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.195/46/13-RA, 195/47/13- RA,
195/48/13-RA, 195/50/13-RA,
195/384/13-RA | 1225

Date of Issue:- 08|08|2018

ORDER NO. 236 – 240 /2018-CX(WZ)/ASRA/MUMBAI DATED 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	195/46/13-RA	M/s Cipla Ltd	Commissioner,Central Excise, Raigad
2	195/47/13-RA	M/s Cipla Ltd	Commissioner, Central Excise Raigad
3	195/48/13-RA	M/s Cipla Ltd	Commissioner, Central Excise, Raigad
4	195/50/13-RA	M/s Cipla Ltd	Commissioner, Central Excise, Raigad
5	195/384/13-RA	M/s Cipla Ltd	Commissioner, Central Excise,Raigad

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944 against the Order in Appeal No. BC/294/RGD/2012-13 dtd. 27.09.2012, BC/295/RGD/2012-13 dtd. 27.09.2012, BC/297/ RGD/ 2012-13 dtd.27. 09. 2012, BC/300/RGD/12-13 dtd.27.09.2012and BC/415/RGD(R)/12-13 dtd. 27.11.2012 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 Orders-In-Appeal as detailed in Table below passed by Commissioner of Central Excise (Appeals) Mumbai-III.

TABLE

Sr. No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Issue
1	195/46 /13-RA Dtd.15.01.13	BC/294/RGD/2012-13 dtd. 27.09.2012	914/11-12/AC(Rebate)/Raigad DT.12.06.2012	Duty Paid @10% on goods cleared for export"; Total 8 Nos of Rebate claim, wherein 5 Rebate claim's Triplicate copies of ARE-1s & DPC not received & in 3 rebate claims DPC not received
2	195/47/13-RA Dtd.15.01.13	BC/295/RGD/2012-13 dtd. 27.09.2012	913/11-12/AC(Rebate)/Raigad DT.11.06.2012	Duty Paid @10% on goods cleared for export; Triplicate ARE.1 not submitted, Rebate claimed Sanctioned on CII value and not on the FOB Value.
3	195/48/2013-RA dtd.15.01.13	BC/297/RGD/2012-13 dtd.27.09.2012	912/11-12/AC(Rebate)/Raigad DT.11.06.2012	Duty Paid @10% on goods cleared for export; Triplicate ARE.1 not submitted,
4	195/50/13-RA dtd15.01.13	BC/300/RGD/12-13 dtd.27.09.2012	1091/12-13/AC(Rebate)/ Raigad DT.14.07.2012	Duty Paid @10% on goods cleared for export"; Short Sanctioned rebate claim insted of @5% Rebate claim sanctioned@4%; Rebate claim restricted to the extent of FOB value and Rebate rejected in one case as export after six months.
5	195/384/13-RA dtd.04.03.13	BC/415/RGD(R)/12-13 dtd.27.11.2012	1282/12-13/AC(Rebate)/ Raigad dtd.09.8.2012	Duty Paid @10% on goods cleared for export"; Rebate claim restricted to th extent of FOB value and Rebate rejected in one case as export after six months.

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 as 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 Sr.No.1 to 5- F. No. (195/46/13-RA Dtd.15.01.13; 195/47/13-RA Dtd.15.01.13 ; 195/48/2012-RA dtd.15.01.13; 195/50/2013-RA dtd.15.01.13 & 195/384/2013-RA dtd.04.03.13) - Issue Involved duty paid @10% on goods cleared for export.

6.2 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") restricted their rebate claim to the extent of effective rate of excise duty @4% and @5%.

6.3 Being aggrieved by decision of Original authority they challenged Orders vide respective appeals before Commissioner (Appeals)

Belapur. However, Commissioner (Appeals) 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. Being aggrieved by decision of Commissioner (Appeals) Belapur, they filed these Revision Applications before Government of India.

6.4 However, said matter had already decide by GOI 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.

6.5 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, they are eligible for cash refund in lieu of CENVAT credit.

