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. 195/731/12-RA, 195/211/12- RA, 195/604/12-RA, 195/212-214/12-RA | 211 Date of Issue: 07/08/2018

ORDER NO. 230-235/2018-CX(WZ)/ASRA/MUMBAI DATED 25.07.2018 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	195/731/12-RA	M/s Cipla Ltd.	Commissioner,Central Excise, Mumbai-III
2	195/211/12-RA	M/s Cipla Ltd.	
3	195/604/12-RA	M/s Cipla Ltd.	
4	195/212-214/12-RA	M/s Cipla Ltd.	

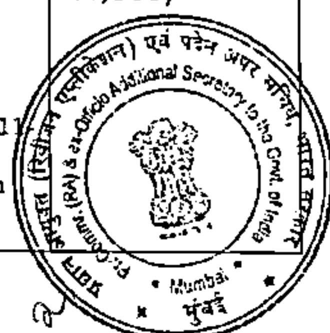
Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944 against the Orders in Appeal No. BC/390/MUM-III/2011-12 dated 04.01.2012 passed by the Commissioner (Appeals) Mumbai-III; BC/366/M-III/2011-12 dated 13.03.2012, BC/08/MUM-III/2012-13 dated 20.04.2012, and BC/372-374/MUM-III/2012-13 dated 14.03.2012 passed by the Commissioner (Appeals) Mumbai-III..

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 of Central Excise (Appeals), Mumbai-III, Mumbai Zone-II.

TABLE

Sl.N	F.No.	Order-In-Appeal No.	Order-In-Original /Date	Issues	Amount of Rebate Rejected (Rs.)
1	195/731/12-RA-CX	BC/390/MIII/2011-12 DT 29.03.2012	170R/RM/AC(RC)/M-III/11-12 Dt:04.01.2012	Shipping filed under Drawback scheme	Rs.10,211/-
2	195/211/12-RA-CX	BC/366/M-III/2011-12 DT 13.03.2012	100R/RKD/DC(RC)/M-III/11-12 dt:12.09.2011	Shipping filed under Drawback scheme Goods exported after six month	Rs.6,065/-
3	195/604/12-RA-CX	BC/08/MUM-III/2012-13 DT 20.04.2012	201R/RM/AC/(RC)/M-III/11-12 Dt:20.02.2012	Shipping filed under Drawback scheme; Duty paid @10% on goods exported and R.C.No.791/11-12 dtd.16.12.2001 goods exported from CFS Mulund & Air Cargo Sahar	Rs.13,37,785/-
4	195/212-214/12-RA	BC/372-374/MUM-III/2012 DT: 14.03.2012	143R/RM/AC(RC)/M-III/11-12 DT:22.11.2011	Shipping filed under Drawback scheme	74,148/-
			153R/RM/AC(RC)/M-III/11-12 DT:29.11.2011	Duty paid @10% on goods exported; & allowed @4% R.C.No.148/11-12 Shipping bill under duty Drawback-Rejected; R.C.No.146/11-12 – Claim submitted on Photocopies-Rejected	12,87,598/-
			156R/RM/AC(RC)/M-III/11-12 DT:29.11.2011	Shipping filed under Drawback scheme R.C.No.177/11-12 – Claim submitted on photocopies	24,668/-



2. The Brief facts 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 a 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 In terms of provisions made under Cenvat Credit Rules, 2004 (herein after referred to as "Credit Rules") appliacnt avail Cenvat credit facility in respect of specified duties paid on inputs and capital goods as well as service tax paid on the input services consumed in or in relation to manufacture of excisable goods. They also opt for various schemes of export incentives issued under foreign trade policy in force, such as DEPB, EPCG, Advance authorization etc. and also opt for drawback of duties under Customs, Central Excise Duties and Service Tax Drawback Rules, 1955 (herein after referred to as "Drawback Rules").

3. In the instant cases, the applicant had exported few consignments of pharmaceutical products on payment of excise duty thereon under claim for rebate and filed rebate claim with all supporting documents with the rebate sanctioning authority. The Assistant Commissioner of Central Excise (Rebate), Mumbai III rejected said rebate claim vide Order-In-Original No. 170R/RM/AC(RC)/M-III/11-12 dt. 04.01.2012 holding that the applicant had availed double benefit i.e. claimed drawback as well as Cenvat Credit therefore, the claimant are not entitled for the rebate of Central Excise Duty.

