REGISTERED
SPEED POST

195/795-798/12-RA, 195/235/13-RA, 195/236-240/13-RA, 195/243/13-RA, 195/773-774/13-RA, 195/884/13-RA, 195/234/13-RA, 195/217-221/13-RA, 195/241/13-RA, 195/242/13-RA, 195/430-434/13-RA

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 30/7/15

ORDER NO. 23-49/2015-CX DATED 29.07.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

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

Applicant : M/s Intas Pharmaceuticals Ltd., Plot No. 457 & 458, Village Matoda, Taluka Sanand, Distt. Ahmedabad

Respondents :
(I) Commissioner of Central Excise, Ahmedabad-II
(II) Commissioner of Central Excise, Mumbai-I
(III) Commissioner of Central Excise, Raigad
(IV) Commissioner of Central Excise, Ahmedabad-I

*****

ORDER

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.	Name of Petitioner/ Applicant	O.I.A. NO. & date	O.I.O. NO. & date
1.	195/795-798/12	M/S INTAS PHARMA LTD. Vs CCE AHBD-II	169-172/2012 (Ahd-II) CE/Ak/Commr.(A) dt. 28-06-12	1514/Rebate/2012 dated 10.4.2012 & others
2.	195/235/13	-DO-	297/12(AHD-II) CE/Ak/COMMR(A)/AHD dt. 31.12.12	2759/Rebate/2012 dt. 27.6.2012
3.	195/236-240/13	-Do-	250-254/12(AHD-II) CE/Ak/ COMMR(A) /AHD dt. 18-10-12	MP/191-192/2012/Rebate dt. 20.3.2012
4.	195/243/13	-Do-	255/12(AHD-II) CE/Ak/COMMR(A)/AHD dt. 22-10-12	32-37/ADC/Demand/2012/AS dt. 15.3.2012
5.	195/773-774/13	-DO-	90-91/2013 (AHD-II)CE /AK/Comm(A)/ AHD dt. 16-04-13	29-34/DC/Demand/AP/2012 dt. 23.11.2012 & others
6.	195/884/13	-DO-	168/13 (Ahd-II)CE/AK/ Commr(A)/ AHD dt. 26-08-13	10/JC/2013/VG dt. 27.2.2013
7.	195/234/13	M/S INTAS PHARMA LTD. VS CCE, Mumbai-I	BR(333-364)M-I/12 dated 03-10-12	K-II/663-R/2011 (MTC) dt. 12.12.2011.
8.	195/217-221/13	INTAS PHARMA LTD. Vs CCE RGD.	US/846-850/RGD/12 dt. 27-11-12	545/12-13/DC(Rebate) dated 22.5.12 & 324/11-12/DC(rebate) Raigad dated 30.04.12
9.	195/241/13	-DO-	BC/432/RGD (R)/ 12-13 dt. 29.11.12	1363/12-13/DC(Rebate)/Raigad dt. 22.8.12
10.	195/242/13	-DO-	BC/430/RGD (R)/ 12-13 dt. 29.11.12	1232/12-13/DC(Rebate)/Raigad dt. 2.8.12
11.	195/430-434/13	-DO-	US/871-875/RGD/12 dt. 11-12-12	323/12-13/DC(Rebate)/Raigad dt. 30.4.12 & others

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. 2/08-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 28.02.11 and @ 5% w.e.f. 01.03.11 under Notification No. 4/2006-CE dated 01.03.2006 as amended and @ 0% under Notification No.04/2006-CE dated 1.3.2006 read with Notification

No.21/2002-Cus dated 1.3.2002. 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 @0%/ 4%/5% on FOB value of the goods. In some cases, the demand was confirmed for recovery of the rebate already sanctioned on the ground that the rebate was erroneously sanctioned @10% whereas same goods were absolutely exempted from payment of duty under Notification No.4/2006-CE dated 1.3.2006 read with Notification No.21/2002-Cus dated 1.3.2002. In some cases, the rebate claims were also held inadmissible for the reasons of non-submission of certain documents/certain procedural lapse. In some cases, demands have been confirmed for recovery of rebate sanctioned erroneously at the rate of 10% when the goods were actually chargeable to 'Nil' rate of duty under Notification No.4/2006-CE dated 1.3.2006 read with Notification No.21/2002-Cus dated 1.3.2002.

