F.No. 195/606/12-RA, 195/45/13- RA,
195/335/14-RA, 195/175/15-RA,
195/461/16-RA

REGISTERED SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 195/606/12-RA, 195/45/13-RA ,
195/335/14-RA,195/175/15-RA
195/461/16-RA / 1192

Date of Issue: 03/08/2018.

ORDER NO.224-228 /2018-CX(WZ)/ASRA/MUMBAI DATED 26.07.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SETION 35EE OF THE CENTRAL EXCISE ACT,1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/606/12-RA	M/s Cipla Ltd	Commissioner,Central Excise, Mumbai-III
2	195/45/13-RA	M/s Cipla Ltd	Commissioner, Central Excise Raigad
3	195/335/14-RA	M/s Cipla Ltd	Commissioner, Central Excise, Mumbai-I
4	195/175/15-RA	M/s Cipla Ltd	Commissioner, Central Excise Raigad
5	195/461/16-RA	M/s Cipla Ltd	Commissioner, Central Excise,Mumbai-III

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944 against the Orders in Appeal No. BC/11/MUM-III/2012-13 dated 20.04.2012 passed by the Commissioner (Appeals) Mumbai-III; BC/293/RGD/2102-13 dated 27.09.2012 passed by the Commissioner (Appeals) Mumbai-III; PD/77&78/Mumbai-I/2014 dated 31.07.2014 passed by the Commissioner (appeals), Mumbai Zone-I; CD/204 to 206/RGD/15 dated 09.03.2015 passed by Commissioner (Appeals) Mumbai Zone-II and CD/256-268/M-III/2015 dated 30.03.2016 passed by the Commissioner (Appeals), Mumbai-II.

ORDER

These Revision applications are filed by M/s Cipla Ltd., Mumbai (Hereinafter referred to as 'applicant') against the Order-In-Appeal as detailed in Table below passed by Commissioner (Appeals) of Central Excise Mumbai Zone-I, Commissioner (Appeals) of Central Excise Mumbai Zone-II and Commissioner (Appeals) of Central Excise Mumbai-III.

TABLE

Sr. No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Issue in Brief
1	195/606/12 - RA	BC/11/MUM-III/11-12 dtd.20.04.2012	185R/RM/AC(RC)/M-III/11-12 dtd.30.01.2012	**"Duty Paid @10% on goods removed for export"**- Rebate sanctioned @4% and rejected excess paid.
2	195/45/13 - RA	BC/293/RGD/12-13 dtd.27.09.2012	1191/12-13/DC(Rebate)/ Raigad dtd.31.07.2012	**"Duty Paid @10% on goods cleared for export"**- Rebate claim sanctioned to the extent of 4% or 5% and Rejected excess paid . **Excess to FOB values sanctioned by CENVAT credit**
3	195/335/14-RA	PD/77&78/Mumbai-I dtd.31.07.2014	KII/229-R/2014(MTC) dtd.27.03.2014 KII/260-R/2014(MTC) dtd.01.04.2014	**"Duty Paid @10% on goods removed for export"**- Rebate claim sanctioned to the extent of 5%
4	195/175/15-RA	CD/204-206/RGD/15 dtd.09.03.2015	1383/13-14/AC-(Rebate)/ Raigad dtd.27.8.13	**Goods exported after six months Duty Paid @10%**
			2703/13-14/AC(Rebate)/ Raigad dtd.17.01.14	**Goods exported after six months**
			2227/13-14/AC(Rebate)/ Raigad dtd.27.11.13	**Goods exported after six months**
5	195/461/16 - RA	CD/256 to 268/MIII/2016 dtd. 30.03.2016	24 to 36/R/RC/AC (RC)M-III/15-16 DT.08.04.2015	**"Duty Paid @10% on goods removed for export"**-Initially said matter has been decided vide Order No.41-54/2013/CX dtd. 16.01.2013 by Revision Authority, wherein CENVAT credit allowed to Cipla Ltd., but Department filed Writ Petition (WP/2693/2014) at Hon'ble Bombay High Court on the ground of unjust enrichment. But Hon'ble Bombay High Court has dismissed Writ Petition 2693/2013 by order dated 17th November 2014. Hence department has allowed CENVAT credit vide these Order-In-Originals, aggrieved by decision Cipla Ltd has filed Appeals before Commissioner (Appeals)-M-II for want of cash rebate. Commissioner Appeal-M-III has set aside appeal and upheld order in original. Hence this Revision Application filed by Cipla Ltd.