4. Being aggrieved by the Order-in-Original passed by the Assistant Commissioner of Central Excise (Rebate), Mumbai-III, the applicant preferred appeal before Hon'ble Commissioner (Appeals) of Central Excise, Mumbai III, who after consideration of all the submissions, rejected their appeals and upheld impugned Order-in-Original.

Pr. Commr. (RA) & ex-Officio Addl. Secretary to the Govt. of India
* Mumbai *

5. 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 :-

7. Sr.No.1 to 4- (F.No.195/ 731/12-RA ; 195/211/12-RA ; 195/604/12-RA & 195/212-214/12-CX) - Issue Involved – Claimed double benefit Drawback as well as Rebate of excise duty paid on goods exported

7.1 They have paid excise duty as per the provision of Central Excise Act, 1944. Further, under said Act, there is not as such any provision or restrictions on claiming rebate of excise duty when such duty paid goods has been exported.

7.2 Further, the conditions and procedures in respect of rebate claim have been covered vide Notification No.19/2004 C.Ex.(N.T.) dated 06.09.2004 issued under Rule 18 of Central Excise Rule 2002. However, there is no as such any restrictions given in respect of claiming rebate of excise duty paid on finished goods.

7.3 While rejecting our rebate claim, original authority has taken ground as, claimant have availed double benefit, claimed drawback as well as Cenvat Credit therefore, the claimant is not entitling for the rebate of central excise duty and rejected our rebate claim.

7.4 In this matter, two notifications have been issued namely 103/2008-Customs (N.T.) dated 29th August 2008; 84/2010 - Customs (N.T.) dated 18th September 2010 and 98/2013-Customs (N.T.) dated 14th September 2013. At Para-6 of all the Notification's, it has clarified that, "If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed Cenvat or not."

7.5 Further, enclosed the revised Drawbacks Rates effective from 20th September 2010, Table attached to the Notifications issued under drawback Rules has two columns to indicate All Industry Rates of duty drawback declared by Central Government under Rule 3 of the Drawback Rules, namely column "A" which specifies rate of duty

drawback with excise as well as customs component, and column "B" which specifies rate of duty drawback with only Customs component. And the drawback rates under Table-A & Table-B are the same for Central Excise Tariff Head "3004", there is no difference. Therefore, as per the provisions of aforesaid notifications the component of drawback in present matter pertain to Customs part only.

7.6 Therefore, they have not claimed drawback of central excise component, it is drawback of custom component. And it is evidencing from the copies of shipping bills submitted along with rebate claims, we have claimed duty drawback only for customs component and not for excise and Customs both.

7.7 Also, Shipping bills filed under EDI system for exports having claimed drawback incentive (Drawback All Industry Rate Scheme code-19) having distinction by specifying either "A" or "B" suffix with RITC code of the products printed on the shipping bills. Thus, shipping bills submitted by us suffix "B" indicates that the duty drawback has been claimed only for Customs component. (Enclosed copies of ARE.1 and shipping bill collectively Exhibit-3)

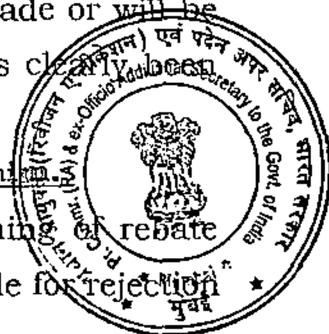
7.8 The scheme of rebate of central excise duty, paid on goods manufactured and exported, as under provisions of Rule 18 of central excise rules 2002, can be availed simultaneously with the Customs component of All Industry Rate of duty drawback ("AIR-DBK-Cus" for short) under provisions of Drawback Rules, since both these schemes relate to different types of duties charged on different goods and at different stage.

7.9 The scheme of AIR-DBK-Cus., as devised under drawback rules, related only to the basic duties of customs suffered on inputs used in the manufacturing of excisable goods and does not relate to the component of duties of excise paid on inputs which are available as credit under Credit Rules.

