearing their goods for home consumption on payment of concessional rate of duty, i.e. at 8% by availing of the benefit of Notification No. 10/2003-CE (NT) dated 01.03.2003.Therefore, the case laws quoted by the Applicant are also not applicable in this case.

(vi) The Applicant has placed reliance on the judgment of Hon'ble Supreme Court in C.A. No. 7739-42/2009-in the case of M/s Ajanta Manufacturing Ltd. However it is pertinent to note here that in this case, the Department had preferred an appeal to the Hon'ble Apex Court on account of dispute in the rate of duty and exemption notification. In the present case, there is no dispute regarding rate of duty. The issue in the present case is with respect to payment of higher rate of duty by the Applicant at tariff rate (16%) in respect of exports instead of effective rate of duty @ 8% in terms of Notification No. 13/2002-CE(NT) read with Notification no. 10/2003-CE(NT), and subsequently claiming of rebate @ 16%. Therefore, the grounds and facts in both the cases are different. Accordingly, the reliance placed by the Applicant on the said judgment is misplaced.

(vii) It is true that due to typographical error date of Board's Circular No. 625/16/2002-CX is mentioned as 28.03.2003 instead of 28.02.2002. However, the said Circular cannot be relied in this case as the same has been disaffirmed and distinguished by the Larger Bench of Tribunal in the case of M/s BPL Telcom (P) Ltd. [2004 (168) ELT 251]. Again, as already discussed in paras supra, it is well settled position of law that an assessee is legally bound to avail the exemption or concession provided in a Notification

unless a specific option is given for not availing the same. Further an assessee cannot pay duty at different rates in respect of same product, whether the clearances are domestic or export. The case laws referred by the Applicant are not applicable in this case as they pertain to issues of dispute in classification of goods or disputes relating to availment of benefit under different notifications which is not the issue involved in the present case.

(viii) As regards to the contention of the Applicant that since rebate is not reviewed, it means that the department has accepted that once the goods have been exported, the rebate of duty paid shall be granted, irrespective whether rightly paid or not. It is submitted that the said contention of the Applicant is devoid of merit and not backed by any case laws or instructions or authority. Further, it may be noted that in this case the rebate is not at all questioned, only the amount of rebate is disputed.

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

7. The issue is whether the Applicant is entitled to the rebate of the duty at tariff rate 16% adv in respect of exports, whereas the Applicant was paying concessional rate of duty @ 8% in terms of Notification No. 13/2002-CE(NT) read with Notification No. 10/2003-CE(NT) in respect of the goods when cleared for home consumption.

8. On perusal of the records, Government observes that on scrutiny of the ER-1 Returns for the period from March, 2003 to June, 2003 it was noticed that the Applicant, manufacture of excisable goods viz. Quartz Watches had cleared most of the products for export under claim of rebate of duty under Rule 18 of the Central Excise Rules, 2002 and the rebate claim was sanctioned to them. They had exported the watches worth Rs.1,87,82,725/- on payment of Central Excise duty of Rs.30,05,236/-at the tariff rate of 16% adv, whereas the effective rate of duty for the goods i.e. Watches and Clocks of retail sale price not exceeding Rs.500/- per piece had been fixed unconditionally at the rate of 8 % adv. vide

Notification No. 10/2003-CE (NT) dated 01.03.2003. The Department objected to clearance of export goods on full payment of duty i.e. tariff rate on the ground that the Applicant should have also availed the concessional rate of 8% adv in terms of Notification No.10/2003-CE (NT) dated 01.03.2003 even for export. The Department proposed to recover the differential rebate amount, being the difference between duty paid at 16% and 8% on the ground that retail sale price of watches cleared by the Applicant for exportation was less that Rs. 500/- each. Accordingly, the Applicant was issued two Show Cause Notices dated 08.03.2004 for Rs. 421,590/- and dated 01.04.2004 for Rs. 10,81,028/- for recovery of the said amount being excess amount of the duty paid on the exported goods and erroneously granted as rebate to the Applicant. Government finds that for domestic clearance, the Applicant was availing the benefit of MRP base valuation under Section 4A of the Act and clearing their goods by taking abatement of 35% from the MRP by virtue of Notification No. 13/2002-CE (NT) dated 01.03.2002 as amended by Notification No. 10/2003-CE dated 01.03.2003 and for export clearance the Applicant had paid duty through Cenvat Credit Account at the tariff rate of 16% adv on assessable value under Section 4A of the Central Excise Act, 1944.

9. Government, observes that the instructions issued by CBEC regarding assessment of export goods are quite relevant to decide the issue involved in this case. The instructions contained in Para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual on Supplementary Instructions are extracted under:

> *"**4. Sealing of goods and examination at place of dispatch** -*
> *Para 4.1 –*
> *The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in Annexure-14 to Notification No. 19/2004-CE (NT) dt 6-9-2004.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 F.O.B. value indicated by the exporter on the Shipping Bill.'*

Government finds that the plain reading of said Para, reveals that the export goods shall be assessed to duty in the same manner as the goods cleared for home consumption are assessed.

10. From the afore stated para 4.1 of Chapter 8, Government observes value of the export goods shall be the **transaction value** and **shall conform to** Section 4 **or** Section 4A of the Central Excise Act, 1944, as the case may be. Government observes that the value of the export goods shall not only conform to Section 4 or Section 4A but shall also be the transaction value. Thus, these instructions also contemplate assessment under transaction value only. Government finds that in view of the detailed discussions in foregoing paras, the value of the export goods determined under Section 4A of the Central Excise Act, 1944, assessing them to duty on MRP in terms of Section 4A of the Central Excise Act, 1944 for payment of excise duty is not correct.

