REGISTERED SPEED POST

सत्यमेव जयते

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.195/1121/12-RA, 195/446/13- RA,
195/448/13-RA, 195/542/13-RA,
195/543/13-RA, 195/544/13-RA /1389

Date of Issue:-31/08/2018

ORDER NO.291-296 /2018-CX(WZ)/ASRA/MUMBAI DATED 03.08.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SETION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/1121/12-RA	M/s Cipla Ltd	Commissioner, Central Excise, Mumbai-III
2	195/446/13-RA	M/s Cipla Ltd	Commissioner, Central Excise Mumbai-III
3	195/448/13-RA	M/s Cipla Ltd	Commissioner, Central Excise, Mumbai-III
4	195/542/13-RA	M/s Cipla Ltd	Commissioner, Central Excise, Mumbai-III
5	195/543/13-RA	M/s Cipla Ltd	Commissioner, Central Excise, Mumbai-III
6	195/544/13-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/190/MUM-III/2012-13 dtd. 27.07.2012, BC/441/MUM-III/2012-13 dtd. 06.12.2012, BC/443/ MUM-III/ 2012-13 dtd. 06. 12. 2012, BC/552/MUM-III(R)/12-13 dtd.29.01.2013 , BC/555/MUM-III(R)/12-13 dtd. 29.01.2013 and BC/556/RGD(R)/2012-13 dtd.29.01.2013 passed by the Commissioner (Appeals), Mumbai-III.

Pr. Commr. (Revision Application) & ex-Officio Additional Secretary to the Govt. of India, भारत सरकार के आयुक्त (पुनरीक्षण आवेदन) एवं पदेन अपर सचिव, Mumbai मुंबई

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	Remark
1	195/1121/12-RA dtd.11.10.12	BC/190/MUM-III/12-13 dtd.27.07.2012	42R/RM/AC(RC)/M-III/12-13 dtd.13.06.2012	Duty Paid @10% on goods removed for export Triplicate ARE.1 not submitted
2	195/446/13 dtd.01.04.13	BC/441/MUM-III/12-13 dtd.06.12.2012	167R/RM/DC(RC)/M-III/12-13 dtd.23.10.12	
3	195/448/2013 -RA	BC/443/MUM-III/12-13 dtd.06.12.2012	169R/RM/DC(RC)/M-III/12-13 dtd.23.10.2012	
4	195/542/13-RA	BC/552/MUM-III('R)/12-13 dtd.29.01.2013	162R/VK/DC(RC)/M-III/12-13 dtd.23.10.12	Mismatching of CETH on Ex. Invoice and Shipping Bill
5	195/543/13RA Dtd.22.04.13	BC/555/MIII-(R)/12-13 dtd. 29.01.2013	166R/VKJ/DC(RC)/M-III/12-13 dtd.23.10.2012	Triplicate ARE.1 not submitted.
6	195/544/13-RA	BC/556/RGD (R)/12-13 dtd.29.01.2013	730/11-12/AC(Rebate)/Raigad dtd.31.05.12	Duty Paid @10% on goods removed for export Restricted rebate claim to the extent of FOB value.

2. The Brief facts of the case are that the applicant M/s Cipla Ltd. are engaged in the business of manufacturing of pharmaceutical goods falling under chapter 30 of CETH of Central Excise Tariff Act, 1985. The applicant is also holding license under provision of Drugs and Cosmetic Act, 1940 and Rules made their under and are manufacturing pharmaceutical products of various dosages forms such as tablets, capsules, liquids, suspensions, injections, aerosols etc. and marketing the same in local market as well as in overseas. They also have a several supporting manufacturers as well. According to the applicant, each manufacturing lot of product is given distinct Batch number which is mentioned on all manufacturing records as well on clearance documents. Goods are cleared for exports from manufacturing units following self-sealing and certification procedure, under cover of excise invoice and ARE-1 applications either under Letter of Undertaking /Bond without payment of

duty, under rule 19 or on payment of duty under claim for rebate in terms of provision of rule 18 of central excise rule 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

3. In the instant cases, the rebate claims filed by applicant were rejected by the original authority on the ground that:

- 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 were not submitted,
- Rebate claim rejected due to mismatching of CETH mentioned on excise invoice and shipping bill

4. Being aggrieved by the said Orders-in-Original applicant filed appeals before Commissioner (Appeals) who after consideration of all the submissions, rejected their appeals and upheld impugned Orders-in-Original.