7.10 Thus claiming rebate (of excise duty paid on finished goods) and availing customs component of duty drawback simultaneously on the same goods does not amount to double benefits. The declaration given by them along with rebate claims to the effect that "no separate claim for duty drawback of duty has been made or will be made" is also in line with this submission, which has clearly been misconstrued by learned Asst. Commissioner.

7.11 **<u>No provision under Excise Law to reject the rebate claim.</u>**

- The provisions made under excise law for sanctioning of rebate claims filed under provisions of Rule 18 do not provide for rejection



of rebate on the ground of simultaneous availing of duty drawback benefits under Drawback Rules.

- Rule 18 of the Excise Rules reads, thus Rule 18-Rebate of duty

  "Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."

  Explanation- "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

- Rule 18 deals with rebate of excise duties paid on finished goods as well as on inputs. While Notification No. 19/2004 C.E. (N.T.) dated 6.9.2004 governs rebate of Central Excise duties paid on manufactured goods which are exported, the Notification No. 21/2004 C.E. (N.T.) dated 6.9.2004 governs rebate of specified duties paid on inputs used in the manufacture of goods exported. It is pertinent to note that provisions of neither of these Notifications lays down a condition for rejection of rebate claim filed under it for the availment of duty drawback under Drawback Rules on the goods exported.
- Learned Asst. Commissioner rejected rebate claim on a condition altogether foreign to the scheme of sanctioning rebate as laid down under Excise Law. Thus, the impugned order passed by the learned Asst. Commissioner suffers from serious legal infirmities, hence needs to be set aside.

7.12 **What could be denied is the claim for duty drawback and not rebate**

- Proviso to Sub-Rule (1) of Rule 3 of the Drawback Rules clearly provides for adjustment / reduction in amount sanctionable as drawback, wherever double benefits in respect of taxes considered there under have been availed under any other law.
- For the ease of reference, Rule 3 of Drawback Rules is reproduced here under: Drawback. –

  Subject to the provisions of –

  (a) the Customs Act, 1962 (52 of 1962) and the rules made thereunder,

  (b) the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder,

  (c) these rules, a drawback may be allowed on the export of goods at such amount, or at such rates as may be determined by the Central Government:

Provided that where any goods are produced or manufactured from imported materials or excisable or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1942 (52 of 1962) and the rules made thereunder, or of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, or of the Finance Act, 1944 (32 of 1944) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained:

The impugned order passed by the learned Asst. Commissioner, rejecting rebate claims, is clearly in violation of the aforesaid legal mandate, hence needs to be set aside.

7.13 Issue is no more res integra

- It is respectfully submitted that the issue is no more res Integra in as much as it stands decided in following cases : -

  "Re: Munot Textiles" as reported 2007(207) ELT-298(G.O.I)

  "Re: Benny Impex Pvt. Ltd." as reported in 2003(154) ELT-300(G.O.I)

  Associated Dye Stuff Industries v. Comm. Of C. Ex., Ahmadabad as reported in 2000(117) ELT-732

- **The matter is already decided in our favor**

- The said issue is already decided by your office vide Order No. 551-569/2012-CX dated 11.05.2012.

8. Sr.No.2 to 4- (F.No.195/211/12-RA ; 195/604/12-RA & 195/212-214/12-CX) - Issue Involved – Excise duty paid @10% on goods exported.

8.1 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, as per department the effective rates for payment of excise duty are @4% and @5%. as these are effective rates. Therefore, on this ground office of Maritime Commissioner (Rebate), Raigad (hereinafter referred as "Original Authority") has restricted their rebate claim to the extent of effective rate of excise duty @4% and @5%.

8.2 Being aggrieved by decision of Original authority we have challenged Orders vide respective appeals before Commissioner (appeals) Belapur. However, commissioner Appeals has rejected their appeals vide Order-In-Appeals Nos BC/295/RGD/2012-13 dtd. 27.09.2012; BC/297/RGD/2012-13 dtd.27.09.2012; BC/300/RGD/2012-13 dtd. 27.09.2012 and BC/415/RGD (R)/2012-13 dtd 27.11.2012. Due to aggrieved by decision of Commissioner (Appeals) Belapur, we have submitted these Revision Applications at your office