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 allowed re-credit of excess duty paid in Cenvat Credit account and rejected the appeals of the applicant.

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 It is a question of fact that as per Serial Entry No.62-C of the Table, to the Notification 4/2006-CE., dated 1.3.2.006, Medicaments of Heading, 3004 of the First Schedule to the said Tariff Act, are assessable under MRP Based Valuation, under Section 4A of the Central Excise Act, at the total Central Excise Duty rate of 4.12% (5.15% as amended), the said Tariff Notification, has been issued by the Central-Government, under Section 5-A(1) of the Central Excise Act and has been approved by the Indian Parliament. The Applicants, now prefer to refer to Serial Entry No.21 of the Table, to the

Notification, 2/2008-C.E., dated 1.3.2008, whereunder, the same Medicaments of Heading, 3004 of the First Schedule to the said Tariff Act, are assessable to the CENVAT, at the rate of 10% ad valorem and 8accordingly, the total duty rate on Medicaments of Heading 3004 of the First Schedule to the said Tariff Act, works out to 10.30%, under the said Serial Entry No.21 of the Table, to the Notification, 2/2008-C.E., dated 1.3.2008. Notification 2/2008-C.E. dated 1.3.2008, has been issued by the same Central Government, under the provisions of Section 5A(1) of the Central Excise Act, with approval of the Indian Parliament.

4.2 In the premises, 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(C.E.), dtd 01.03.06, with Serial 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%(5.15% as amended) ad valorem and (2) Notification 2/2008-C.E., dated 1.3.2008, with Serial 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. Under the same Notification No.4/2006(CE) dated 1.3.2006, same goods are absolutely exempted from payment of duty.

4.3 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 1.3.2006 and (2) 2/2008-C.E, dated 1.3.2008, the Applicants, have selected Notification 2/2008-C.E., dated 12.3.2008 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.

4.4 The Applicants invite attention to Chapter 9 of the Supplementary Instructions, issued by the Central Board of Excise & Customs on 1.9.2001, 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. In these premises, the Order-in-Original of the Original Authority, granting rebate under Rule 18 of the Central Excise Rules 2002, by way of CENVAT Credit, is bad in law and requested to direct the Original Authority to refund the balance amount of Rebate by cheque with interest at appropriate rate, under Section 11B of the Central Excise Act, read with Section 11-BB.

4.5 The applicant also stated that the respondent has also argued that from the Budget speech of the Finance Minister, as cited by him in his Order-in-Appeal, the purpose and object of keeping duty rate of pharmaceuticals products at low rate of 4% is to keep the price of Pharmaceuticals as low as possible and therefore it cannot be the intention of the Government to export goods at higher price it being the priority area. Government will always want to keep cost of exportable goods low and therefore it does not fit in to the logic that it was ever intention of the Government to allow export of goods at the Central Excise duty rate of 10%, notwithstanding the rebate but this argument is unreasonable by paying Central Excise duty at the rate of 10.30% of export goods because the foreign buyer is not going to pay the said duty element and the same is returned back by the Central Government to the exporter, given rate at the rate of 4.12% instead of 10.30%, the cost of pharmaceuticals products exported would be enhanced. So the arguments of the respondent is contradictory in as much as he

would like to see that the cost of export of goods reduces but sanctioning rebate claim, at the rate of 4.12% the cost of export goods increased on the contrary.