5. Being aggrieved with these Orders-in-Appeal, applicant 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 3 and Sr. No 5- F. No. (195/1121/12-RA , 195/446/13-RA, 195/448/13-RA and F.No.195/543/13- RA): - Rebate Claim's Rejected on the ground Non-Submission of Triplicate ARE.1. :-**

6.2 In this matter, they removed goods for export on payment of excise duty, and their manufacturer had submitted triplicate ARE-1 at Jurisdictional Central Excise Authority. They had correctly followed the provision of Notification 19/2004 CE (NT) dated 06.09.2004.

6.3 The provision for submission of triplicate ARE-1 is laid down in sub-paragraph (ix) read with sub-paragraph (vii) of sub-paragraph (2) of

para 3 under said Notification reproduce herein below for your reference

(vii)- The Triplicate copy of application shall be-

(a) sent to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(b) Sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;

(ix)where goods are not exported directly from the factory of a manufacturer or warehouse, the triplicate copy of application shall be sent by superintendent having jurisdiction over the factory of manufacturer or warehouse, who shall, after verification, forward the triplicate copy in the manner specified in the sub-paragraph (vii),

6.4 As per above provision, the Jurisdictional Central Excise Authority shall sent triplicate ARE-1 to the Jurisdictional Central Excise Authority by post or by handing over to the exporter in tamper proof sealed cover. Therefore, as per above provision, they are responsible to submit triplicate ARE-1 to the rebate sanctioning authority, only when the triplicate ARE.1 is handed over to claimant (manufacturer) by Jurisdictional Central Excise Authority. In this case the Jurisdictional Central Excise office has not handed over triplicate ARE-1 to them, therefore, rejection of rebate claim on this ground is hardship to them.

6.5 In respect of Revision Application 195/543/13 – Triplicate ARE.1 11/11-12 dated 15.06.2011 was lost in transit, Therefore, office of the Superintendent of Central Excise Range -Talegaon on their request vide their letter F. No. TGN/ Sterling/ Export/ Cipla/ 2012/611, Akurdi dated 29th August 2012 forwarded their office record (Quadruplicate ARE.1) copy to the Maritime Commissioner (Rebate) Mumbai-III.

6.6 Further, at para 4 & 5 of Order-in-Original Number 166R/VKJ/DC(RC)/M-III/12-13, said facts has taken on records and they have admitted that they have received attested copy of quadruplicate ARE.1 with endorsement of duty payment at backside of said ARE.1. Both the para reproduced herein below for your perusal

"4) – The quadruplicate copies of the ARE.1 is duly certified by the jurisdictional Range Superintendent carries the endorsement of the jurisdictional Excise Officers that the duty is paid in CENVAT Account.

5) – Though payment of duties has been certified on reverse of the ARE.1's by the Jurisdictional Range Superintendents, reference was also made to the concerned jurisdictional Central Excise authorities to verify the payment of duty, despite sending reminders, the duty verification certificate has not been received."

6.7 Therefore, Rebate sanctioning authority at one part accepted they have received certified copy with endorsement of duty payment particulars and at other part again states that despite of sending reminders duty payment certificate has not been received.

6.8 Therefore, said facts please to be considered while deciding this revision application. Because Triplicate copy of ARE.1 has been lost in transit has already been informed by jurisdictional central excise authority and forwarded attested copy of Quadruplicate ARE.1 of their records copy. Therefore, collateral evidence is available to support that duty paid goods has been exported.