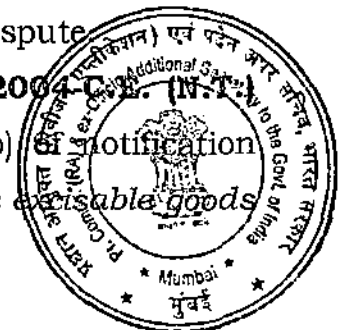
8.3 However, said matter has already decide by your office vide order No. 1568-1595/2012-CX dt.14.11.2012; Order No. 41-54/2013-CX dated 16.01.2013 & Order No.59-81/2018-CX/ASRA/Mumbai Dated 16.03.2018. Further, As per the provision of Clause (a) of Subsection (6) of Section 142 of Central Goods and 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 sub-section(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, we are eligible for cash refund in lieu of CENVAT credit.

9. Sr.No.2 (F.No.195/211/12-RA-CX) - Issue Involved – Goods Exported after Six Months.

9.1 In respect of all four Revision application subject goods have been exported after six months from the date of ARE-1. Therefore, rebate sanctioning authority has rejected their rebate claims. Further, non-fulfilment of condition 2(b) of notification 19/2004 CX (N.T.) dated 06.09.2004 does not alter the status of export of duty paid goods. Therefore, rejection of rebate claim is hardship to us.

9.2 **Interpretation of notification no.19/2004-C.E. (N.T.) dated 06.09.2004:** - 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.

9.3 **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.

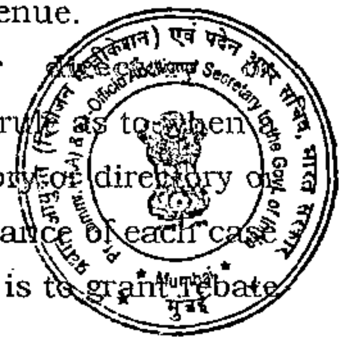
9.4 **Substantial compliance to conditions for export of goods:**-The appellants submit that there is substantial compliance to conditions governing export of goods. The physical export of goods and their duty paid character which are substantive conditions of notification are duly complied by the appellants. 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.

9.5 **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.

9.6 **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, 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.

9.7 **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.

9.8 **Condition whether statutory, mandatory or directory or procedural** :-It is submitted that there is no general rule as to when 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.

9.9 **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

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

9.11 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.

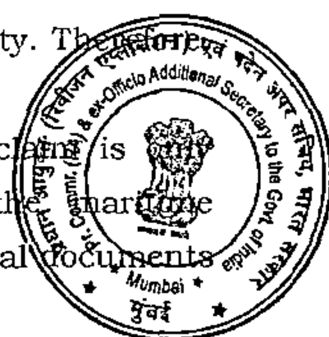
10. Sr.No.4- (F.No.195/212-214/12-RA-CX) - Issue Involved – No original documents submitted as required to sanctioned rebate claims.

10.1 In this matter, goods exported from two different port namely CFS Mulund and Air Cargo complex Sahar, Mumbai and office of the Maritime Commissioner (Rebate) having port wise jurisdiction to sanction rebate claim. Therefore, they have submitted rebate claim with original documents with one of rebate sanctioning authority and with attested copies of all relevant documents to another rebate sanctioning authority.

10.2 Accordingly, they have submitted copies of all relevant (common) documents namely all ARE.1, excise invoice obtained duly certified(attested) by Superintendent of C. Ex. Rebate Mumbai-IV in respect of rebate claim No. 133/11-12 dated 10.05.2011 of Order-in-Original 143/R/RM/AC(RC)/M-III/11-12 dated 22.11.2011; rebate claim No. 146/11-12 dated 20.05.2011 of Order-in-Original 153R/RM/AC(RC)/M-III/11-12 dated 29/11/2011 and Rebate Claim No.177/11-12 dated 27.05.2011 of Order-in-Original 156R/RM/AC(RC)/M-III/11-12 dated 29/11/2011

10.3 Further, original copies of respective rebate claims were submitted to the office of the maritime commissioner Mumbai-IV and said rebate claim has also sanctioned by the said authority. Therefore, duty payment status of said goods is not in dispute.

