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.195/390/13-RA, 195/392/13- RA,
195/393/13-RA, 195/394/13-RA,
195/708/13-RA/1390

Date of Issue:- 31/08/2018

ORDER NO.297-301 /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	195/390/13-RA	M/s Uni world Pharma Pvt. Ltd.	Commissioner, Central Excise, Raigad
2	195/392/13-RA	--"--	Commissioner, Central Excise Raigad
3	195/393/13-RA	--"--	Commissioner, Central Excise, Raigad
4	195/394/13-RA	--"--	Commissioner, Central Excise, Raigad
5	195/708/13-RA	--"--	Commissioner, Central Excise,Raigad

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944 against the Order in Appeal No. BC/424/RGD/2012-13 dtd. 29.11.2012, US/902/RGD/2012-13 dtd. 14.12.2012, BC/426/RGD/2012-13 dtd. 29.11.2012, US/904 to 909/RGD/12-13 dtd. 14.12. 2012 and US/83/RGD/12-13 dtd. 22.03.2013 passed by the Commissioner (Appeals), Mumbai-III and Mumbai Zone-II.

ORDER

These Revision applications are filed by M/s Uni 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 and Mumbai Zone-II.

TABLE

Sl. No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Issue
1	195/390/13	BC/424/RGD(R) /2012-13 DT:29.11.2012	1448/12-13/ DC (Rebate)/ Raigad DT:31.08.2012	Goods Exported through Air Cargo
2	195/392/13	US/902 /RGD/ 2012 DT.14.12.2012	RB0/1190/RAS/11 1-12 DT: 19.03.2012	Duty paid @10%. Rebate claim rejected on the ground that goods not exported directly from the place of Manufacturing location to the Port. Therefore, Goods not exported in terms of para 2(a) of Notification No.19/2004-CE (NT)Dt. 6.9.2004.
3	195/393/13	BC/426/RGD/(R) / 2012-13 DT.29.11.2012	1274/12-13/DC (Rebate)/Raigad DT:08.08.2012	Duty paid over and above the FOB. Part consignment exported through Air Cargo, Sahar.
4	195/394/13	US/904 to 909 /RGD/2012 DT. 14.12.2012	640/11-12/DC (Reb) Rgd. DT: 30.05.2012 746/11-12/DC (Reb)/ Rgd DT:31.05.2012	Duty paid @10% Duty paid over and above the FOB In two cases the rebate claims has been rejected on the ground that the goods were exported after six months and there was no extension by the proper officer. In one case, one rebate claim has been rejected on the ground that the triplicate copy of the ARE-1 was not submitted and therefore, the duty paid nature of the goods was not established.
5	195/708/13	US/83/RGD/2013 DT.22.03.2013	RB0/1003/RAS/12-13 DT: 30.11.2012	Duty Paid @10% on goods cleared for export"; Rebate claim rejected on the ground that goods not exported directly from the place of Manufacturing location to the Port. Therefore, Goods not exported in terms of para 2(a) of Notification No.19/2004-CE (NT) Dt. 06. 09. 2004

2. The Brief facts of the case are that the applicant M/s Uni World pharma Pvt. Ltd., a merchant exporter procure goods from various manufacturers on

payment of duty under claim for rebate as per Notification No. 19/2004-CE read with Rule 18 of Central Excise Rules, 2002.

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

- the part consignment were exported through Air.
- the goods not exported directly from the place of Manufacturing location to the Port. Therefore, Goods not exported in terms of para 2(a) of Notification No.19/2004-CE (NT) Dt. 6.9.2004.
- The applicant had paid duty at a higher rate of 10% as against effective rate of 4% duty payable and therefore, are entitled to get rebate at 4% 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.
- The goods were exported after six months and there was no extension by the proper officer.

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, applicants have filed these revision applications before Central Government under Section 35EE of Central Excise Act, 1944 as shown at Table in para 1 above, on the grounds mentioned in each application.

6. A Personal Hearing was held in this case on 06.02.2018 and Shri Shrikant S. Gharat, Advocate, 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 alongwith written submissions filed on the date of hearing. It was pleaded that Orders in Appeal be set aside and Revision Applications be allowed.