4.6 Case laws relied upon by the applicants are:

- 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 CCE New Delhi-2001 (130) ELT405(SC)
- Share Medical care vs. UOI 297 (209) ELT 321(SC)
- CCE Bangalore vs. Maini Precision Products Pvt. Ltd2010 TIOL 1663 Tri(Bang.)
- HYVA (India) Pvt. Ltd. Vs. CCE Belapur 2010 TIOL 1410 CESTAT Mum.

4.7 In some cases, demands have been confirmed for recovery of rebate sanctioned erroneously at the rate of 10% when the goods were actually chargeable to 'Nil' rate of duty under Notification No.4/2006-CE dated 1.3.2006 read with Notification No.21/2002-Cus dated 1.3.2002. In this regard, the applicant has contended that section 5A (1A) also will be attracted only when there is only one Notification issued under Section 5A exempting excisable goods absolutely from whole of the duty leviable and they are at liberty to choose either of the beneficial Notifications.

5. Personal hearing was scheduled in this case on 13.03.15. Shri Hiren Soni, Asstt. Manager (W.H) and Shri Hemang Vaishnav, Asstt. Manager (IT) appeared for personal hearing on behalf of applicant. The applicant submitted written submission dated 13.3.15, wherein, they mainly reiterated contents of impugned revision applications. 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 notes that applicants 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. 2/08-CE dated 01.03.2008 as amended. Similarly, the manufacturers had cleared said goods

for home consumption on payment effective rate of duty @ 4% upto 28.02.11 and @ 5% w.e.f. 01.03.11 under Notification No. 4/2006-CE dated 01.03.2006 as amended or in some cases at 0% in terms of Notification No.21/02-Cus dated 1.3.2002 read with Notification No.04/2006-CE dated 1.3.2006. 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 @ 0%/4%/5% and rebate has been allowed to that extent only. In some cases the remaining duty paid was allowed to be re-credited in cenvat account. The Commissioner (Appeals) upheld the impugned Orders-in-Original. Now, the applicants have filed these revision applications against the impugned Orders-in-Appeal on the grounds stated above.

8. The applicants have contended that both the said notifications have approval of Parliament and therefore they are at liberty to avail any notification which ever they find beneficial to them. Therefore they have claimed to be eligible for rebate of duty paid on export goods @10% in terms of Notification No. 2/08-CE dated 1.03.08 as amended.

8.1 It is observed that Central Government issued Notification No. 2/08-CE dated 1.03.08 which had an effect of reduction in general rate of Central Excise duty on various products from 16% to 14%. Subsequent amendment by Notification No. 58/08-CE dated 7.12.08 reduced the general rate from 14% to 10%. Vide Notification No. 4/09-CE dated 24.2.09, it 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%.

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%. The Notification No. 4/06-CE was further amended vide Notification No. 4/11-CE dated 01.03.2011 and effective rate of duty was enhanced to 5% which was prevalent during the period when said exports were made. In some cases, the goods were absolutely exempted from payment of duty in terms of Notification No.4/2006-CE dated 1.3.2006 read with Notification No.21/2002-Cus dated 1.3.2002.

8.2 Joint Secretary (TRU) vide DO Letter No. 334/1/2008-TRU dated 29.02.08 clarified 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%. He explained the changes made in excise and customs duties through Finance Bill, 2008 introduced in Lok Sabha on 29.02.08 vide para 1, 2 & 3, as under which are reproduced:-

"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 been 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 here in above 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. However, in the present case the issue involved is not so much regarding the applicability of two notifications for payment of duty but whether rebate of duty paid at tariff rate or effective rate are to be allowed.

8.3 It is felt that it is necessary to visit the background behind the issue of these two notifications. Notification No. 4/2006-CE dated 1.03.06 when issued, originally did not prescribe 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. Further, Notification No. 4/06-CE was amended vide Notification No. 4/11-CE dated 01.03.2011 and the effective rate of duty was enhanced to 5%. 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. 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 the above, it is quite clear that Notification No. 2/08-CE dated 1.3.08(14%) and subsequent amending Notification No. 58/08-CE dated 7.12.08 (10%), 4/09-CE dated 24.02.09(8%) and 6/10-CE dated 27.02.10(10%), were issued to reduce/alter the general tariff rate of duty.