10.4 Further, Port wise jurisdiction to sanction rebate claim is only administrative process and therefore, office of the maritime commissioner Mumbai-IV should have transfer original documents



to the Maritime Commissioner Mumbai-III after completing the required process in respect of rebate claim pertaining to their jurisdiction. It is incorrect to reject entire rebate claim without considering any alternate option. Therefore, mere rejection of rebate claim on this technical ground proves the rigidity of Rebate sanctioning authority.

10.5 In view of above submission, they respectfully pray to direct the office of Maritime Commissioner Mumbai-IV (Now Mumbai East of CGST, Lotus Bldg. Parel, Mumbai) to transferred required documents to the office of Maritime Commissioner Mumbai-III for further process.

11. 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. In all these Revision Applications there is one issue is common which is admissibility of Rebate of duty paid on final product exported when drawback of Customs portion is availed and also Cenvat credit of Central Excise duty paid on inputs have also been availed. Government also observes that while rejecting the rebate claim of the applicant on the ground of availing double benefit i.e. claimed drawback as well as Cenvat Credit, the adjudicating authority has also observed that in a similar case , the Department has filed an application with Joint Secretary, Revision Application Unit, GOI against the Order in Appeal No. PKS/518-521/BEL/2010 dated 17.02.2011 passed by Commissioner of Central Excise (Appeals) wherein Commissioner (Appeals) have allowed the appeal of the claimant with regard to the issue of the drawback.

12. Government observes that the aforementioned Revision application filed by the Department against Order in Appeal No. PKS/518-521/BEL/2010 dated 17.02.2011 in the case of the applicant has already been decided by the GOI vide Order No. 551-569/2012-CX dated 11.05.2012. While rejecting the Revision application filed by the Department and upholding the Order in Appeal No. PKS/518-521/BEL/2010 dated 17.02.2011, the Revisionary Authority, GOI vide its aforesaid Order observed as under:-

9. Government observes that the instant rebate claims are governed by Not. No.19/04-CE(NT) dated 6.9.04 wherein conditions and procedure has been prescribed for claiming rebate of duty in terms of Rule 18 of Central Excise Rules, 2002. The said notification nowhere puts any restriction to the effect that rebate of duty paid on exported goods will not be admissible if exporter has availed drawback of Customs portion on the said exported goods. The relevant Customs Notification No.103/08- Cus(NT) dated 29.08.08 condition 8(e) states that the rates of drawback specified in this schedule shall not be applicable to the export of a commodity or product if such commodity or product is manufactured or exported by availing the

rebate of duty paid-on materials used in the manufacture or processing of such commodity or product in terms of rule 18 of Central Excise Rules, 2002. Similarly para 1.5 of part V of chapter 8 of CBEC Manual of Supplementary instructions as on 1.9.2001 debars the benefit of input stage rebate of duty paid on materials used in the manufacture of exported goods where finished goods are exported under duty drawback. In these cases, respondents have claimed rebate of duty paid on finished exported goods and therefore the above mentioned restrictions are not applicable-here.

10. Government also notes that CBEC vide Circular No.83/2000-Cus. dated 16th October, 2000' has clarified that "where only Customs portion of duties is 'claimed as per the All Industry Rate of Drawback (erstwhile) rule 57F (14), does not come in the way of admitting refund of unutilized credit of Central Excise / Countervailing duty paid on inputs used in the products exported." This clarification also indicates that there is no restriction on granting rebate of duty paid on exported goods even if the drawback the drawback. Of Customs portion is availed by exporter. This view is already taken by Government in GOI order cited by respondent i.e. in the case of M/s Benny, Impex Pvt. Ltd. 2003)154) ELT 300 and also in the case of William Industries GOI order No.38/09-Cx dated 30.01.2009.

11. *Further, Government keeping in view that as per the policy of making the Drawback scheme more attractive and beneficial to the exporters has bifurcated the composite rates of drawback into Central Excise portion and that of Customs portion and that too in two types of different situations i.e when Cenvat Credit facility has been availed Notification No.103/08 Cus (NT) dated 29.08.08, condition No.6 envidages as under:-*

> *"The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat, facility has not been availed" refer, to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not."*

It is clear from the said condition that drawback of duty can be availed when Cenvat facility has been availed but the rates applicable is lower rate. Further CBEC has clarified in CBEC Circular No.23/01-Cus. dated 18.4.11 (F.No.605/12/2001-Drawback) as under :-