7. In its submissions dated 06.02.2018 the applicant mainly contended as under :-

7.1 (RA-195/390/13; 195/393/13) Rebate Claim sanctioned in proportionate to goods exported through sea port JNPT and rejected for goods exported through Air Cargo

- 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 as a Maritime Commissioner, Raigad. However, as per the requirement of overseas buyer, goods were exported from two ports viz. JNPT and Air Cargo Complex, Sahar.

- Therefore, they have correctly submitted their rebate claim to the office of Maritime Commissioner (Rebate) Raigad, as on ARE-1 they have mentioned rebate sanctioning authority as Maritime Commissioner (Rebate) Raigad. They were aware about their jurisdiction to sanctioned rebate claims in respect of goods exported through JNPT port. However, this jurisdiction has been introduced for better administrative convenient. However, they have requested to send part claim pertains to Shipment done by Air Cargo Complex under forwarding letter with the support of Order In Original passed by their office to process rebate claim pertain to office of the Maritime Commissioner Mumbai-IV. However, they have not accepted and rejected claim in proportionate to goods exported through Air Cargo Complex.

- There is no doubt that about the export of duty paid goods but rebate claim rejected only on technical ground of jurisdiction.

- The order in original dated 1448/31.08.2012 have recorded the evidence of availability of all required documents namely Original / Duplicate and Triplicate ARE.1 supported with duplicate excise invoice, shipping bill, air way bill, invoice and packing list with the rebate sanctioning authority Raigad. Therefore, they request you to direct original authority to provide attested copies of all concern rebate claim pertain to shipment made by Air Cargo Complex supported with Order dated 31.08.2012 to process their rebate claim by the office of Maritime Commissioner Mumbai-IV (Mumbai-I and in GST Mumbai East Commissioner).

7.2 (RA-195/393/13 ; 195/394/13 & 195/708/13)Duty Paid @10% on goods cleared for export market.:-

In this matter, they cleared goods for export on payment of excise duty @10% Adv. as per Notification No.2 /2008-CE dt.01.03.2008 as amended, whereas the duty payable on the export goods is 5% Adv. as per Notification No.4/2006 CE. dated 1.3.2006. The Commissioner (Appeals) has neither discussed on this issue in finding nor passed any order and kept said matter as such pending. However, said matter has already been decide by your office vide order No. 1568-1595/2012-CX dt.14.11.2012.

- 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 subsection(2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:" . Therefore, we hereby request you to consider the same for allowing the cash rebate instead of CENVAT credit.

7.3 (RA-195/393/13 ; 195/394/13) :-The Assessable value shown in ARE.1 is more than FOB Value i.e Duty paid over and above FOB value. : -

- The Rebate sanctioning authority has sanctioned their rebate claim to the extent of FOB value declared in shipping bill vide Order-in--Original No.1274/12-13 dated 8.8.2012. But for the reaming rebate claim amount instead giving specific direction to avail the Cenvat Credit have been rejected.
- Therefore, it is not correct practice, as there is no dispute about the export of duty paid goods and cash rebate has been restricted to the extent of FOB value.
- The said matter has already been decided by the Government of India vide order G.O.I Order No. 1318-1329/2013-Cx DT. 15.10.2013 where it has held that, "The excess paid amount may be allowed to be re-credited in the cenvat credit account of the concerned manufacturer subject to the compliance of the provision of Section 12B of Central Excise Act, 1944". Therefore you are requested to please direct original authority to sanction rejected claim.
- In this matter they would like also like to rely on below mentioned decision IN RE: BHAGIRATH TEXTILES LTD as reported in 2006 (202) E.L.T. 147 (G.O.I).

7.4 Goods Exported after six months and Non Submission of Triplicate ARE-1 (RA-195/394/13) :- Export of duty paid goods is beyond the doubt and original authority has not disputed the facts.

- Further, the rebate sanctioning authority has sanctioned part rebate claim in proportionate to the goods exported within six months and rejected part rebate claim merely on procedural ground that goods has exported beyond the period of six month. Therefore, rejection of their rebate claim on procedural lapse is hardship to us and tax on export.