6.9 In the matter of **Revision application No. 195/1121/12-RA ; 195/446/2013-RA & 195/448/13-RA.** :- Rebate claim rejected on the similar ground for non-submission of triplicate copy of ARE.1 . In all cases, they had procured goods for export from their loan licensee manufacturer M/s S Kant Healthcare Ltd, GIDC, Vapi, Gujrat on payment of excise duty @10% as per the Notification 2/2008 dated 01.03.2008, but Central Excise officers were not agreed on this and according to them the effective rate for payment of excise duty was @4% or 5%. Therefore, office of the jurisdictional range superintendent has denied to accept triplicate copies of ARE.1.

6.10 Accordingly, their manufacturer vides their letter dated 21st September 2010 sent triplicate copies to the office of the Assistant Commissioner, Division- Vapi, Gujrat by registered post. However, office of the Assistant commissioner directed their manufacturer to withdraw all the triplicates from their office. Accordingly vide letter dated 26th October 2012 said triplicates have been withdrawn.

6.11 Simultaneously, they have submitted rebate claims pertain to said triplicate ARE-1 to the Rebate section Raiagd. Therefore, office of the Deputy Commissioner (Rebate) Raigad had telephonic discussion with the office of Deputy Commissioner Division-I, Vapi.

And Therefore, they approached the office of the Deputy Commissioner Division-I Vapi and vide our letter dated 17th May 2012 they have submitted their all triplicates to their office for further process.

6.12 Accordingly, Deputy Commissioner Division-I Vapi vide their letter **F. No. V/Misc.-I/Rebate/11-12/932 dated 31.05.2012** has forwarded 184 Nos of Triplicate ARE.1 to the Rebate Section (Raigad) On receiving triplicate copies with aforesaid reference letter dated 31.05.2012 of Deputy Commissioner, Division-I Vapi by the rebate section Raigad, their rebate claims have been sanctioned by them.

6.13 However, entire triplicate ARE-1 has been sent to Rebate section, Raigad, said facts we have brought in to the notice of the Assistant Commissioner (Rebate) Mumbai-III. Accordingly, rebate claims pertain to Maritime Commissioner (Mumbai-III), they have submitted all the facts as discussed above at para 6.9 to 6.13. Even the office of the Maritime Commissioner in their findings at para IV has stated that, **"Payment of duties has been certified by the Jurisdictional Range Superintendent. However, The Range Superintendent has informed that the manufacturer has paid duty @10% instead of 5%."** Therefore, **export of duty paid goods has not been disputed in said Order in Original's, 42R/RM/AC(RC)/M-III/12-13 dated 13.06.2012; 169R/ RM/ DC(RC)/M-III/12-13 dated 23.10.2012 and 167 R/ RM/ DC(RC) / M-III/12-13 dated 23.10.2012**

6.14 Further, required triplicate copies has also been covered in letter F. No. V/Misc.-I/Rebate/11-12/932 dated 31.05.2012 of Deputy Commissioner, Division-I, Vapi. Vide which said triplicates has been forwarded to the Rebate Section Raigad which has recorded at serial number 84,110,134,123 & 124 of this letter.

6.15 However, our rebate claim has been rejected even after duty payment confirmation have been received by the rebate section from the jurisdictional range office.

7 **Sr.No.1 to 3 & 6- Rebate Claim's Rejected on the ground duty paid @10% (F.No. 195/1121/12-RA; 195/446/13-RA & 195/448/13-RA & F.No.195/544/13-RA): -**

7.1 In this matter, they have paid excise duty @10% along with Education Cess and SHE Cess in terms of notification 2/2008 of C. Ex. dated 01.03.2008, however department have disputed the same and according to them they should have paid excise duty

@4% and @5% as these are effective rates. Therefore, on this ground office of Maritime Commissioner (Rebate), Mumbai-III has restricted their rebate claim to the extent of effective rate of excise duty @4% and @5%.