> *"2. The issue has been examined in the Board. All Industry Rate is based on the concept of averages, wherein the drawback rate itself as well as its customs and excise portions are based on weighted averages of consumption of imported / indigenous inputs of a representative cross section of exporters and the average incidence for duties suffered on such inputs. These rates have no relation with the actual input consumption pattern and actual incidence suffered on inputs of a particular exporter or individual consignments exported by a particular exporter under AIR/DBK claim.*
>
> *3. Therefore, it is clarified that, as a matter of rule, no evidence of actual duties suffered on imported or indigenous nature of inputs used, even if the All*

Industry Rate has customs portion, should be insisted upon by the field formations along with declaration Filed by exporters under Rule 12(1)(a)(ii) of the Customs & Central Excise Duties Drawback Rules, 1995".

The CBEC Circular No.19/05-Cus. dated 21.03.2005 has also clarified that concept of All Industry Rate of duty drawback is that the rates are determined taking into account of average duties paid on inputs and in determining rates the average (weighted average) consumption of imported / indigenous inputs of a representative cross section of exporters is taken into account.

12. It may be noted that the CBEC vide Circular No.35/2010 dated 17.09.2010 has clarified this position. The relevant paragraph reads as under:-

> *"(vi(d) The earlier Notification No.103/2006-Cus.(NT) dated 29.8.08, as amended provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback on the basis of the above condition although the manufacturers had taken only the rebate Central Excise duties in respect of their inputs / procured the inputs without payment of Central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.*
>
> *The issue has been examined. The present Notification No.84/2010-Cus(NT) dated 17.09.2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002."*

The content of the above said circular envisage that the Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of rule 18 of Central Excise Rules, 2002. This position is made amply clear in the Notification No.84/2010-Cus.(NT) dated 17.09.2010.

13. Government observes that Commissioner (Appeals) has given his detailed findings in order-in-appeal No. 49-53/11 dated 14.6.11 in the case of M/s Aarti Industries. Department in their revision applications has not countered even a single argument and simply stated that double benefit of drawback and rebate of duty cannot be allowed. Government. is in agreement with the findings of Commissioner (Appeals). As such the argument of department that allowing said rebate of duty where drawback of Customs portion is availed will amount to double benefit, does not hold good and is not sustainable.

14. In view of above, Government do not find any infirmity in the impugned orders of Commissioner (Appeals) in all these cases and hence the same are upheld for being perfectly legal and proper. All the Revision Applications herein above are thus rejected being devoid of merits.

13. In view of the aforesaid background Government now takes up the following Revision Applications for decision.

14 **Revision Application No. 195/731/12-RA** (arising out of Order in Appeal No. BC/390/MUM-III/2011-12 dated 29.03.2012).

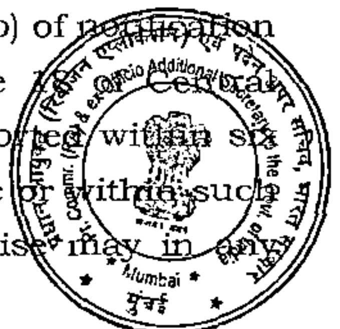
15. Government notes that in this case the adjudicating authority has rejected the rebate claim on the ground of availing double benefit i.e. claimed drawback as well as Cenvat Credit and also on the ground that the triplicate copy of ARE-1 with endorsement of the duty payment on the reverse side by the Jurisdictional Range Superintendent has also been not made available.

16. Government notes that the issue of dual benefit of drawback and Cenvat credit has already been decided in favour of the applicant by GOI vide Order No. 551-569/2012 dated 11.05.2012 in the applicant's earlier cases as discussed in preceding para No.12 and therefore, Government holds that the applicant is entitled to rebate alongwith drawback of customs portion of the applicable drawback schedule even after availment of the duties of Central Excise as paid for the inputs used in the manufacture of such exported goods which were cleared on payment of duty of Central Excise from Cenvat Credit Account, subject to verification of duty paid on the exported goods as verified by the jurisdictional Central Excise Superintendent.

17. In view of the discussions and findings elaborated above, Government sets aside Order in Appeal No. BC/390/MUM-III/2011-12 dated 29.03.2012 and **the Revision Application No. 195/731/12-RA at Sl. No. 1 of Table** is disposed of in the above terms.

