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 195/54/13-RA /5239
195/55/13-RA

Date of Issue :- 16.09.2021

ORDER NO. 287-288 /2021-CX(WZ)/ASRA/MUMBAI DATED 27.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, 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	195/54/13-RA	M/s One world Pharma Pvt. Ltd.	Commissioner,Central Excise, Raigad
2	195/55/13-RA	M/s One world Pharma Pvt. 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/267/RGD/2012-13 dtd. 24.09.2012 and BC/266/RGD/2012-13 dtd. 24.09.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

ORDER

These Revision applications are filed by M/s One world Pharma Pvt. 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

Sl.No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Issue
1	2	3	4	5
1	195/54 /13-RA	BC/267/RGD/2012-13 dtd. 24.09.2012	233/11-12/DC(Rebate)/Raigad DT.30.04.2012	Duty Paid @10% under Notfn. No.2/2008-CE 01.03.2008 on goods cleared for export. The lower authorities restricted rebate to the extent of duty involved in FOB Value as well as 4% of duty in terms of Notfn. No. 4/2006 dated 01.03.2006;
2	195/55/13-RA	BC/266/RGD/2012-13 dtd. 24.09.2012	2593/11-12/DC(Rebate)/Raigad DT.31.03.2012	Duty Paid @10% under Notfn. No.2/2008-CE 01.03.2008 on goods cleared for export. The lower authorities restricted rebate to the extent of duty involved in FOB Value as well as 4% of duty in terms of Notfn. No. 4/2006 dated 01.03.2006.

Revision Application No. 195/54 /13-RA

2.1 The applicant, a merchant exporter had procured goods from various manufacturers and have exported goods and had filed 11 rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 for the duty paid on goods exported. The manufacturers paid duty at 4% on the goods cleared for home consumption in terms of Notification No. 4/2006 dated 01.03.2006, as amended whereas for exports they paid duty @10% under Notification No.2/2008-CE 01.03.2008, as amended. Further during the course of verification of the rebate claim it was found that the FOB value was less than the invoice value. The rebate sanctioning authority vide Order in Original 233/11-12/DC(Rebate)/Raigad DT.30.04.2012 restricted the rebate to the extent of duty involved in FOB value as well as 4% of duty in terms of Notification 4/2006 dated 01.03.2006.

2.2 Being aggrieved with the aforesaid Order in Original the applicant filed appeal before Commissioner of Central Excise (Appeals) Mumbai-III who vide Order in Appeal No. BC/267/RGD/2012-13 dtd. 24.09.2012 upheld the Order in original and rejected the appeal filed by the applicant.

2.3 Being aggrieved with the impugned Order, the applicant has filed Revision Application No. 195/54/13-RA mainly on the following grounds:-

2.3.1 In respect of rebate claim No.24336/09-10:-

- In this matter, they clarify that, at the time of clearance of goods they had cleared these goods for sale in overseas market. However, the buyer party has asked for the sample quantity therefore, the said goods had been exported as sample and does not have commercial value. But the said goods have suffered excise duty and have been exported. Also the rebate sanctioning authority has not pointed out any dispute relating to export of duty paid goods.
- As per Notification No. 19/2004-CE (NT) dated 6.9.2004 read with Rule 18 of Central Excise Rules. 2002 to get sanction of rebate of excise duty only condition needs to be fulfilled is that the duty paid goods must be exported. In their case also this condition is fulfilled therefore rejecting our rebate claim for non realization of forex is hardship to them and tax on exported goods. Further, in order to promote export business the Government of India has relaxed industry in many aspects in regards to export. Therefore, rejection of rebate claim on this ground is in violation of express policy of the Government of India.
- They also rely on In Re: Bhagirath Textiles Ltd. 2006(202) E.L.T. 147 (G.O.I.).

In view of the above, they requested to direct rebate sanctioning authority to sanction the rebate claim and if it is not possible to sanction their rebate in cash then proper directions be issued for taking credit in CENVAT account of jurisdictional Central Excise Office having jurisdiction over the factory of manufacturer.

2.3.2 In respect of Rebate claim No. 3415/10-11.

- At the time of clearance of goods from factory the goods scheduled to be exported through JNPT. Therefore, they had addressed rebate sanctioning authority to Maritime Commissioner, Raigad. However, as per the requirement of overseas buyer, they exported from two ports viz. JNPT and Air Cargo Complex, Sahar. Copy of proof of export is enclosed.
- In such situation, they are in practice to submit the rebate claim with rebate sanctioning authority who has declare as rebate sanctioning authority on ARE-1 at the time of clearance of goods. Accordingly they submitted rebate claim with Maritime Commissioner, Raigad as mentioned on ARE-1. As per the CBEC manual of supplementary instruction Maritime Commissioner means the Commissioner of Central Excise under whose jurisdiction one or more of the port, airport, land custom station or post office of exportation, is located. In present case the goods have been exported. When export affected through two ports, viz. JNPT & Air Cargo, Sahar and Air Cargo Sahar is not under the jurisdiction of Maritime Commissioner, Raigad therefore, they orally informed them to give attested photocopies of ARE-I & Central Excise

Invoice and also give as direction in Order in Original to submit part rebate claim with Maritime Commissioner, Mumbai - I as Air Cargo Sahar falls under their jurisdiction. However, the rebate sanctioning authority rejected their part rebate claim and also had not given any direction for the same. Therefore, they requested to set aside that portion of Order in Original and give them direction in present claim as well as for future claims about how to proceed with such claims.

- In view of the above, they prayed to give directions to rebate sanctioning authority to sanction the entire rebate claim and if it is not possible then proper directions be issued to take credit in CENVAT account at jurisdictional Central Excise Office having jurisdiction over factory of manufacture.
- Further as concern to export affected after six months through JNPT, they state that they have cleared these goods for export purpose and the same have been exported. Also the payment of excise duty and export is not in dispute. Therefore, rejection of their claim on procedural is hardship to them and tax on exported goods. Payment and export of goods is not in dispute.
- As per Notification No. 19/2004- CE (NT) dt. 6.9.2004, in order to sanction the rebate claim there is condition that duty paid goods must be exported. In their case this condition is fulfilled and there is no dispute by adjudicating authority on this ground. The other requirements are procedural. Further, the Notification does not remotely suggest rejection of rebate claim for non compliance of any procedural condition when duty procedural payment and export of goods is not in dispute. Therefore, rejection of their claim on this ground is hardship to them and tax on exported goods.
- In this matter we would like to rely below judgment
  2006 (205) E.L.T. 1093 (G.O.I.) In Re:- CCE, Bhopal (Para 7.4),
  2006(200) E.L.T.171 (G.O.I.) In Re:- Harison Chemicaals (Paras 6.2 to 6.5)
  OIA No. SB/38/M-IV/09 dated 14.09.2009,
  OIA No. AT/703/M-III/05 dated 31.12.2005,
  OIA No. PIII/190/04 dated 01.11.2004.

However, Commissioner (Appeals) has not given her opinion on these issues.

2.3.3 <u>In respect of RC No.1043, 1213 and 1215/11-12</u>

- Notification No.4/2006 & Notification No.2/2008 co-exist in the books of law are not mutually exclusive. Both the aforesaid Notifications do not have any provisions excluding the other. Both these Notifications co-exist simultaneously in the books of law. Both the Notifications have been issued under Section 5A of the Central Excise Act, 1944.
- The Deputy Commissioner has not pointed out any provision under the Central Excise Act or Rules made there under which has the effect of

requiring assessee to mandatorily avail the exemption Notification No.4/2006 CE dated 01.03.2006.

They are entitled to entire refund of duty paid on goods exported.

- The export of goods is not in dispute. The fact that the goods which have been exported have suffered excise duty is also not in dispute. Therefore, they are eligible for the entire claim of rebate.
- The CESTAT in Gayatri Laboratories Vs CCE-2006(194) ELT 73 (T) held that the rebate claim to the extent of duty paid is available and that the rebate claim cannot be restricted on ground that less duty should have been paid in terms of Notification.

Rebate sanctioning authority cannot question the assessment:

- The method of assessment of excise duty payment on finished goods opted by them have not yet been challenged at any Commissionerate and therefore reassessment of excise duty payment while sanctioning rebate claim by the office of maritime commissioner is beyond the scope. The said issue has been already clarified by the circular of Government of India, Ministry of Finance (Circular No. 510/06/2000-CX dated 3 Feb,2000), which is self explanatory about such issues vide this circular board has resolve that - "*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 a claim.*" (Copy enclosed)

Assessment of goods being finalized, refund of duty cannot be denied.

- The goods have been assessed to Central Excise duty applying Notification No. 2/2008-CE dated 01.03.2008 by paying 10% duty on such goods in terms of provisions of Rule 6 and the said assessment has not been challenged by the department in any manner.
- Ministry of Finance have clarified vide their letter (DOF No.334/1/2008-TRU) dated 29th February 2008 where ata para 2.2. as "*since the reduction in the general rate has been carried out by notification. The possibility of same product / item being covered by more than one notification cannot be ruled out. In such situation the rate beneficial to the assessee would have to be extended if he fulfils the attendant condition of the exemption*"

In view of the above, the applicant prayed to give directions to rebate sanctioning authority to sanction the entire rebate claim and if it is not possible then proper directions be issued to take credit in CENVAT account at jurisdictional Central Excise Office having jurisdiction over factory of manufacture.

3. Personal hearing in this case was scheduled on 16.01.2018, 01.02.2018, 16.01.2020/22.01.2020, 03.12.2020/08.12.2020/11.12.2020 and 27.01.2021.

However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

4.1 Rebate claim No.24336/09-10.

Government observes that the rebate sanctioning authority has rejected rebate on export of Trade Sample goods as it has no market/export value and there is no realisation of Forex. Government in this regard relies on GOI Order No. 332/2014-CX, dated 25-9-2014 in Re: Umedica Laboratories (Pvt.) Ltd. 2015 (320) E.L.T. 657 (G.O.I.) wherein GOI observed as under:-

> ***9.1*** *Government finds that the original authority also rejected the rebate claim of duty paid on free samples. Government observes that these samples were not meant for sale, so, they did not have any commercial value and no foreign remittances were to be received by the applicant. Government observes that the rebate/drawback etc. are export oriented schemes to neutralize the effect of the domestic duties on the exported goods to make them competitive in international market to earn more foreign exchange for the country.*
>
> ***9.2*** *As in the instant case, no foreign remittances was to be received by the applicant, they were not eligible for rebate of duty on (free trade samples). As per foreign trade policy, the exporter is allowed to send the free trade samples, but the admissibility of the rebate claim is to be decided as per relevant provisions of Central Excise Act. No commercial value is mentioned on the export documents and the market value as per records become nil. Since the market price of export goods at the time of exportation is nil, the rebate claim becomes inadmissible in terms of Condition No. 2(e) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.*
>
> ***10.*** *Government notes that the amount paid in excess of duty payable on one's own volition cannot be retained by Government and it has to be returned to manufacturer/applicant in the manner in which it was paid. Accordingly, such excess paid amount/duty which is required to be returned to the applicants.....*
> .....
>
> ***11.*** *In view of above, Government modifies the order of Commissioner (Appeals) to the extent discussed above. As such the excess paid amount may be recredited in manufacturer's Cenvat credit account.*

Applying the ratio of the afore stated GOI Order Government holds that the applicant is not entitled to rebate of duty paid in cash on goods exported as trade sample goods. However, the duty paid by the manufacturer of the applicant on goods exported has to be re-credited in the Cenvat Credit account from where it

was paid subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

4.2 Rebate claim No. 3415/10-11

Goods exported from two different Ports : Government in this case observes that in its revision application, the applicant has stated that the goods had been exported through two ports, Viz. JNPT and Air Cargo Sahar and it was not possible to submit one single original claim documents at same time with two different rebate sanctioning authorities. However, the rebate sanctioning authority rejected their part claim and also did not give direction for the same. Government in this case rely on GOI Order No. 1596/2012-CX dated 16.11.2012 in Re: Unique Pharmaceutical Laboratories [2014(313) ELT 941(GOI)]. The facts of the case were that the goods were exported by the applicant partly by sea and partly by air, thereby attracting the jurisdiction of two different authorities for the purpose of grant of due export benefits , however, the applicant could not file rebate claims in time on account of delay in obtaining certified copies of relevant documents from the office of Maritime Commissioner (Rebate), Raigad. The Assistant Commissioner (Rebate), Central Excise, Mumbai-IV while granting the rebate held that the respondent had filed their rebate claims with appropriate authority i.e. Maritime Commissioner, Khandeshwar, Raigad on 16-11-2006 & 8-12-2006, which was within 1 year and therefore he sanctioned the rebate claims amounting to Rs. 27,936/- by issuing Order-in-Original dated 15-2-2008. However, on filing an appeal by the department against Order in Original dated 15.02.2008, Commissioner (Appeals) while allowing Department's appeal observed that

> *"The rebate claim effected by air was filed with the Maritime Commissioner, Mumbai-IV on 20-7-2007 i.e. after the expiry of period of one year from the date of export. Even though the ARE-1s were common for both exports the claimant could have filed the rebate claim along with xerox copies of ARE-1s before the expiry of one year from the date of export.*

However, while setting aside the aforesaid Order in Appeal, vide Order No. 1596/2012-CX dated 16.11.2012 (supra) GOI observed as under :-

> *8. Government considers the above situation of one of the export case as having been made partly by sea & partly by Air, thereby attracting the jurisdiction of two different authorities for the purpose of grant of due export benefits. For this case matter Government is of the opinion that when the applicant had indeed bonafidely approached one of the proper rebate sanctioning authority for the purpose and submitted all the relevant documents then the department should have co-operated and co-ordinated with the appropriate rebate sanctioning authority and the entire case matter could have been settled in a legal and proper manner well within required time*

frame. The submissions of applicant herein as made in Para 4 above when read with the basic policy of the Government for the export benefits schemes then the orders of lower authorities appears to be proper. Government held in the case of M/s. I.O.C. Ltd. reported as 2007 (220) E.L.T. 609 (G.O.I.) that time limitation of one year is to be computed from the date on which rebate claim was initially filed. Government therefore agrees with the findings of original authority.

Relying on the aforesaid judgement and also in view of the fact that all the required documents namely Original / Duplicate and Triplicate ARE-1 supported with duplicate excise invoice, shipping bill, air way bill, invoice and packing list are available with the rebate sanctioning authority Raigad, (now CGST Belapur) he is directed to provide attested copies of these documents to the applicant in respect of shipment made through Air Cargo Sahar, for submitting the same for processing a rebate claim by the office of Maritime Commissioner, Mumbai-IV (now CGST Mumbai East Commissionerate).

However, as regards the rebate claims of the applicant rejected by the rebate sanctioning authority on the ground that the consignment of 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. The applicant has not obtained extension of validity of ARE-1. Further, aforementioned issue stands decided in Re: Cipla Ltd. vide 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.

In view of the foregoing, Government holds that the applicant is not entitled to rebate of duty paid on consignment exported after six months of clearance from factory and the Order in Original is upheld to this extent.

4.3 Rebate claims No.1043, 1213 and 1215/11-12

Government observes issue of payment of duty by the applicant's manufacturer @ 10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 has been decided by G.O.I. Revision Order Nos. 41-54/2013-CX, dated 16-1-2013 in RE Cipla Ltd. [2014(313)E.L.T.954(G.O.I.)] holding as under:-

> *"9. ..... 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.*
>
> *10. .....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".*

Being aggrieved by the decision of the aforementioned order of Revision Authority, the Commissioner of Central Excise, Mumbai-III filed Writ Petition No. 2693/2013 before Hon'ble Bombay High Court. Hon'ble Bombay High Court vide Order dated 17th November 2014 dismissed the Writ Petition No 2693/2103 filed by the Commissioner of Central Excise Mumbai-III [2015 (320) E.L.T. 419 (Bom.)] holding that

> *8.....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 even 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.

In view of the Revisionary Authority and Hon'ble Bombay High Court's Order/Judgement discussed in preceding paras , 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 in cash. Government therefore, holds that the excess duty paid by the manufacturer of the applicant 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 has to be re credited in the Cenvat Credit account from where it was paid subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

4.4 In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. BC/267/RGD/2012-13 dtd. 24.09.2012 to the extent discussed at paras 4.1 to 4.3 supra and the Revision Application No. 195/54/13-RA at Sl. No. 1 of Table at para no. 1 is disposed of in the above terms.

Revision Application No. 195/55/13-RA

5.1 The applicant, a merchant exporter had procured goods from various manufacturers and have exported goods and have filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 for the duty paid on goods exported. The manufacturers paid duty at 4% on the goods cleared for home consumption in terms of Notification No. 4/2006 dated 01.03.2006, as amended whereas for exports they paid duty @10% under Notification No.2/2008-CE 01.03.2008, as amended. The rebate sanctioning authority vide Order in Original 2593/11-12/DC(Rebate)/Raigad DT.31.03.2012 restricted the rebate to the extent of duty involved in FOB value as well as 4% of duty in terms of Notification 4/2006.

5.2 Being aggrieved with the aforesaid Order in Original the applicant filed appeal before Commissioner of Central Excise (Appeals) Mumbai-III who vide Order in Appeal No. BC/266/RGD/2012-13 dtd. 24.09.2012 upheld the Order in original and rejected the appeal filed by the applicant.

5.3 Being aggrieved with the impugned Order, the applicant has filed Revision Application No. 195/55/13-RA mainly on the following grounds :-

In respect of rebate claim reduced to FOB value:-

- Freight element is not decided on the day of dispatch from factory. They have tried there level best to overcome the problem of F.O.B. Value and there is no intention to pay excise duty at higher side to claim rebate, therefore, the rejecting their rebate claim is without understanding the fact of the case or difficulties of industries Fright gets confirmed on availability of vessel and space on vessel.
- To promote the export business they offer discount to overseas buyer and thus discounted CIF values get consider for the calculation of FOB value in shipping bill and because of that ARE-1 value becomes less than ARE-1 value.
- The commission given to foreign agent exceeds to 12.5% and whenever commission exceeds 12.5% it gets deducted from shipping value to calculate FOB Value in Shipping Bill (Ref: Circular 64/2003 Cus 21st July 2003). Due to these issues many times FOB values in Shipping Bill get lessed than ARE-1 value. They rely on circular No. 510/06/2000-CX dated 03.02.2000) which says that there is no question of re-quantifying the amount of rebate by the rebate sanctioning authority by applying some other rate of exchange prevalent subsequent to the date on which the duty was paid but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim.
- They also rely on In Re: Bhagirath Textiles Ltd. 2006(202) E.L.T. 147 (G.O.I.).
- In view of GOI order 1568-1595-2012-CX dt.14.11.2012 directions may be issued to take Cenvat Credit at manufacturer end as they are not registered with jurisdictional Central Excise as assessee.

In respect of rebate claimed @10% as per Notification No.2/2008-CE dated 01.03.2008 the applicant has relied on same grounds mentioned at para 2.3.3 supra.

6. Personal hearing in this case was scheduled on 16.01.2018, 01.02.2018, 16.01.2020/22.01.2020, 03.12.2020/08.12.2020/11.12.2020 and 27.01.2021. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

7.1 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".

Government therefore, holds that the excess duty paid by the applicant's manufacturers over and above the FOB value has to be re-credited in the Cenvat Credit account from where it was paid subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

7.2 Government observes that issue of payment of duty by the applicant @ 10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 has already discussed & decided at para 4.3 supra. Government therefore, holds that the excess duty paid by the manufacturer of the applicant in excess than payable at effective rate as per of Notification No. 4/2006-C.E., dated 1-3-2006 as amended has to be re-credited in the Cenvat Credit account from where it was paid subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

8. In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. BC/266/RGD/2012-13 dated 24.09.2012 to the extent discussed at paras 7.1 & 7.2 supra and the Revision Application No. 195/55/13-RA at Sl. No. 2 of Table at para no. 1 above, is disposed of in the above terms

Shrawan 27/8/21

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

287-288
ORDER No. /2021-CX (WZ) /ASRA/Mumbai Dated 27.08.2021

To,

M/s One World Pharma Pvt. Ltd.,
201,202,203, 2nd Floor, Arc Ind Estate,
Makwana Road, Marol, Andheri (East),
Mumbai-400 059.

Copy to:

1. The Commissioner of CGST, Belapur CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614.
2. The Commissioner of CGST & CX, Mumbai East Commissionerate, 9th Floor, Lotus Info centre, Parel, Mumbai 400 012.
3. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
4. The Deputy / Assistant (Maritime) Commissioner of GST & CX , Belapur Commissionerate , CGO Complex, CBD Belapur, Navi Mumbai-400614.
5. The Deputy / Assistant Commissioner, Division-III, GST & CX Division –III, Mumbai East Commissionerate, 9th Floor, Lotus Info centre, Parel, Mumbai 400 012
6. Sr. P.S. to AS (RA), Mumbai.
7. Guard file.
8. Spare Copy.