7.2 Due to aggrieved by decision of original authority they have challenged Order-in-Original vide respective appeals before Commissioner (appeals)- Mumbai-III. However, commissioner Appeals rejected their appeals vide Order-In-Appeals BC/190/MUM-III/2012-13 dtd 27.07.2012, BC/441/MUM-III/2012-13 dtd 06.12.2012, BC/443/MUM-III/2012-13 dtd.06.12.2012, and BC/556/RGD (R)/2102-13 dtd.29.01.2013. Being aggrieved by decision of Commissioner (Appeals) Mumbai-III, they have submitted present Revision Applications at your office.

7.3 However, said matter has already been decided by your office vide order No. 1568-1595/2012-CX dt.14.11.2012; Order No. 41-54/2013-CX dated 16.01.2013 & Order No.59-81/2018-CX/ASRA/Mumbai Dated 16.03.2018.

7.4 Further, In respect of Order No 41-54/2013-CX dated 16.01.2013 office of the Commissioner Mumbai-III of Central Excise filed writ petition (WP/2693/2013) at Hon'ble Bombay High Court on the ground of unjust enrichment.

7.5 Hon'ble Bombay High Court vide their order dated upheld the decision of Revision authority vide their order dated 17th November 2014, copy enclosed for your perusal and records. Hon'ble Bombay High Court at para of this order stated that, "The direction to allow the amount to be re-credited in the Cenvat Credit account of the concerned manufacturer does not required 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 (Revision Authority), what is the material to note 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 another manufacturer or manufactured by it. Looked at any angle, we do not find 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 amount lying in excess. How they are to be dealt with and in what terms and under what provision of law is a matter 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 classify anything in relation thereto particularly when it is in favor of the authority. For all these reasons, the writ petition is misconceived and disposed of.

7.6 Therefore, the said issue has been settled by apex court Further, effective 1st July 2017, Goods and Service Tax Act, 2017 came in to force and provisions of Central Excise Act, 1944 not remained applicable to Chapter 30 of Central Excise Tariff Act,1985. As per the provision of Chapter XX – "Transitional Provisions" introduced under Central Goods and Service Tax Act, 2017 (In Short will say "CGST Act 2017") we have migrated Central Excise Balances as on 30th June 2017 by filing ER-1 in CGST Act 2017 by filing GST-TRANS-1. Further, under GST there is not provision of CENVAT credit and therefore whatever CENVAT credit available prior to appointed day we have declared in ER-1 monthly return to migration in GST Law.

7.7 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 hereby request you to consider the same for allowing the cash rebate instead of CENVAT credit.

8 **Sr. No. 4 (F.No.195/542/13-RA)- Rebate Claim Rejected on the ground of Mismatching of CETH declared on Central Excise Invoice and Shipping bill.: -**

8.1 In this matter, they had procured goods namely Lo-Kal Gold Tablets vide Two ARE.1 Nos. EO19/ACC/2011 dated 08.07.2011 and EO20/ACC/2011 dated 27.07.2011 and Cal Free Sachets 0.5 gm vide ARE.1 No. EO21/ACC/2011 dated 09.08.2011 from M/s ACME DIET CARE PVT.LTD on loan licensee basis. Both the products are having same characteristics and are used as low calories product to substitute for sugar. They have correctly classified the same under CETH 21069099 on respective central excise invoice. But, as concern

to the product viz Lo-Kal-Gold Tablet by mistakenly it's classification was declared as CETH 30031000 in shipping bill No.5101366 dated 23.08.2011.

8.2 However, as concern to another product viz. Cal Free Sachets 0.5gm, (R.C.No.345/20.07.2012) it has correctly classified on excise invoice as well as on shipping bill no. 5072208 dated 20.08.2011 under CETH 21069099. Thus, in this case there is no classification dispute. Even though Original authority has rejected our rebate claim without taking available facts on record.