18. Government now takes up **Revision Application No. 195/211/12-RA** (arising out of Order in Appeal No. BC/366/M-III/11-12 dated 13.03.2012) for decision. Government observes that the Adjudicating authority rejected the rebate claims amounting to Rs. 6,065/- pertaining to goods exported vide shipping Bill No. 2436377 dated 05.02.2011 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. Commissioner (Appeals) vide Order in Appeal No BC/366/M-III/11-12 dated 13.03.2012 rejected the appeal filed by the applicant.

19. 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: -

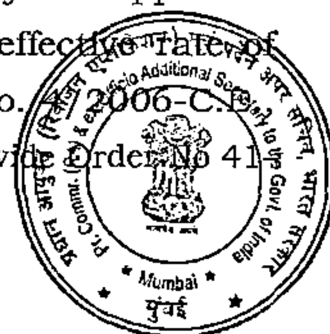
> *9. Government notes that as per provision of Condition2(b) of notification No. 19/04-CE (NT) dated 06.09.04, the excisable goods shall be exported within 6 months from the date on which they were cleared for export from the factory of manufacturer or within extended period as allowed by commissioner 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.*

20. 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.

21. In view of the discussions and findings elaborated above, Government upholds the Order in Appeal No. Order in Appeal No BC/366/M-III/11-12 dated 13.03.2012 and **Revision Application No. 195/211/2012 -RA** at Sl. No. 2 of Table **is dismissed as devoid of merit.**

22. Government now takes up **Revision Application No. 195/604/12-RA** (arising out of Order in Appeal No. BC/8/M-III/2012-13 dated 20.04.2012) for decision. Government observes that in this case 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% as per effective rates in terms of Notification No 4/2006 C.Ex. dated 01.03.2006 as amended. The Commissioner (Appeals) also rejected the appeal filed by the applicants. Another ground for rejection of rebate claims was simultaneous availment of duty drawback benefits as well as claiming rebate under Rule 18 of the Central Excise Rules 2002.

23. Government observes issue of payment of duty by the applicant @ 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 has been decided by Government of India vide Order No 41-54/2013-CX dated 16.01.2013 holding as under :



" 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".

24. 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.

25. 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 order in original was modified by the Joint Secretary (Revisional Authority), what is the material to note is that relief has not been granted in its entirety to the first respondent. The first respondent may have come in the form of an applicant who has exported goods, either procured from other manufacturer or manufactured by it. Looked at from any angle, we do not find that any observation at all has 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.

26. In view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in preceding paras 23 to 25, 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

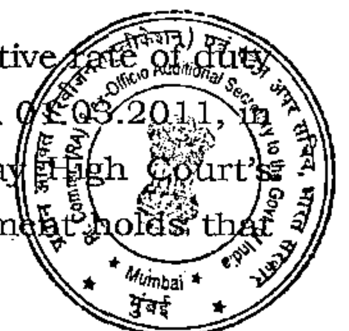
compliance of the provisions of Section 12 B of Central Excise Act, 1944.

27. As regards simultaneous availment of duty drawback benefits as well as claiming rebate under Rule 18 of the Central Excise Rules 2002 by the applicant, Government notes that the issue of dual benefit of drawback and Cenvat credit has already been decided in favour of the applicant by GOI vide Order No. 551-569/2012-CX dated 11.05.2012 in the applicant's earlier cases as discussed in preceding para No.12 and therefore, Government holds that the applicant is entitled to rebate alongwith drawback of customs portion of the applicable drawback schedule even after availment of the duties of Central Excise as paid for the inputs used in the manufacture of such exported goods which were cleared on payment of duty of Central Excise from Cenvat Credit Account.

28. In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. Order in Appeal No. BC/8/M-III/2012-13 dated 20.04.2012 to the above extent and the **Revision Application No. No. 195/604/12-RA at Sl. No. 3 of Table** is disposed of in the above terms.