7. Sr.No.1 to 3 F. No. (195/46/13-RA Dtd.15.01.13; 195/47/13-RA Dtd.15.01.13 ; 195/48/2012-RA dtd.15.01.13 – Triplicate Copy of ARE.1 not submitted :-

7.1 In this matter, they would like to clarify that their manufacturing unit had submitted triplicate copies of ARE-1 to the jurisdictional central excise office as per the provision of Notification 19/2004 CE-N.T. dated 06.09.2004. Further, the jurisdictional Central Excise office neither handed over said triplicate ARE-1 to them nor directly to rebate sanctioning authority. Therefore, rejection of rebate claim on this ground is incorrect practice adopted by original authority.

7.2 They would like to say that, as per the provision under notification 19/2004 CE.NT. dated 06.09.2004, claimant is responsible to submit only original ARE-1 along with the all post shipment documents. Therefore, they have correctly followed the legal provision of said notification. Further, on the body of respective ARE.1 and excise invoice, duty debit entry is available. Further, excise invoice is duty paying document, and it is evidencing that the nature of goods which has been exported are of duty paid. Therefore,

they have submitted all required essential documents while claiming rebate of excise duty paid on goods exported.

7.3 In respect of **F.No.195/46/13 dated 15.01.2013**, total 8 rebate claims are involved, wherein in respect of 4 rebate claim numbers 20328 /02.01.2012; 20335/02.01.2012; 21426/17.01.2012; and 24655/27.02.2012 triplicate ARE-1 and Duty payment certificate (DPC) has not received.

7.4 In respect of rebate claim number 23584/15.02.2012 only Triplicate ARE-1 has not submitted, and rest of three rebate claims namely R.C.No.20331/02.01.2012; 20350/02.01.2012 and 23578/ 15. 02. 12 only duty payment certificate (DPC) has not received by them.

7.5 However, DPC is not the prescribed documents under said Notification and therefore it should not be ground for the rejection of rebate claim. DPC process may be relied by original authority for cross verification, and about to know authenticity of duty payment transaction. But it would be internal administrative control in the interest of revenue. However, for this reason rejection of rebate claim is not fare and beyond the scope decided by the provisions of law. Therefore, they request you to consider all this fact and take lenient view and direct original authority to sanction our rebate claim.

7.6 **F.No.195/47/13-RA dated 15.01.2013 & 195/48/13-RA dated 15.01.2013 –** In this case also six rebate claims have been rejected by original authority on same ground of non-submission of Triplicate ARE.1. However, their manufacturer has submitted Triplicates to their respective authority. But same has not been forwarded to rebate section for further process. Therefore, requested you to take lenient view and direct original authority to reconsider this issue in consideration with the jurisdictional officer for duty verification. Mere rejection of rebate claim on this ground is not justifiable. Because we have submitted concern Triplicate copies with proper jurisdictional authority.

7.7 However, In the matter of writ petition No.9673/2011 filed by M/s Shalina Laboratories Pvt.Ltd. Hon'ble Bombay High Court has allowed rebate claim in absence of original documents vide order dated 22nd August 2012. Therefore, when duty paying documents namely excise invoice is available rejection of rebate claim for want of Triplicate ARE.1 or Duty Payment Certificate is not maintainable.

7.8 It is incorrect to held sole responsible to claimant for non-submission of triplicate ARE.1. As notification, also does not support to the stand taken by Rebate sanctioning authority.

8. Sr.No.1 to 2 and 4 to 5 F. No. (195/46/13-RA Dtd.15.01.13; 195/47/13-RA Dtd.15.01.13 ; 195/50/2013-RA dtd.15.01.13 & 195/384/2013-RA dtd.04.03.13) - Issue Involved Rebate claim restricted to the extent of FOB value appeared in Shipping Bill.-

8.1 In this matter, Original authority has restricted rebate claim to the extent of FOB value appeared in Shipping bill, due to aggrieved by decision we have preferred appeal before commissioner Appeals. Commissioner (appeals) has set aside our appeal vide Order in Appeal Number BC/294/RGD/2012-13 dated 27.09.2012; BC/295/RGD/2012-13 dated 27.09.2012 ; BC/300/RGD/2012-13 dated 27.09.2012 and BC/415/RGD(R)2012-13 dated 27.11.2012 has rejected our appeal

8.2 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.