8.4 Government observes that the instructions issued by CBEC regarding assessment of export goods are also 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 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."

A 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. The CBEC instructions clearly stipulate that applicable effective rate of duty will be as per the exemption notification while sanctioning 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%, 8% to 4% and finally to 5% by different amending notifications. As such it is not correct to say that it is a case of applicability of two notifications only and that the 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. Normally changes in General tariff rate are carried out through Finance Bill / Act. Government, therefore, is of the view that duty was payable @ 0% / 4% / 5% on the export goods 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.

8.5 Further, it is also noticed that applicant are clearing goods for home consumption on payment of duty @0%,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 the same manner. They cannot assess export goods as higher rate of duty @ 10% and good cleared for home consumption at lower rate of duty @ 0%/ 4%/ or 5%. Any one notification has to be chosen and clearance of goods have to be in the same manner even if there are two effective rates of duty as per two notifications. In this case, the situation is different. In this case, there are two notification, one prescribes General tariff and other prescribes effective rate. Notification No. 2/08-CE as amended prescribed duty at General Tariff rate of 10% whereas effective rate of duty is 0% or 4% / 5% vide Notification No. 4/06-CE as amended. Even the Joint Secretary (TRU) CBEC's 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 clearances even if it is considered as case of applicability of two notifications.

8.6 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 Court 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.

8.7 Applicants have 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;

i. CCE Baroda vs. India Petro Chemicals 1997(92) ELT 13(SC)
ii. HCL Ltd. vs. CC New Delhi 2001(130) ELT 405(SC)
iii. M/s Arvind Ltd. Vs UOI 2014(300) ELT 481(Guj.)

Hon'ble Supreme Court has held that when two notifications co-exist simultaneously, then assessee has the option to choose any one of the notifications beneficial to him. Hon'ble Supreme 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 clearances, but decided to avail benefit of the notifications viz. 2/08 dated 01.03.2008 as amended and 4/06 dated 01.03.2006 as amended.

8.8 The applicant during the course of personal hearing, has further relied upon the case of M/s Arvind Ltd. Vs UOI, which was decided by Hon'ble Gujarat High Court. The applicant, in this case, paid 4% duty in terms of Notification No.59/2008-CE, while absolute exemption was available under Notification No.29/2004-CE (NT), as amended by Notification No.58/2008-CE. The revenue contended that once the goods were exempted from payment of duty in terms of Notification No.58/2008-CE(NT), they were not required to export the goods on payment of duty @4% in terms of Notification No.59/2008-CE. The Hon'ble High Court has held that when the applicant was given exemption from payment of whole duty and if paid duty at the time of export, the rebate claim should be allowed. Government finds that the Hon'ble High Court has considered a situation where two exemption notifications were available. However, in the case, under consideration in the present revision applications, there is one exemption notification providing effective rate of duty @4% or 5% in terms of Notification No.4/06-CE, as amended and other is Notification No.2/08-CE (which

is not in fact exemption notification), which provides general tariff rate at 10%. Hence, facts of these cases are different and not applicable to present case.

8.9 Government further observes that the above 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. The cited case laws mainly relate to admissibility of exemption notification benefit in case of dispute of classification/eligibility of claimant. Hon'ble Supreme Court in para 10 & 11 of the judgement in case of Escorts Ltd. vs. CCE Delhi-II 2004 (173) ELT 113 (SC) observed that 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. 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, it needs to be reiterated that each one of the above citation has different set of facts, pertaining to manufacturing of goods of different sub-headings, following different Notifications, choosing different beneficial schemes and changing thereof in between a given financial year, thereby leading to different question of law.

8.10 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.

8.10.1 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.

8.10.2 Government also notes that identical issue in case of the same applicant has been decided vide Revision Order No. 278-309/14-Cx. dated 29-08-2014 and ratio of the said revision order is squarely applicable to this case.