29. Government now takes up **Revision Application No.** 195/212-214/12-RA (arising out of Order in Appeal No. BC/372-374/MUM-III/ 2012 dated 14.03.2012) for decision. Government observes that in this case also the duty was paid by the applicant @ 10% under the Notification. No 2/2008-CE dated 1.3-2008, as amended. However, the rebate sanctioning authority held that the effective rate of duty on the export goods was 4% vide No No 4/2006-CE dad 01.03.2006 as amended and hence the claimant was eligible for rebate of duty @ 4% adv. paid on export goods. Further the claim was also rejected on the grounds that double benefit of drawback and Cenvat credit was availed simultaneously in this case. The applicant had also submitted photocopies of certain documents for sanction of rebate claim which were not proper documents for processing the claims as prescribed under Notification No. 19/2004–CE (NT) dated 06.09.2004 read with Rule18 of Central Excise Rules, 2002 and accordingly claim was rejected. Government observes that Commissioner (Appeals) in his impugned order has upheld the Orders in Original.

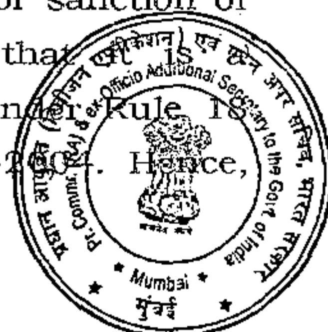
30. As regards the duty payment over and above effective rate of duty @ 4% Adv in terms of Notification No. 4/2011-CE dated 01.03.2011, in view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in preceding paras 23 to 25, Government holds that



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.

31. As regards simultaneous availment of duty drawback benefits as well as claiming rebate under Rule 18 of the Central Excise Rules 2002 by the applicant, Government notes that the issue of dual benefit of drawback and Cenvat credit has already been decided in favour of the applicant by GOI vide Order No. 551-569/2012 dated 11.05.2012 in the applicant's earlier cases as discussed in preceding para No.12 and therefore, Government holds that the applicant is entitled to rebate alongwith drawback of customs portion of the applicable drawback schedule even after availment of the duties of Central Excise as paid for the inputs used in the manufacture of such exported goods which were cleared on payment of duty of Central Excise from Cenvat Credit Account.

32. As regards, submission of photocopies of certain documents for sanction of rebate claim which are not proper documents for processing the claims as prescribed under Notification No. 19/2004-CE (NT) dated 06.09.2004 read with Rule18 of Central Excise Rules, 2002, Government observes that the applicant had exported goods from two different port namely CFS Mulund and Air Cargo complex Sahar, Mumbai. The applicant filed part rebate claim for goods exported through Air Cargo complex Sahar, Mumbai at office of the Maritime Commissioner (Rebate), Mumbai-IV having port wise jurisdiction to sanction rebate claim alongwith original documents, and for the goods exported from CFS Mulund, the applicant filed rebate claims with attested copies of all relevant documents to another rebate sanctioning authority, viz. The Assistant Commissioner of Central Excise (Rebate), Mumbai III. Government observes that an identical issue in respect of the same applicant has been decided by the GOI vide its Order No. 52/2016-CX, dated 29-3-2016[2016 (343) E.L.T. 894 (G.O.I.)] wherein the Revisionary Authority upheld the Order in Appeal which rejected applicant's rebate claim on the ground that photocopies of documents submitted for sanction of rebate claim were not proper documents holding that it is fundamental requirement for sanctioning the rebate under Rule 18 read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004. Hence,



Government holds that the applicant is rightly held not entitled for rebate on this ground.

33. In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. BC/372-374/MUM-III/ 2012 dated 14.03.2012 to the above extent and the Revision Application No. **F.No.195/212-214/12-RA at Sl. No. 4** of Table is disposed of in the above terms.

34. Government however, directs that in respect of Revision Applications at Sl. No. 1, 3 & 4 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.

35. All the 6 Revision Applications viz. bearing No.195/731/12-RA F. No.195/211/12-RA; 195/604/12-RA & 195/212-214/12-CX are disposed off in terms of above.

36. So ordered.

25.7.18

(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.

Copy to :

1. The Commissioner of GST & CX, Navi Mumbai, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai.
2. The Commissioner of GST & CX (Appeals) Belapur, CGO Complex, 6thFloor, Belapur.
3. The Deputy/Assistant Commissioner, Division IV, GST & CX Navi Mumbai, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai.
4. Sr.P.S. to AS(RA),Mumbai.
5. Guard File.
6. Spare copy.

ATTESTED

7/8/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)