8.3 **F.No.195/46/13-RA** – In this R.A. original authority at para 10 of Order No.914/11-12 dated 12.06.2012 has precisely discussed about the admissibility of rebate claim in respect of excise duty paid on CIF value and rejected rebate claim.

8.4 **F.No.195/47/13-RA** – In this R.A. original authority at para 10 of Order-in-Original No.913 dated 12.06.2012 has precisely discussed and stated that FOB value is less than the assessable value in respect of Rebate Claim No. 12791 ; 13306 and 13281, and rebate claim restricted to the proportionate to FOB value. However, as concern to RC. No. 13306/13.10.2011, assessable value of ARE.1 is less than FOB value and therefore, rebate claim required to be sanctioned in totality. Details provided in following tabular form. Also, enclosed Annexure-A for detail information about assessable values and FOB values of concern export transaction

Sl.N.	R.C.No	R.C.Date	ARE.1 No	ARE.1 Dt.	Amount
1	12791	07.10.11	43/WTC/10	10.07.10	46347.00
2	13306	13.10.11	30/HGL/10	11.12.10	1743.00
3	13281	13.10.11	184/AHP/10	30.09.10	593.00

8.5 **F.No.195/50/13-RA** – In this R.A. original authority at para 5.7 of Order-in-Original No.1091 dated 14.07.2012 has precisely discussed and stated that FOB value is less than the assessable value in respect of Rebate Claims as per details given herein below in tabular form. and given order like, " As regards to CENVAT credit of excess duty paid over and above the FOB value, this office has no objection to such claims being made with the appropriate jurisdictional authority".

Sl.N	R.C.No	R.C.Date	ARE.1 No	ARE.1 Dt.	Amount
1	838	19.04.2012	328/GO7/2010	06.12.10	1881.00
2	839	19.04.2012	336/G07/2010	10.12.10	1846.00
3	3381	22.05.2012	010/SIR/2011	30.04.11	624.00
4	3382	22.05.2012	009/SIR/2011	23.04.11	1380.00
5	3383	22.05.2012	014/SIR/2011	03.05.11	1419.00
6	3403	22.05.2012	319/SIR/2010	17.03.11	1650.00
7	3406	22.05.2012	013/SIR/2011	03.05.11	870.00
8	25801	14.03.2012	068/SIR/2011	04.10.11	1911.00
9	3407	22.05.2012	019/MD1/2011	25.04.11	883.00
				Total	12467.0

8.6 **F.No.195/384/13-RA dated 04.03.2013** - In this R.A. original authority at para 5.7 of Order-in-Original No.1282 dated 09.08.2012 has precisely discussed and stated that FOB value is less than the assessable value in respect of Rebate Claim No. 5978 dated 20.06.2012 (ARE.1 No.157/G01/2011 dated 08.07.2011). In this claim the Assessable value is Rs.9,90,934/- and duty thereon is Rs.1,02,066/- and FOB value is 8,80,080 and duty thereon Rs. 90,648/- thus rejected amount is Rs 11418/-. Further, while passing Order, original authority has not given clear cut directions for CENVAT credit "As regards to CENVAT credit of excess duty paid over and above the FOB value, this office has no objection to such claims being made with the appropriate jurisdictional authority".