8.3 As concern to mismatching of classification in respect of Lo-Kal-Gold Tablets (R.C. No. 344/20.07.2012 & 349/20.07.2012) they had requested for amendment of CETH classification in shipping bill to the Custom Authority, ICD, Mulund. **Accordingly, office of the Assistant Commissioner of Customs (Export), In Land Container Depot, Mulund (West) vide their letter No. F. NO. S/6-B-Misc-527/2012-13 ICD(M)(X) dated 1st April 2013 has issued the Certificate of Amendment to change CETH (RITC) From 30031000 to 21069099.** Therefore, the reason due to which their rebate claim has been rejected was genuine mistake and it has now resolved.

8.4 Further, rejection of rebate claim by original authority in respect of product Cal Free Sachets, is injustice with them as there was no mismatching in CETH declared in Excise Invoice and Shipping bill. It is not fare practice to take it all rebate claims under deem consideration of same mistakes. They have rightly submitted entire essential required documents along with rebate claim and by ignoring the same original authority has rejected our rebate claim on similar ground.

8.5 Further, Hon'ble Commissioner (Appeals) has also rejected their appeals, and at para 7 to order in appeals states that, "These are all mandatory requirements which have to be followed by all exported if they wish to claim rebate". But this observation of Hon'ble Commissioner (Appeals) is of strict sense of interpretation. Rebate of excise duty paid on goods exported, is not optional for exporter to claim on their own wish, it is booster to financial strength of industry to stand in competitive overseas market and to earn foreign exchange to support Government by contributing in liquidity of foreign currency. Therefore, it is in correct to reject their rebate claims on very technical problem, It is cardinal principal when substantial compliance has proved beyond the doubt benefit given by law should

not deprived given they have very Therefore in consideration of above facts and information their application please be allowed with consequential relief.

9. **Sr.No.6 (F.No.195/544/13-RA) - Issue Involved Rebate claim restricted to the extent of FOB value appeared in Shipping Bill.-**

9.1 In this matter, Original authority has restricted rebate claim to the extent of FOB value appeared in Shipping bill, due to aggrieved by decision they preferred appeal before commissioner Appeals. Commissioner (appeals) has set aside their appeal vide Order in Appeal Number BC/556/RGD(R)/2012-13 dated 29.01.2013 has rejected our appeal

9.2 Further, said issue has 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.

9.3 Further, excise duty paid 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 is practical difficulty as at the time of dispatch from factory they were not aware about the freight element in CIF and in addition to this they would like to state that, excise duty paid on CIF value and they have realized only CIF value and not the excise duty which have paid over the CIF value. They 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, they requested to consider this fact while deciding this issue.

9.4 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.

10. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. Government notes that in these cases the adjudicating authority rejected the Rebate Claims filed by the applicant on the following grounds:

- Triplicate Copy of ARE.1 not submitted with Rebate Claim
- 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,
- Rebate claim rejected due to mismatching of CETH mentioned on excise invoice and shipping bill,
- Adjudicating authority has restricted rebate claim to the extent of FOB value appeared in shipping bill. FOB Value is less than assessable value, hence rebate claims were restricted to duty on FOB value.

On being appeal filed by the applicant the Commissioner (Appeals) upheld the Orders in Original and rejected the appeal filed by the applicant. In view of the aforesaid background and as the issues involved in all these Revision Applications being similar, Government now takes up these Revision Applications for decision vide common order.

11. **Sr.No.1 to 3 and Sr. No 5- F. No. (195/1121/12-RA, 195/446/13-RA, 195/448/13-RA and F.No.195/543/13- RA)** (arising out of Order in Appeal No. BC/190/Mum-III/2012-13 dated 27.07.2012, BC/441/Mum-III/2012-13 dated 06.12.2012 BC/555/MIII(R)/ 2012-13 dated 29.01.2013): - **Rebate Claim's rejected on the ground Non-Submission of Triplicate ARE.1.** - As regards rejection of rebate claims on account of non-submission of triplicate copy of ARE-1s 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. 350 (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.