- As per Notification No. 19/2004- CE (NT) Dt. 6.9.2004, all the condition is of the nature of administrative controlled. Basically, The Principal condition is Payment of excise duty of goods proposed for export. And such goods must be exported as per the provisions of Customs Act, 1962.

- Export of goods after six month, which is a procedural lapse at our part shall not denying the status of export of duty paid goods.

- Export under Rebate under taxing statute is beneficial legislation and having intention to promote exports business in competitive market at affordable rates. Which will help their industry to stand in overseas market. Therefore, need to understand the intention of legislator under what circumstance said benefit has introduced and what was the need for the same, therefore after considering all this, it will be beyond the doubt that if export of duty paid goods is proved than other conditions are of procedural nature and benefit given by law cannot be taken away on procedural lapse.

- Therefore, it is required to be read and interpret all provisions harmoniously. Further, it is also accepted facts that there is not any loss of revenue to Government and actual export of duty paid goods and earning of foreign exchange is beyond the doubt.

- Further to say that, Department Should have consider the fact that, the subject goods have been sold in overseas market and it is not possible it will always take place as per conditions, hence, the revenue should take lenient view. Further, the Notification does not remotely suggest rejection of rebate claim for non-compliance of any procedural condition when duty payment and export of goods is not in dispute.

Triplicate ARE.1 Not Submitted: -

- Their manufacturer has submitted triplicate to jurisdictional authority, however, the jurisdictional range office has neither handed over said triplicate to their manufacturer neither forwarded to rebate sanctioning authority.

- They also submit that till date their manufacturing unit have not received any demand for the payment of excise duty or not registered any matter in respect of clandestine removal of said goods.

- Therefore, there is not dispute about the non-payment of excise duty on said goods, also original authority has not confirmed about the duty payment from the jurisdictional central excise authority.

- Therefore, it is not correct to punish exporter without having any such records about non payment of government duties. Notification 19/2004 CE. (NT) dated 6.9.2004 has not directed or held responsible to claimant for submission of triplicate copy of ARE.1

- Therefore, it is requested to take lenient view and direct original authority to investigate the matter from proper authority mere rejection without following the provisions of notification is only hardship to claimant.

7.5 Goods not exported directly from factory :- (RA- 195/392/13; RA-195/708/13) :- No violation of condition of direct export of goods from the factory" Relevant conditions are reproduced herein below for the ease of reference:

- that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

- the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;

  As can be seen from the above conditions, what is required is clearance of goods for exports "directly from a factory or warehouse" .

- It is undisputed fact in their case that the goods were cleared for exports from the factory of manufacture under the cover of ARE1 application and on payment of appropriate Central Excise duty from the Cenvat Credit account maintained at factory registered under Excise Law.

- Triplicate copies of ARE 1 s signed by the jurisdictional Range Superintendent of concerned factories as well as duty payment certificates issued by them subsequently at the request of the Maritime Commissioner prove this point beyond doubt.

- What has been objected by the rebate sanctioning authority is the en-route storage of export products at their depot premises for some time interval till they arrange export consignments coming from other factory premises to fulfil a common export order and to make further shipment arrangements.

- It is their submission that the en-route storage of goods at depot premises does not in any way violates the condition of "export of goods directly from a factory".