2. The Brief fact of the case are that the applicant M/s Cipla Ltd. are engaged in the business of manufacturing of pharmaceutical goods falling under chapter 30 of CETH of Central Excise Tariff Act, 1985. The applicant is also holding license under provision of Drugs and Cosmetic Act, 1940 and Rules made their under and are manufacturing pharmaceutical products of various dosages forms such as tablets, capsules, liquids, suspensions, injections, aerosols etc. and marketing the same in local market as well as in overseas. They also have several supporting manufacturers as well. According to the applicant, each manufacturing lot of product is given distinct Batch number which is mentioned

on all manufacturing records as well on clearance documents. Goods are cleared for exports from manufacturing units following self-sealing and certification procedure, under cover of excise invoice and ARE-1 applications either under Letter of Undertaking /Bond without payment of duty, under rule 19 or on payment of duty under claim for rebate in terms of provision of rule 18 of central excise rule 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

3. In the instant cases, the applicant had paid duty on said exported goods @ 10% under Notification No. 2/08-C.E., dated 1-3-2008 as amended, whereas the same goods were cleared for home consumption on payment effective rate of duty @ 4% up to 28-2-2011 and @ 5% w.e.f. 1-3-2011 under Notification No. 4/2006-C.E., dated 1-3-2006 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@4% or @ 5% in terms of Notification No. 4/2006-C.E., dated 1-3-2006 as amended and sanctioned the rebate claims to the extent of duty payable @4% or @ 5%.

4. Being aggrieved by the said Orders-in-Original applicants filed appeals before Commissioner (Appeals) who after consideration of all the submissions, rejected their appeals and upheld impugned Orders-in-Original.

5. Now, being aggrieved with these Orders-in-Appeal, applicants have filed these revision applications before Central Government under Section 35EE of Central Excise Act, 1944 on the grounds mentioned in each application.

6. A Personal Hearing was held in this case on 29.06.2018 and Shri Prashant M. Mhatre, Senior Manager Indirect Taxation duly authorized by the applicant appeared for hearing. No one appeared on behalf of the Revenue. The applicant reiterated the submission filed through Revision applications. The applicant also filed submissions dated 06.07.2018 wherein they mainly contended as under :-

6.1 **(F.No.195/ 461/RA-16 Dtd. 01.07.16) -**

6.1 In this matter, they have paid excise duty @10% along with Education Cess and SHE Cess in terms of notification 2/2008 of C. Ex. dated 01.03.2008, however department have disputed the same and according to them they should have paid excise duty @4% and @5% as these are effective rates . Therefore, on this ground office of Maritime Commissioner (Rebate) , Mumbai-III (hereinafter referred as "Original Authority") has restricted our rebate claim to the extent of effective rate of excise duty @4% and @5%.excise vide I.T Order-In-Originals.

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6.2 Being aggrieved by decision of original authority they challenged all 13 Orders vide respective appeals before Commissioner (Appeals) Mumbai-III. However, Commissioner Appeals has rejected their appeals and passed 13 respective Order-In-Appeals. Being aggrieved by decision of Commissioner (Appeals) Mumbai-III, the applicant filed 13 Revision Applications. The said matter has been decided by Government vide Order No. 41-54/2013-CX dated 16.01.2013. While passing this order, the Revsionary Authority at para 10 has directed, *"The amount of duty paid in excess of duty payable at effective rate 4% or 5% as per notification no.4/06-CE is to be treated as voluntary deposit with the Government. The excess paid amount is to be returned /adjusted in cenvat credit account of assesse. 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 manufacturer. The Commissioner(Appeals) Order was modified to this extent."*

6.3 Being aggrieved by the decision of Cenvat credit given by Revisionary authority the applicant challenged the Order No 41-54/2013-CX dated 16.01.2013 by filing Writ Petition No 4367/2014 at Hon'ble Bombay High court. Further, the office of the Commissioner Mumbai-III have also challenged this Order dated 16.01.2013 of Revision Authority by filing writ petition (WP/2693/2013) at Hon'ble Bombay High Court on the ground of unjust enrichment.