8.7 Further, they would like to clarify that, they have paid excise on CIF value and not the FOB value as it was very difficult to determine FOB value at the time of removal of goods from factory. Because, they are manufacturing goods across the country and consolidated the same at our depot for onward execution of export order. Therefore, it was their practical difficulty as at the time of dispatch from factory they were not aware about the freight element and in CIF and FOB freight amount having major effect. In addition to this we would like to state that, they had paid excise duty on CIF value and we have realized only CIF value and not the excise duty which they have paid over CIF. We have never recovered Excise duty from overseas buyer and

rejection of our rebate claim to the extent of FOB value is cost for us and tax on export. Therefore, we hereby request you to consider this fact while deciding this issue.

8.8 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, they are eligible for cash refund in lieu of CENVAT credit.

9. F.No.195/50/13-RA dated 15.01.2013 - Issues involved Short Sanctioned of Rebate Claim.

9.1 In this matter theh have paid excise duty @10% on goods cleared for export as per the provision of notification 2/2008 dated 01.03.2008. However, department has never sanctioned our rebate claim where we have paid excise duty @10%. According to original authority admissible rate was @4% (till 28th February 2011) or 5% (effective from 1st March 2011 vide notification 4/2011 dated 01.03.2011-C. Ex). However, original authority has wrongly sanctioned rebate claim @4% instead of 5%. Original authority has erroneously rejected their rebate claims and there is no any specific reason to do so.

9.2 Further, vide their additional submission, said facts they have submitted to the Commissioner (Appeals) on 28th September 2012. The said letter we have already submitted with our revision application as Annexure-8 at page number 76-77. However, Commissioner (Appeals) has not considered our request. Therefore, we hereby request you to consider the same for allowing the cash rebate.

10. F.No.195/50/13-RA dated 15.01.2013 & F.No.195/384/13-RA dtd 04.03.2013: - Issue Involved – Rejection of rebate claim due to export of goods after six month

10.1 **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.

10.2 **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.

10.3 **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.

10.4 **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.

10.5 **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.

10.6 **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.

10.7 **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.

10.8 **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

10.9 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.)

10.10 **195/50/RA-13**:- In this R.A, original authority has rejected our rebate claim No. 3402 dated 22.05.2012 of ARE.1 No. MD2/10/2010 dtd. 11.10.2010 RS. 15,581/- vide order dated 1091/12-13 dated 14.07.12

10.11 **195/384/RA-13** :- In this R.A , original authority has rejected our rebate claim No. 25877 dated 15.03.2012 of ARE.1 No. 60/PDL/2010 dtd. 16.06.2010 RS. 24,759/- & rebate claim No. 836 dated 19.04.2012 of ARE.1 No. 61/PDL/2010 dtd. 16.06.2010 RS. 12,379/-vide order dated 1282/12-13 dated 09.08.12

10.12 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.

11. In view of the aforesaid background and also as the issues involved in all these Revision Applications being similar, Government now takes up the these Revision Applications for decision vide common order .

12. **Revision Applications No. 195/46/13-RA, 195/47/13-RA, 195/48/13-RA** (arising out of Order in Appeal No. BC/294/RGD/2012-13 dated 27.09.2012, BC/295/RGD/2012-13 dated 27.09.2012 BC/297/RGD/ 2012-13 dated 27.09.2012).

13. Government notes that in these cases the adjudicating authority rejected the Rebate Claims filed by the applicant on the following grounds:

- The applicant had paid duty at a higher rate of 10% as against effective rate of 4% or 5% duty payable and therefore, are entitled to get rebate at 4% or 5% on the value of the goods cleared for exports,
- FOB Value is less than assessable value, hence rebate claims were restricted to duty on FOB value.
- Triplicate copies of ARE-1s not submitted,
- Duty paying Certificate not received.

14. On being appeal filed by the applicant the Commissioner (Appeals) upheld the Orders in Original and rejected the appeal filed by the applicant.

15. 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% or 5% as per effective rates in terms of Notification No 4/2006 C.Ex. dated 01.03.2006 as amended.

16. 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".*

17. 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 before Hon'ble Bombay High Court.

18. 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.*

19. In view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in preceding paras 16 to 18, 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.