12. Relying on the aforesaid case as well as on the aforesaid discussions and findings, as well as taking into consideration the contentions of the applicant at para No. 6 above, 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. The Original Authority shall pass the appropriate order following the principles of natural justice.

13. Government further observes that the Revision Application at Sr.No.1 to 3 & 6 of the table at para 1, bearing No. **F. No. 195/1121/12-RA; 195/446/13-RA & 195/448/13-RA & F.No.195/544/13-RA, the** Rebate Claim's were also rejected on the ground duty was paid @10% and rebate was restricted to the extent of FOB value in respect of R.A at Sr. No 6: -

14. 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.

15. 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% 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 assesse. 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".

16. 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. 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.

17. In view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in preceding paras 15 & 16, 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.

18. As regards rebating in cash only **(RA No.F.No.195/544/13-RA at Sr. No. 6 of the table at par no. 1)** 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".

19. 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 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.

20. Government, accordingly modifies the Order in Appeal No. BC/190/MUM-III/2012-13 dated 27.07.2012, BC/441/MUM-III/2012-13 dated 06.12.2012, BC/443/MUM-III/ 2012-13 dated 06.12.2012 and BC/556/MUM-III(R)/12-13 dated 29.01.2003 to the above extent. The **Revision Applications No. 195/1121/12-RA, 195/446/13-RA, 195/448/13-RA , 195/543/13-RA and 195/544/13-RA at Sl. No. 1 to 3 and 5 to 6 of Table** at para No. 1 are disposed of in the above terms.

21. Government now takes up **Revision Application No. 195/542/13-RA** arising out of Order in Appeal No. BC/552/MUM-III(R)/2012-13 dated 29.01.2013) for decision. Government observes that in this case the rebate claims filed by the applicant were rejected on the ground of mismatching of CETH mentioned on Central Excise invoice with the CETH shown on Shipping bill. There is no other ground registered by adjudicating authority while rejecting rebate claim.

22. Government notes that the only ground on which the department has rejected the rebate claim of the applicant is the afore stated discrepancy observed in the Chapter Sub Heading as mentioned on Central Excise Invoice and on Shipping Bills. Government also observes that the applicant had requested the Customs Authorities to rectify the error and necessary rectification has been carried out by the Customs Authorities and Certificate of Amendment dated 01.04.2013 has been issued by them. Copy of the said Certificate bearing No. S/6-B-Misc-527/2012-13 ICD (M)(X) dated 01.04.2013 issued by the Assistant Commissioner of Customs, ICD, Mulund (Export) is also enclosed by the applicant to the Revision Application.

23. In view of the fact that the Customs have rectified the relevant Shipping Bill by issuing Certificate of Amendment, Government remands the matter back to the original adjudicating authority for verification of the rebate claims with directions that he shall reconsider the claim on the basis of these

documents after satisfying itself in regard to the authenticity of those documents and to sanction the rebate claims if claims are otherwise found in order. The impugned the Order in Appeal No. BC/552/MUM-III(R)/12-13 dated 29.01.2003 is set aside.

24. **Revision Application No. 195/542/13-RA** is disposed of in the above terms.

25. Government however, directs that the re credit of the 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 duty paid over and above the FOB value is to be allowed by the original authority in 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 realized by the applicant from the overseas buyer.

26. All the 6 Revision Applications viz. bearing Nos. **195/1121/12-RA, 195/446/13- RA, 195/448/13-RA, 195/542/13-RA, 195/543/13-RA, 195/544/13-RA** are disposed off in terms of above.

27. So ordered.

31.12.2019

(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

31/12/19

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. The Commissioner of GST & CX, Navi Mumbai, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai.
5. The Deputy/Assistant Commissioner, Division IV, GST & CX Navi Mumbai, Satra Plaza, Palm Beach Road, Sector 19 D, Vashi, Navi Mumbai.
6. Sr.P.S. to AS (RA),Mumbai.
7. Guard File.
8. Spare copy.