6.4 Hon'ble Bombay High Court vide their order dated 17.11.2014 upheld the decision of Revsionary authority. Hon'ble Bombay High Court at para 8 of order stated that, " *The direction to allow the amount to be re-credited in the Cenvat Credit account of the concerned manufacturer does not required 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 (Revision Authority), what is the material to note 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 another manufacturer or manufactured by it. Looked at any angle, we do not find any observation at all has 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 amount lying in excess. How they are to be dealt with and in what terms and under what provision of law is a matter can be looked into by the Government or eve 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 classify anything in relation thereto particularly when it is in favor of the authority. For all these reasons, the writ petition is misconceived and disposed of.

6.5 Therefore, in view of order of Hon'ble Bombay High Court, original authority has allowed Cenvat Credit of Rs 21,52,481/- in respect of initially rejected rebate claims vide respective 13 Orders-in-Original Nos 24 to 36/R/RC/AC(RC)/M-III/15-16 dated 8th April 2015. Being aggrieved by decision of Original Authority they have again challenged all 13 Orders dated 08.04.2015 before Commissioner (Appeals) Mumbai Zone-II on the ground of Cash Rebate. However, Commissioner (Appeals) vide their Order in Appeal No. CD/256 to 268/M-III/2016 dated 30.03.2016 rejected their appeal and upheld Order -In-Originals. Being aggrieved by decision they have challenged the same before Government by filing revision application dated 01.07.2016. Hence in same rebate claim two parallel proceedings initiated and thus this present Revision Application.

6.6 However, this matter was already being decided by Government vide Revision Order No. 41-54/2013-CX Dt.16.01.2013, and they also filed Writ Petition No. 4367/2014 at Bombay High Court for cash rebate and not for Cenvat Credit.

6.7 Further, effective 1st July 2017, Goods and Service Tax Act, 2017 came in to force and provisions of Central Excise Act, 1944 not remained applicable to Chapter 30 of Central Excise Tariff Act, 1985. As per the provision of Chapter XX – "Transitional Provisions" introduced under Central Goods and Service Tax Act, 2017 (In Short will say "CGST Act 2017") they have migrated Central Excise Balances as on 30th June 2017 by filing ER-1 in CGST Act 2017 by filing GST-TRANS-1. Further, under GST there is not provision of CENVAT credit and therefore whatever CENVAT credit available prior to appointed day they have declared in ER-1 monthly return to migration in GST Law.

6.8 In present matter, by Order No. 41-54/2013-CX dated 16.01.2013 Government has already allowed Cenvat Credit in respect of excise duty paid @10% and original authority has rejected their rebate claim over and above to 4% or 5%. Therefore, they have decided to withdraw Writ Petition No. 4367 of 2014 and accordingly they have made application for withdrawal of writ petition before Hon'ble Bombay High Court. As per their application Hon'ble Bombay High Court vide their order dated 27th June 2017 has allowed their request and said writ

petition stands withdrawn. Accordingly, they have availed Cenvat Credit at their respective unit and declared the same in monthly Central excise ER-1 return for migration in GST law.

6.9 (F.No.195/335/RA-2014);(F.No.195/606/2012-RA); (F.No.195/45/RA-2013) and (F.No.195/175/RA-2015) :-

6.10 In these applications also the same issue involved. The applicant have paid excise duty @10% Adv. As per Notification No.2/2008-CE dt.01.03.2008 in respect of goods exported whereas the duty payable is 4% or 5% Adv. As per Notification No.4/2006 CE. dated 1.3.2006 as amended. In this matter, Original authority has rejected their rebate claims over and above to 4% or 5%. Commissioner (Appeals) vide their O.I.A No. PD/77&78/M-III/2016 dated 31.07.2014 has rejected their appeal and upheld the Order-In-Original passed by original authority. Being aggrieved by decision of Commissioner (Appeals) they have filed this revision application.

6.11 However, said matter has already decided by Government vide order No. 1568-1595/2012-CX dt.14.11.2012 & Order No.59-81/2018-CX/ASRA/Mumbai Dated 16.03.2018.

6.12 Further, as per the provision of Clause (a) of Subsection (6) of Section 142 of Central Goods and Service Tax Act, 2017, " every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before , on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of subsection(2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act". Therefore, applicant requested to consider the same for allowing the cash rebate instead of CENVAT credit.

6.13 **(F.No.195/45/RA-2013) – (O.I.A. No. BC/293/RGD/2012-13 dated 27.09.2012.) & (F.No.195/175/RA-2015) – (O.I.A. No.CD/204-206/RGD/15 dated 09.03.2015.):-**

Issue involved - Rebate claim sanction in cash to the extent of FOB Values declared in Shipping Bill -

6.14 In this matter, Original authority has restricted rebate claim to the extent of FOB value appeared in Shipping bill and aggrieved by the decision the applicant have preferred appeal before Commissioner Appeals. Commissioner (appeals) has set aside their appeal.