20. As regards rebating in cash, only the duty worked out on FOB value in respect of the rebate claims treating it as a transaction value Government relies on GOI Order dated 26.03.2014 in Re: Sumitomo Chemicals India Pvt. Ltd. [2014(308) E.L.T.198(G.O.I.)] wherein GOI held that:

> *"9. Government notes that in this case the duty was paid on CIF value as admitted by applicant. The ocean freight and insurance incurred beyond the port, being place of removal in the case cannot be part of transaction value in terms of statutory provisions discussed above. Therefore, rebate of excess duty paid on said portion of value which was in excess of transaction value was rightly denied. Applicant has contended that if rebate is not allowed then the said amount may be allowed to be re-credited in the Cenvat credit account. Applicant is merchant-exporter and then re-credit of excess paid duty may be allowed in Cenvat credit account from where it was paid subject to compliance of provisions of Section 12B of Central Excise Act, 1944".*

21. Government therefore, holds that the excess duty paid by the applicant in both the issues, viz. duty paid in excess than payable at effective rate as per of Notification No. 4/2006-C.E., dated 1-3-2006 as amended and also over and

above the FOB value 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. As regards rejection of rebate claims on account of non submission of triplicate copy of ARE-1s as well as Duty Payment Certificate by the applicant, Government observes that the applicant has contended that their manufacturer had submitted Triplicates to their respective authority, but the same had not been forwarded to rebate section for further process. Government in this regard relies on GOI Order Nos. 612-666/2011-CX., dated 31-5-2011 in In Re : Vinergy International Pvt. Ltd., wherein GOI observed as under:

> ***9.9*** *Regarding certification of duty payment on the goods, Government notes the furnace oil cleared on payment of duty on Central Excise Invoices by M/s. BPCL Refinery Mahul and stored in their own installation BPCL Sewree Terminal whose Central Excise Invoice contain the reference of corresponding Central Excise Invoice issued by BPCL Refinery. The Asstt. Commissioner Central Excise has mentioned that the applicant had received said goods from M/s. BPCL Sewree Terminal and duty of said goods was originally paid by M/s. BPCL (Refinery) Mahul. This factual position as stated in the order-in-original is not denied by the department. Further, M/s. BPCL Mahul has given Disclaimer Certificate in each case to the applicant certifying the duty payment on the said goods and stating that they have no objection to M/s. Vinergy International Pvt. Ltd. claiming Excise refund/rebate of duty paid on furnace oil supplied to foreign going vessels. The triplicate copy of ARE-I was required to be certified by Range Superintendent regarding duty payment and forwarded to Asstt. Commissioner Central Excise. The factual position has not been brought on record regarding certification by Central Excise Range Superintendent.*
>
> ***10.*** *In this regard, Govt. further observes that rebate/drawback etc. are export-oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute, similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notification, Circular etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been*

prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd., 1998 (99) E.L.T. 387 (Tri), Alfa Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Tri), Atma Tube Products - 1998 (103) E.L.T. 207 (Tri.), Creative Mobus - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd., 2003 (157) E.L.T. 359 (GOI) and a host of other decisions on this issue.

11. In view of above circumstances and keeping in view the existence of enough adduced evidence here in above, Government is of the considered opinion that what is compulsorily required here in the interest of justice is that the department should make positive efforts so as to confirm the basic ingredient of co-relatibility specifically when there is nothing on record to out rightly negate the claim of applicant that duty paid goods cleared from M/s. BPCL Sewree Terminal were exported. Government, thus holds that duty paid goods have been exported in this case and rebate claim is admissible to the applicant. Thus, the impugned orders-in-appeal are hereby set aside and case is remanded back to the original authority to sanction the rebate claim after verifying the duty deposit particulars as stated in ARE-I forms. A reasonable opportunity of hearing will be afforded to the applicants.