9. 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. 4/06-CE dated 1.03.06 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.

10. Government notes that the amount paid in excess of duty payable (@ 4% 0r 5% in terms Notification No. 4/06 dated 1.03.06 as amended) on one's own volition cannot be retained by Government and it has to be returned to applicant in the manner in which it was paid. Accordingly, such excess paid amount/duty which is required to be returned to the applicants, has already been allowed by the original / appellate authority. 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 also 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."

Therefore, the lower authorities have rightly allowed the re-credit of the excess paid amount of duty in then cenvat credit account.

11. Government also notes that in some cases the original authority either denied rebate where excise duty payable was NIL in terms of Notification No.4/2006 dated 01.03.2006 read with Notification No.21/2002-Cus dated 01.03.2002 or confirmed recovery of rebate erroneously sanctioned on the ground that duty was not payable by the applicant. As held in above paras, the rebate is admissible only to the extent of 0%/4%/5% as the case may be.

11.1 Further, notwithstanding the above Government observes that when the goods are absolutely exempted from payment of duty, the assesse cannot pay duty as per Section 5A(1A) proviso wherein it has been provided "that where an exemption under sub-section (1) in respect of any excisable goods from the whole of duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods". The Notification No.4/2006 dated 01.03.2006 issued under Section 5A(1A) of the Act, grants exemption from whole of duty of excise absolutely. So applicant was required not to pay duty. The amount so paid cannot be treated as duty under Section 3 of the Act and therefore not admissible as rebate under Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 06.01.2004. Moreover, when goods are exempted from payment of duty, no cenvat credit is permissible under Rule 6(1) of CENVAT Credit Rules 2004.

11.2 In view of the above, Government observes that the applicant was not allowed to pay duty on the exempted goods as per proviso 5A(1A) of Central

Excise Act 1944 and no cenvat credit on the inputs is available under Rule 6(1) of CENVAT Credit Rules 2004. Further the applicant has also not claimed that the duty on such fully exempted goods has not been paid from such inadmissible cenvat credit and therefore no re-credit is permissible in such cases. Hence, Government finds that orders of recovery by original/appellate authority are legal and proper.

12. In view of the above discussions, Government finds no infirmity in the Orders of Commissioner (Appeals) and hence, upholds the same.

13. These Revision Applications are rejected as being devoid of merit.

14. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

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

Attested

OSD (Revision Application)

GOI ORDER NO. 23-49/2015-CX DATED 29.07.2015

Copy to:

1. The Commissioner of Central Excise, Ahmedabad-II Commissionerate, Customs House, Navrangpura, Ahmedabad-380009.
2. The Commissioner of Central Excise, Mumbai-I Commissionerate, 115, New Central Excise Building, M.K.Road, Opp. Charchgate Station, Mumbai-400020.
3. The Commissioner of Central Excise, Raigad Commissionerate, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai-410206.
4. The Commissioner of Central Excise, Ahmedabad-I
5. The Commissioner of Customs (Appeals-I), Ahmedabad, 7th Floor, Central Excise Building, Near Polytechnic, Ambavadi Ahmedabad-380012
6. The Commissioner of Central Excise (Appeals), Mumbai-III, Zone-I, Dadishet Lane, Chowpaty, Mumbai-400007
7. The Commissioner of Central Excise (Appeals), Mumbai-III, Zone-I, Dadishet Lane, Chowpaty, Mumbai-400007
8. The Joint Commissioner, Central Excise, Ahmedabad-II, Customs House, Navrangpura, Ahmedabad-380009
9. The Deputy Commissioner of Central Excise (Rebate), Maritime Commissioner, 3nd Floor, MSEB Building, Labour Camp, Dharavi, Mumbai-I
10. The Deputy Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410206.
11. Guard File.
12. PA to JS (RA)
13. Spare Copy

ATTESTED

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