6.15 Further, said issue have been already clarified by the circular of Government of India, Ministry of Finance-510/06/2000-CX dated 03 Feb 2000, therefore, There is no question of re-quantifying the amount of rebate by the rebate sanctioning authority by reassessment. It is also clarified that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by claim. The said matter has already been decided by Government. Thus, they have filed revision application, and requested to allow their application.

6.16 **(F.No.195/175/RA-2015) – (O.I.A. No.CD/204 - 206/RGD/15 dated 09.03.2015):-**

Issue Involved – Rejection of rebate claim due to export of goods after six month

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

6.18 Conditions and limitations of notification no.19/2004- C.E.(N.T.) dated 06.09.2004. :- It is true that condition 2 (b) of notification no.19/2004-C.E.dated 06.09.2004, stipulates that *the excisable goods **shall be** exported within be **six months** from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow.* However, the said condition is not that rigid, so as, to take away the export benefit available to the appellants and can be relaxed by the Commissioner.

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

6.20 **Taxes not be exported along with goods** :-It is settled law and express policy of the Government to ensure that domestic levies are not exported along with goods. In the instant case, if rebate is denied simply for failure to export goods within stipulated time limit would

result in taxing of exported goods or burdening the export goods with domestic levy. This is against the legislative intent to encourage exports.

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

6.22 **Non-compliance of the condition not fatal to revenue:** -The appellants further submit, that, failure to export goods within time limit prescribed in notification no.19/2004-C.E.(N.T.) dated 06.09.2004, is neither fatal to revenue or nor serious prejudice to revenue, when actual export of goods admitted by revenue.

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

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

the apex court while distinguishing between mandatory and directory provisions observed as follows

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

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

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

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

6.26 In view of the foregoing, it is most respectfully prayed before your honour to re-consider the plea of the applicant with a view to give full effect to the zero-rated export policy of the Government of India.

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

8. The background of the case is that initially, Assistant Commissioner, Maritime Commissioner (Rebate) Mumbai-III rejected rebate of duty amount paid in excess i.e. over and above to 4% or 5% effective rate of excise duty vide 13 Order-In-Originals dated 17.05.2012, 18.05.2012, 24.05.2012, 30.05.2012, 27.06.2012, 28.06.2012, 10.08,2012, 22.08.2012, 23.08.2013 and 11.09.2012. Being aggrieved by the decision of various Order-In-Original the applicant preferred before Commissioner (Appeals) Mumbai-III. However same had been rejected by the Commissioner (Appeals) vide 13 Order-In-Appeals dated 27.09.2012 and 19.10.2012.

9. Being aggrieved by the decision these Orders-In-Appeals the applicant filed 13 Revision Applications before Government of India. However same had been decided by Government of India vide Order No 41-54/2013-CX dated 16.01.2013 holding that

> *there is no merit in the contentions of applicant 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. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per Notification No. 4/2006-C.E. 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 case 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 manufacturer.*

10. Being aggrieved by the decision of the Revision Authority which granted Cenvat credit (instead of cash rebate) vide Oder No 41-54/CX dated 16.01.2013, the applicant filed Writ Petition No. 4367/2014 before Hon'ble Bombay High Court. Similarly, being aggrieved by the decision of the order of Revision Authority, the Commissioner of Central Excise, Mumbai-III also filed Writ Petition No. 2693/2013.

11. Hon'ble Bombay High Court vide Order dated 17th November 2014 had dismissed the Writ Petition No 2693/2103 filed by the Commissioner of Central Excise Mumbai-III holding that

> *"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 orderinoriginal 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 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 eve 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. In view of the aforesaid background Government now takes up the following Revision Applications for decision.

13. **Revision Application No. 606/2012-RA** (arising out of Order in Appeal No. BC/11/MUM-III/2012-13 dated 20.04.12).

14. Government notes that in this case the adjudicating authority held that the applicant with an intention to obtain higher amount of rebate had paid duty at a higher rate of 10% as against effective rate of 4% duty payable and therefore, are entitled to get rebate at 4% on the value of the goods cleared for exports and accordingly sanctioned rebate of Rs.1,88,953/- and rejected the remaining amount of Rs.2,83,430/-. Commissioner (Appeals) in his Order in Appeal No. BC/11/MUM-III/2012-13 dated 20.04.2012, while rejecting the appeal filed by the applicant, observed that the applicant are eligible for cash refund of duty equal to duty payable at the effective rate of 4% during the relevant period, and the Adjudicating Authority has adopted correct method for sanction of rebate claims as per provisions of law.

15. Government notes that the issue has already been decided and in view of the Revisionary Authority and Hon'ble Bombay High Court's Orders discussed in preceding paras 11 to 13, Government holds that the applicant is not entitled to rebate of duty paid in excess of duty payable at effective rate as per of Notification No. 4/2006-C.E., dated 1-3-2006 as amended and the excess paid duty has to be re credited in the Cenvat Credit account of the applicant subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

16. In view of the discussions and findings elaborated above, Government sets aside Order in Appeal No. BC/11/MUM-III/2012-13 dated 20.04.12 and **the Revision Application No. 195/606/2012-RA at Sl. No. 1 of Table** is disposed of in the above terms.

17. Government now takes up **Revision Application No. 195/45/13-RA** (arising out of Order in Appeal No. BC/293/RGD/2012-13 dated

27.09.2012) for decision. Government observes that in all these cases the rebate claims filed by the applicant were restricted to effective rate of duty @ 5% Adv in terms of Notification No. 4/2011-CE dated 01.03.2011 and in respect of four rebate claims, were restricted to duty paid on FOB value where ARE-1 value was found to be more than corresponding FOB Value. However, Government observes that Commissioner (Appeals) in his impugned order has held that there is no dispute about the payment of excess amount by the manufacturer, therefore, the excess amount is required to be credited to the manufacturer's Cenvat Account, since the appellant cannot be granted rebate of the said excess payment. As regards the duty payment over and above effective rate of duty @ 5% Adv in terms of Notification No. 4/2011-CE dated 01.03.2011, in view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in preceding paras 11 to 13, Government holds that the applicant is not entitled to rebate of duty paid in excess of duty payable at effective rate as per of Notification No. 4/2006-C.E., dated 1-3-2006 as amended and the excess paid duty has to be re credited in the Cenvat Credit account of the applicant subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

18. In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. BC/293/RGD/2012-13 dated 27.09.2012 to the above extent and the **Revision Application No. 195/45/13-RA at Sl. No. 2 of Table** is disposed of in the above terms.

19. Government now takes up **Revision Applications No. 195/335/2014 -RA**, (arising out of Order in Appeal No. PD/77 & 78/Mumbai-I/2014 dated 31.07.2014) for decision.

20. Government observes that in this case also the applicant paid Excise Duty @10% in terms of Notification No. 2/2008 of CX. dated 01.03.2008. However, Rebate sanctioning authority sanctioned rebate claim to the extent of @ 4% or @5%, as per effective rates in terms of Notification No 4/2006 C.Ex. dated 01.03.2006 as amended. The Commissioner (Appeals) rejected the appeal filed by the applicants.

21. In view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in preceding paras 11 to 13, Government holds that the applicant is not entitled to rebate of duty paid in excess of duty payable at effective rate as per of Notification No. 4/2006-C.E., dated 1-3-2006 as amended and the excess paid duty has to be re credited in

the Cenvat Credit account of the applicant subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

22. In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. Order in Appeal No. PD/77 & 78/Mumbai-I/2014 dated 31.07.2014 to the above extent and the **Revision Application No. 195/335/2014 -RA at Sl. No. 3 of Table** is disposed of in the above terms.

23. Government now takes up **Revision Applications No. 195/175/2015-RA,** (arising out of Order in Appeal No. CD/204-206/RGD/15 dtd. 09.03.2015) for decision.

24. Government observes that Adjudicating Authority rejected the rebate claim of the applicant on the ground that the impugned goods were exported after 6 months of their clearance from the factory which in violation of condition 2 (b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 and hence inadmissible. Commissioner (Appeals) vide Order in Appeal No. CD/204-206/RGD/15 dtd.09.03. 2015 rejected the appeal filed by the applicant.