23. Relying on the aforesaid case as well as on the aforesaid discussions and findings, Government modifies the Order in Appeal No. BC/294/RGD/2012-13 dated 27.09.2012, BC/295/RGD/2012-13 dated 27.09.2012, BC/297/ RGD/ 2012-13 dated 27.09.2012 to the above extent and remands these cases back to the original authority for verification of the duty deposit particulars as stated in ARE-I forms/Invoices and the applicant is also directed to submit all documents evidencing duty paid nature of the exported goods. The **Revision Application No. 195/46/2013-RA, 195/47/2013-RA, 195/48/2013-RA at Sl. No. 1 to 3 of Table** at para No. 1 are disposed of in the above terms.

24. Government now takes up **Revision Application No. 195/50/13-RA** (arising out of Order in Appeal No. BC/300/RGD/2012-13 dated 27.09.2012) for decision. Government observes that in this case 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 16 to 18, Government holds that the applicant is

not entitled to rebate of duty paid in excess of duty payable at effective rate (4% or 5%) as per of Notification No. 4/2006-C.E., dated 1-3-2006 as amended. However, Government remands the case back to the original authority to verify the contention of the applicant that the rebate sanctioning authority has wrongly sanctioned rebate claim @ 4% for the goods cleared after 1st March 2011, when the effective rate became 5% adv, and if the said contention is found to be correct the applicant is entitled to rebate @ 5% adv. The excess paid duty over and above the effective rate of 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.

25. As regards the rebate claims of the applicant rejected by the adjudicating authority on the ground that the impugned goods were exported after 6 months of their clearance from the factory in violation of condition 2 (b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 and hence inadmissible, 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 and the impugned Order in Appeal is upheld to this extent.

27. In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. BC/300/RGD/2012-13 dated 27.09.2012 to the

above extent and the **Revision Application No. 195/50/13-RA at Sl. No. 4 of Table at para no. 1** is disposed of in the above terms.

28. Government now takes up **Revision Applications No. 195/384/2014 -RA**, (arising out of Order in Appeal No. BC/415/RGD®12-13 dtd.27.11.2012) for decision.

29. 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.

30. In view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in preceding paras 16 to 18, 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.

31. As regards rebating in cash, only the duty worked out on FOB value in respect of the rebate claims treating it as a transaction value Government relying on GOI Order dated 26.03.2014 referred to in preceding para 20, holds that applicant is not entitled to rebate of duty paid in excess of FOB value of clearances.

32. Government therefore, holds that the excess duty paid by the applicant in both the issues, viz. duty paid in excess than payable at effective rate as per of Notification No. 4/2006-C.E., dated 1-3-2006 as amended and also over and above the FOB value 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.

33. As regards the rebate claims of the applicant rejected by the adjudicating authority on the ground that the impugned goods were exported after 6 months of their clearance from the factory, Government relying on GOI Order No. 40/2012-CX dated 16.01.2012 in applicant's case itself discussed at para 25 above, holds that the applicant is not entitled to rebate of duty paid on goods exported after six months of clearance from factory and the impugned Order in Appeal is upheld to this extent.

34. In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. Order in Appeal No. BC/415/RGD(R) 12-13 dated 27.11.2012 to the above extent and the **Revision Application No.**

195/384/2012 -RA at Sl. No. 5 of Table at para 1 above is disposed of in the above terms.

35. Government however, directs that the re credit of the excess duty paid is to be allowed by the original authority in all the above cases 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.

36. All the 5 Revision Applications viz. bearing Nos.195/46/13-RA, 195/47/13 –RA, 195/48/13-RA, 195/50/13-RA, 195/384/13-RA are disposed off in terms of above.

37. So ordered.

20.7.17

(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

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

Copy to :

1. The Commissioner of GST & CX, Belapur,
2. The Commissioner of GST & CX (Appeals) Belapur, CGO Complex, 6thFloor, Belapur.
3. The Deputy / Assistant Commissioner of (Rebate), GST & CX Belapur,
4. Sr.P.S. to AS(RA),Mumbai.
5. Guard File.
6. Spare copy.