11. Government further notes that the Government has reiterated instructions contained in Para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual on Supplementary Instructions in the Government of India's Order No. 87-102/2015-CX dated 29-9-2015 passed in the matter of M/s Cipla Ltd., GOI Order No. 160-225/2014-CX, 53-73/2015-CX dated 27-08-2015 (issued on 31-8-2015), and 23-49/2015-CX dt. 29.07.2015. Government in these orders held that the rebate claims were admissible to the extent of duty payable at effective rate of duty @ 4% or 5% as the case may be and not of duty paid at the tariff rate (10%) by availment of two notifications as all goods whether cleared for export or home consumption, to be assessed in same manner. From the above, it is clear that wording *"assessing the duty in the same manner as the goods for home consumption"* contained in Para 4.1 of Part-I of Chapter 8 of C.B.E. & C. Excise Manual on Supplementary Instructions relates to applying same rate of duty in the case of exports and home consumption and cannot be construed to mean that the value of exported goods should also be determined under Section 4A of Central Excise Act, 1944 and chargeable to duty under MRP based valuation in the same manner when cleared for home consumption.

12. Government relevantly notes that in the aforesaid GOI Orders, the Applicants were also manufacturing Medicaments falling under Chapter Heading 3003/3004 of Central Excise Tariff Act, 1985 which were chargeable to duty @ 4% or 5% adv. under MRP based valuation as per Notification No. 49/2008-C.E (N.T.), dated 24-12-2008 when cleared for home consumption. However, in all such orders, despite the fact that said medicaments were chargeable to duty under MRP based valuation for home consumption, the Government in all such orders has held as under:

> *"In view of position explained in foregoing paras, 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. 4/2006-C.E., dated 1-3-2006 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. 4/2006-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".*

13. Government further notes that in the following GOI orders also, Government has held that rebate is admissible on the duty paid as applicable on the relevant date on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944 even when the medicaments were chargeable to duty under MRP-based valuation under Section 4A of the Central Excise Act, 1944 for home consumption:

(a) GOI Order No. 332/2014-CX, dated 25-9-2014 [2015 (320) E.L.T. 657 (G.O.I.)], Re: Umedica Laboratories (Pvt) Ltd.
(b) GOI Order Nos. 167-173/2015-CX, dated 11-12-2015 [2016 (344) E.L.T. 691 (G.O.I.)], Re : Intas Pharmaceuticals Ltd.
(c) Order Nos. 316-331/2014-CX, dated 24-9-2014 [2016 (343) E.L.T. 852 (G.O.I.)] Re: Cadila Healthcare Ltd.

14. Government also notes that in one of the GOI Order No. 23-49/2015-CX dt. 29.07.2015 [2015 (326) E.L.T. 399 (G.O.I.)] in Re: Intas Pharmaceuticals Ltd.GOI held that

*"In view of position explained in foregoing paras, 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 @ 0%/4% or 5%. As such, Government is of considered view that lower authorities are legally right in holding that rebate is admissible only to the extent of duty paid at the effective rate of duty, i.e., 0%/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. Hence the Order-in-Appeal are upheld to that extent".*

Government from the aforesaid findings finds that GOI upheld the views of the lower authorities holding the admissibility of rebate to the extent of duty payable at 4% or 5% and not duty paid at 10% (i.e. Tariff rate).

15. The Government of India, in its revisionary capacity is duty bound to maintain consistency in its own determination to follow the ratio of the decisions of its own judgments. Therefore, in order to maintain uniformity in practice, Government views that the present proceedings are required to be decided on the same lines as in the GOI orders mentioned supra. Following the ruling in case laws discussed above, Government in current case holds that rebate would be admissible to the extent of duty paid at the effective rate of duty 8% in terms of Notification No. 10/2003-CE dated 01.03.2003 as amended i.e. as applicable on the relevant date on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944 on the transaction value (equivalent to FOB) value of exported goods determined under Section 4 of Central Excise Act, 1944. Hence the amount of rebate totaling to Rs. 15,02,618/- (Rupees Fifteen Lakhs Two Thousand Six Hundred and Eighteen Only) is recoverable from the Applicant under Section 11A of Central Excise along with interest as held by the original authority.

16. Government holds that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and has to be treated as voluntary deposit with the Government, which is required to be returned in the manner in which it was paid as the said amount cannot be retained by the Government. Government

therefore, holds that the excess duty paid by the Applicant over and above the FOB value shall be allowed as re-credit in the Cenvat credit account from which it was paid/debited subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944. Government however, directs that the re-credit of the excess duty paid is to be allowed by the original authority subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944 and only after examining the aspect of unjust enrichment to satisfy himself that the duty incidence had not been passed on and realized by the Applicant from the overseas buyer.

17. In view of the discussions and findings elaborated above, Government modifies Orders-in-Appeal Nos. 224 to 225/2005/77 to 78 (Raj)/Commr.(A)/Raj dated 16.03.2013 passed by the Commissioner(Appeals), Customs & Central Excise, Rajkot to the above extent.

18. The Revision Application is disposed off in above terms.

31/05/21

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

ORDER No 206/2021-CX (WZ) /ASRA/Mumbai DATED 31.05.21

To,
M/s Timewell Technics Pvt. Ltd.,
8, Parsana Society,
50 feet Road, Rajkot,
Gujarat- 360 002.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Central CGST Bhavan, Race Course Ring Road, Rajkot – 360 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy.