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 195/56/13-RA
195/81/13-RA
195/202/13-RA
195/203/13-RA /5213

Date of Issue :- 16.09.2021

ORDER NO. 289-292 /2021-CX(WZ)/ASRA/MUMBAI DATED 26.08.2021 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	195/56/13-RA	M/s Uniworld Pharma Pvt. Ltd.	Commissioner,Central Excise, Raigad
2	195/81/13-RA	M/s Uniworld Pharma Pvt. Ltd.	Commissioner, Central Excise Raigad
3	195/202/13-RA	M/s Uniworld Pharma Pvt. Ltd.	Commissioner, Central Excise, Mumbai-I
4	195/203/13-RA	M/s Uniworld 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/252/RGD/2012-13 dtd. 30.08.2012, BC/285/RGD/2012-13 dtd. 26.09.2012, BC/330/ RGD/ 2012-13 dtd.22.10.2012, passed by the Commissioner of Central Excise (Appeals), Mumbai-III and BR/46 to 325/M1/2012 dated 10.09.2012 passed by Commissioner(Appeals), Central Excise, Mumbai Zone-I.

ORDER

These Revision applications are filed by M/s Uniworld 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 and Commissioner(Appeals), Central Excise, Mumbai Zone-I.

TABLE

Sl. No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Issue
1	2	3	4	5
1	195/56 /13-RA	BC/252/RGD/2012-13 dtd. 30.08.2012	42/11-12/DC(Rebate)/Raigad DT.09.04.2012	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; In two rebate claims the goods exported after six months from the date of clearance of factory; Part goods involved in two rebate claims were exported through Air Cargo Sahar Air Complex. **Total Rebate Rejected :Rs.5,37,052/-.**
2	195/81/13-RA	BC/285/RGD/2012-13 dtd. 26.09.2012	212/11-12/DC(Rebate)/Raigad DT.27.04.2012	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. **Total Rebate Rejected: 1,79,757/-.**
3	195/202/13-RA	BR/46 to 325/M1/ 2012 dated 10.09. 2012	K-II/97-R/2011 (MTC) 24.01. 2012 K-II/502-R/201 (MTC) 29.09.2011 K-II/536-R/2011(MTC) 21.10.2011 K-II/678-R/2011(MTC) 14.12.2011 K-II/34-R/2011 (MTC) 11.01.2012 K-II/112-R/2012(MTC) 03.02.2012 K-II/145-R/2012(MTC) 12.02.2012 K-II/178-R/2012(MTC) 21.02.2012 K-II/217-R/2012(MTC) 04.04.2012 K-II/255-R/2012(MTC) 03.04.2012	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 only to the extent it is payable at the effective rate of duty @4% or @ 5% adv. as the case may be in terms of Notfn. No. 4/2006 dated 01.03.2006 in cash and for the balance amount they were asked to approach the jurisdictional authority for availing Cenvat Credit,
4	195/203/13-RA	BC/330/RGD/12-13 dtd.22.10.2012	911/11-12/DC(Rebate)/ Raigad DT.08.06.2012	In r.o. 3 rebate claims applicant did not produce triplicate copies of ARE-1s, in r/o one claim Duty Paid @10% on goods cleared for export"; in all the rebate claims, the FOB value is higher than the invoice value. Lower authorities rejected the entire rebate claim. **Total Rebate Rejected: 51,847/--.**

Revision Application No. 195/56 /13-RA

2.1 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 42/11-12/DC(Rebate)/Raigad dated 09.04.2012 restricted the rebate to the extent of duty involved in FOB value as well as 4% of duty in terms of Notification 4/2006 and also rejected rebate in respect of part consignment of goods which were not exported within six months from the date of clearance from factory and part goods involved in two rebate claims were exported through Air Cargo Complex.

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/252/RGD/2012-13 dtd. 30.08.2012 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. 195/56 /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 in Re : Cipla Ltd. 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 1.3.2008.

- 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.

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.

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, 28.08.2019, 03/08.12.2020 and 28.01.2021. 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 Government observes issue of payment of duty by the applicant's manufacturers @ 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".*

4.2 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.

4.3 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 transaction value cannot be higher than FOB value and the rebate is therefore, required to be restricted proportionate to FOB Value.

4.4 Government therefore, holds that the excess duty paid by the applicant's manufacturers 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 from where it was paid subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

4.5 As regards the rebate claims of the applicant rejected by the rebate sanctioning authority on the ground that the part of 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. Applicants have 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 also concur with the views of the Appellate Authority that the Adjudicating Authority has no jurisdiction to grant rebate in respect of the goods exported through Air Cargo Sahar Air Complex (as the applicant has not made out any grounds in the Revision Application in this regard) and the impugned Order in Appeal is upheld to this extent.

4.6 In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. BC/252/RGD/2012-13 dtd. 30.08.2012 to the extent discussed at para 4.4 supra and the Revision Application No. 195/56/13-RA at Sl. No. 1 of Table at para no. 1 is disposed of in the above terms.

Revision Application No. 195/81/13-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 212/11-12/DC(Rebate)/Raigad DT.27.04.2012 restricted the rebate to the extent of duty involved in FOB value as well as 4% of duty in terms of Notification 4/2006.

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/285/RGD/2012-13 dtd. 26.09.2012 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. 195/81/13-RA mainly on the same grounds mentioned at para 2.3 supra. Additionally the applicant has also submitted as follows :-

In respect of RC No. 21452 dt. 17.01.2012

- In this matter they would like to clarify that, at the time of clearance of goods from factory the goods scheduled to be exported through JNPT. Therefore, they 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 as Annexure-6.
- In such situation, it is their practice to submit the rebate claim with rebate sanctioning authority who is declared as rebate sanctioning authority on ARE-1 at the time of clearance of goods. Accordingly they submitted present 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 has 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-1 & Central Excise Invoice and also give them 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 has rejected our part rebate claim and also not given any direction for the same. Commissioner (Appeals) is also silent on this issue.

- They have paid duty at 10% as per Notification No.2/2008-CE 01.03.2008. The department is of the opinion of sanctioning to the extent of prevailing rate. At the time of clearance of goods from factory the prevailing rate is 5% and the rebate sanctioning authority has mistakenly sanctioned the rebate claims @ 4% for goods exported through JNPT. Hence differential amount of Rs.6668/- be sanctioned to them along with interest.

6. Personal hearing in these cases was scheduled on 02.01.2018, 22.08.2019, 01.10.2019. 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 three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

7.1 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% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 and rebating in cash, only the duty worked out on FOB value in respect of the rebate claims treating it as a transaction value Government has already discussed & decided the issue at paras 4.1 to 4.4 supra. Government therefore, holds that the excess duty paid by the applicant's manufacturers 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 from where it was paid subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

7.2 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).

7.3 As regards another issue of short sanction of rebate claims the applicant has contended that at the time of clearance of goods from factory the prevailing rate was 5% and the rebate sanctioning authority has mistakenly sanctioned the rebate

claims @ 4% for goods exported through JNPT, Government remands the matter back to the rebate sanctioning authority for verification of applicant's contention that these rebate claims have been short sanctioned.

7.4 In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. BC/285/RGD/2012-13 dtd. 26.09.2012 to the extent discussed at paras 7.1 to 7.3 supra and the Revision Application No. 195/81/13-RA at Sl. No. 2 of Table at para no. 1 above, is disposed of in the above terms.

Revision Application No. 195/202/13-RA

8.1 The applicant, a merchant exporter 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 cleared from factories situated at various places and exported through Air Cargo Complex, Sahar, Mumbai. The manufacturers paid duty at for exports they paid duty @10% under Notification No.2/2008-CE 01.03.2008, as amended. The rebate sanctioning authority vide Orders in Original mentioned at column No.4 of Sl. No 3 of the of Table at para no.1 above held that the effective rate of duty for the products cleared for exports attracts 4% duty under Notification No. 4/2006 dtd.01.03.2006 as clarified at para 3.1 of D.O.F. No. 334/1/2008-TRU dtd. 29.02.2008 issued Joint Secretary (TRU-I) in the budget 2008-09. Hence the exporter is entitled to rebate @4.12% in cash and remaining @ 6.18% is refundable under (a) to proviso to sub section (2) of 11B ibid as a CENVAT Credit by approaching the jurisdictional officer for allowing Cenvat Credit.

8.2 Being aggrieved with the aforesaid Orders in Original the applicant filed appeals before Commissioner of Central Excise (Appeals) Mumbai Zone-I who vide Order in Appeal No. BR/46-325/M-1/2012 dtd. 10.09.2012 upheld the Orders in original and rejected the appeal filed by the applicant.

8.3 Being aggrieved with the impugned Order, the applicant has filed Revision Application No. 195/202/13-RA mainly on the similar grounds mentioned at para 2.3 supra.

9. Personal hearing in these cases was scheduled on 16.02.2018, 25.02.2020/03.03.2020 & 03.12.2020/08.12.2020/11.12/2020 & 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.

10. Government observes that the 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 the issue at paras 4.1 & 4.2 supra and in view thereof 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.

10.1 In view of the discussions and findings elaborated above, Government upholds Order in Appeal No. Order in Appeal No. BR/46-325/M-1/2012 dtd. 10.09.2012 and the Revision Application No. 195/202/13-RA at Sl. No. 3 of Table at para no. 1 above, is dismissed.

Revision Application No. 195/203/13-RA

11.1 The applicant, a merchant exporter had procured goods from various manufacturers and have exported goods and have filed 3 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. In one claim the manufacturer 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. In another claim FOB value shown in the shipping bill was lower than the assessable value and all the three rebate claims the applicant failed to produce Triplicate copy of ARE-1. The rebate sanctioning authority vide Order in Original 911/11-12/DC(Rebate)/Raigad dated 08.06.2012 rejected all the three claims holding that Triplicate copy of ARE-1 is an essential & mandatory document without which the rebate claim cannot be entertained.

11.2 Being aggrieved with the aforesaid Orders in Original the applicant filed appeals before Commissioner of Central Excise (Appeals) Mumbai-III who vide Order in Appeal No. BC/330/RGD/2012-13 dtd. 22.10.2012 upheld the Order in original and rejected the appeal filed by the applicant.

11.3 Being aggrieved with the impugned Order, the applicant has filed Revision Application No. 195/203/13-RA mainly on the similar grounds mentioned at para 2.3 supra. Additionally the applicant has also submitted as follows :-

In respect of non-sanctioning of rebate claim for triplicate ARE-1.

- They have submitted triplicate ARE-1 at Jurisdictional Central Excise Range. They have complied all the procedural part as mentioned in Notification No. 19/2004-CE (NT) date 6.9.2004. The para 3 (vii) (a) reads as under

  "the triplicate ARE-I shall be sent to the office with whom rebate claim is to be filed, either by post or by handling over to the exporter in a tamper proof sealed cover".

  In this case the Jurisdictional Central Excise office has not handed over triplicate ARE-1 to them, therefore, they are not in position to submit the same.

- In this matter they rely on the decision given by the Revisionary Authority in the case of In Re: Sanket Industries Ltd as reported in 2011 (268) E.L.T. 125 (G.O.I.). Copy enclosed.

- In view of the above, they requested to set aside Order-In-Appeal passed by Commissioner (Appeals) of Central Excise Mumhai III and set aside that portion of Order In Original passed by Deputy Commissioner of Central Excise, Raigad and allow their appeal with direction to sanction our rebate claim.

12. Personal hearing in these cases was scheduled on 16.02.2018, 25.02.2020/03.03.2020 & 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 three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

13.1 Government observes that the applicant has contended that triplicate ARE-1 at Jurisdictional Central Excise Range, 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., [2012 (278) E.L.T. 407 (G.O.I.)]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. .....*

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.*

13.2 Relying on the aforesaid case Government 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.

13.3 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% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 and rebating in cash, only the duty worked out on FOB value in respect of the rebate claims treating it as a transaction value, Government has already discussed & decided the issue at paras 4.1 to 4.4 supra. Accordingly, the applicant is eligible for the rebate to the extent of duty of 4% ad valorem under Notification No. 4/2006-CE dtd 01.03.2006 as amended. The excess duty paid by the applicant's manufacturers in both the issues, viz. 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 recredited 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.

13.4 In view of the foregoing discussion Government sets aside and modifies Order in Appeal No. BC/330//RGD/2012-13 dated 22.10.2012 at Sl. No. 4 of Table at para no. 1 above, and remands the matter back to the rebate sanctioning authority for taking suitable action in view of Government's observations at paras 13.1 to 13.3 supra.

14. The Revision Application No. 195/203/13-RA is disposed off in the above terms.

26/8/21

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

ORDER No. 289-292 /2021-CX (WZ) /ASRA/Mumbai Dated 26.08.2021

To,

M/s Uni World Pharma,
12, Gunbow Street,
Fort, Mumbai-400 001

Copy to:

1. The Commissioner of CGST & CX, Mumbai East Commissionerate, 9th Floor, Lotus Info centre, Parel, Mumbai 400 012.
2. The Commissioner of CGST, Belapur CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614.
3. The Commissioner of CGST & CX, (Appeals-II), IIIrd floor, Central Excise Building, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.
4. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
5. The Deputy / Assistant Commissioner, Division-III, GST & CX Division –III, Mumbai East Commissionerate, 9th Floor, Lotus Info centre, Parel, Mumbai 400 012
6. The Deputy / Assistant (Maritime) Commissioner of GST & CX , Belapur Commissionerate , CGO Complex, CBD Belapur, Navi Mumbai-400614.
7. Sr. P.S. to AS (RA), Mumbai.
8. Guard file.
9. Spare Copy.