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

> *9. Government notes that as per provision of Condition2(b) of notification No. 19/04-CE (NT) dated 06.09.04, the excisable goods shall be exported within 6 months from the date on which they were cleared for export from the factory of manufacturer or within extended period as allowed by commissioner of Central Excise. In this case, undisputedly, goods were exported after lapse of aforesaid period of 6 months and applicant has not been granted any extension beyond 6 months by Commissioner of Central Excise. This is a mandatory condition to be complied with. Since the mandatory condition is not satisfied the rebate claim on goods exported after 6 months of their clearance from factory is not admissible under Rule 18 read with Notification 19/04-CE (NT) dated 06.09.2004.*

26. In view of the foregoing, Government holds that the applicant is not entitled to rebate of duty paid on goods exported after six months of clearance from factory.

27. In view of the discussions and findings elaborated above, Government upholds the Order in Appeal No. Order in Appeal No CD/204-206/RGD/15 dtd.09.03. 2015 and **Revision Application No. 195/175/2015 -RA** at Sl. No. 4 of Table **is dismissed as devoid of merit.**

28. Government now takes up **Revision Applications No. 195/461/2016-RA,** (arising out of Order in Appeal No. CD/256-268/MIII/2016 dtd.30.03.2016) for decision.

29. In this case as already discussed at para 10 to 13 supra, the department filed Writ Petition No. 2693/2013 against Government of India, Revision Authority's Order No 41-54/CX dated 16.01.2013

30. However, Hon'ble Bombay High Court dismissed the Writ Petition No 2693/2103 vide Order dated 17th November 2014 filed by the department. Therefore, Assistant Commissioner of Central Excise (Rebate) Mumbai-III sanctioned rejected rebate claim over and above to 4% or 5% by way of allowing CENVAT credit of the excess duty paid vide 13 Order-In-Originals Nos 24 to 36 /R/RC/AC(RC)/M-III/15-16 dated 08.04.2015. Being aggrieved by the decision of various Order-In-Original dated 8.04.2015 the applicant preferred appeal before Commissioner (Appeals) Mumbai-II seeking entire rebate in cash. However, the same had been rejected by the Commissioner (Appeals) vide common Order-In-Appeal No CD/256-268/M-III/2016 dated 30.03.2016.

31. Being Aggrieved by the decision of Orders-In-Appeal No.CD/256-268/M-III/2016 dated 30.03.2016, applicant filed present Revision Applications F.No.195/461/2016-RA before Government of India.

32. Government observes that the applicant had requested Hon'ble Bombay High Court by application for withdrawal of writ petition No 4367/2014 filed against the GOI Order 41-54/2013-CX dated 16.01.2013 in view of the Transitional Provision of Goods and Service Tax Act, 2017. Accordingly, Hon'ble Bombay High Court by order dated 27th June 2017 has ordered as under :

> *1. The learned Counsel for the respondents submits that the department would examine the eligibility of the petitioner under the new law. In view of that, the learned Counsel for the appellant seeks leave to withdraw the petition.*

2. In case the Department decides against the appellant, then, the appellant is at liberty to assail the same

Government observes that in view of the aforesaid Order passed by the Hon'ble Bombay High Court the Revision Application No. 195/461/2016, seeking entire rebate claim to be sanctioned in cash has become redundant and needs to be dismissed. Accordingly, Government upholds the Order-In-Appeal No. CD/256-268/M-III/2016 dated 30.03.2016 and the **Revision Application bearing No. 195/461/16-RA** at Sl.No.5 of Table at para 1 **is dismissed as devoid of merits.**

33. Government however, directs that in respect of Revision Applications at Sr. No. 1 to 3 of the table at para 1 above, 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 realised by the applicant from the overseas buyer.

34. All the 5 Revision Applications viz. 195/606/12 – RA, 195/45/13 – RA, 195/335/14-RA, 195/175/15-RA, 195/461/16 – RA are disposed off in terms of above.

35. So Ordered.

28.7.17

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To

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

ATTESTED

28/7/17

S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to :

1. The Commissioner of GST & CX, Mumbai Central,
2. The Commissioner of GST & CX, Mumbai East,
3. The Commissioner of GST & CX, Belapur,
4. The Commissioner of GST & CX (Appeals-II) Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra(E), Mumbai – 400 051.
5. The Commissioner of GST & CX (Appeals) Belapur, CGO Complex, 6thFloor, Belapur.
6. The Assistant Commissioner of (Rebate), GST & CX Belapur,
7. The Assistant Commissioner of (Rebate), GST & CX Mumbai East
8. The Assistant Commissioner of (Rebate), GST & CX Mumbai Central.
9. Sr.P.S. to AS(RA),Mumbai.
10. Guard File.