- The condition does not indicate uninterrupted journey of goods from factory to port of export. In fact, the next condition b) permits time up to six months for export of goods once cleared for export from factory.
- Thus, combined reading of both conditions simultaneously makes it clear that en-route storage of export consignments at depot does not vitiate condition (a) to the Notification.
- Board vide circular no.294/10/94 -CX dated 30/01/1997 has relax condition of direct export from the factory where goods capable of clearly identifiable and clear in original packing condition. (Copy of Circular is attached as Annexure-2)
- Being Manufacturer Pharmaceutical Product, entire manufacturing process of the medicines is strictly governed by the provisions of the Drugs Law.
- Batch No allocated to medicines is the distinctly different identity No and all manufacturing, analytical and clearance records invariably refer to such batch nos.
- Under the Drugs Law we are also bound to preserve records and samples of each batch till shelf life of the batch is over.
- Batch No is invariably printed on each unit of the batch and all shipments documents refer to batch Nos.
- Goods exported in original packing condition
- In their case (including in the present case) goods have always been cleared for exports from the factory premises by preparing ARE-Is. Goods cleared from factory premises for exports, in export worthy packing were en-route stored at depot premises awaiting further shipment arrangements being made and awaiting consolidation of different products received from different factories.
- It is admitted fact that in their case goods cleared from factory are stored as such and exported from depot in original factory packing condition without any processing of them.
- Actual Export goods covered under ARE1 is not in dispute It is also pertinent to note that actual export of goods, in original packing condition, covered under the order has not been disputed by the department
- They Rely upon the following case law
  - In the matter of Cipla Ltd. this matter has already decided by [illegible] office with direction to sanction our rebate claim.
  - Cipla Ltd. Vs Commissioner (Appeals) Raigad -Order No. 12 30/2012-Cx dt.12.01.2012.

- Pidilite Industries Ltd Vs Commissioner (Appeals) Daman as reported in 2014 (3110 ELT 965 (G.O.I.)
- Union of India Vs FarheenTexturisers as reported in 2015 (323) ELT 104 (Born)
- Indian Oil Corporation Vs Union of India as reported in 2015 (316) ELT 618 (Bom).

8. In view of the aforesaid background, Government now takes up the these Revision Applications for decision vide common order .

9. **Revision Applications No. 195/390/13-RA** (arising out of Order in Appeal No. BC/424/RGD (R)/2012-13 dated 29.11.2012).

9.1 Government observes that in this case the applicant, a merchant exporter, had filed four rebate claims for Rs.1,59,578/- under Rule 18 of the said Rules read with Notification No.19/2004 CE (NT) dated 6.09.2004 for the duty paid on the goods exported through two ports , viz. JNPT and Air Cargo Sahar. The rebate sanctioning authority while sanctioning the rebate sanctioned rebate claim to the extent of Rs.1,34,564/- and rejected the rebate claim of Rs. 25,014/- to the extent of duty paid on the goods exported through Air Cargo, which were not within the jurisdiction of rebate sanctioning authority, viz. Maritime Commissioner Central Excise, Raigad. Commissioner (Appeals) while upholding the Order in Original, vide impugned order observed that

> *"Regarding the issue of non sanction of rebate to the extent of duty paid on the goods exported through Air Cargo, Mumbai, on the ground that the rebate sanctioning authority does not have jurisdiction, it is observed that as per Notification No.19/2004-CE (NT) dated 06.09.04, the Maritime Commissioner means the Commissioner of Central Excise under whose jurisdiction the concerned port, airport etc. is located. In the instant case the jurisdiction of Maritime Commissioner, Raigad extends to the areas in the district of Raigad of the State of Maharashtra as per Notification No.14/2002-CE (NT) dated 08.03.02 as amended issued under Rule 3 of C.E.R 2002. Accordingly Air Cargo, Mumbai does not fall under its jurisdiction of Maritime Commissioner, Raigad. Board's Circular No.770/3/2004-CX, dated 9.1.2004 also reiterates the said stand. Thus, the Maritime Commissioner, Raigad has jurisdiction in respect of exports through Nhava Sheva Port and accordingly the rebate sanctioning authority was correct in restricting the rebate to the extent of exports through Nhava Sheva Port.*

9.2 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 Air Cargo Sahar was not under the jurisdiction of Maritime Commissioner, Raigad, therefore they had orally informed them to give them attested photocopies of ARE-1 & Central Excise Invoice and also give

directions 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 claim and also did not give direction for the same. Commissioner (Appeals) also rejected the appeal filed by the applicant.

9.3 Government in this case rely on GOI Order No. 1596/2012-CX dated 16.11.2012 [2014(313) ELT 941(GOI) in the case of Unique Pharmaceutical Laboratories. 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), Raigarh. The Assistant Commissioner (Rebate), Central Excise, Mumbai-IV while granting the rebate held that the respondents 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) 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.*
>
> Thus, the Commissioner (Appeals) allowed this departmental appeal.

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

> *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.

9.4 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, 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 GST Mumbai East Commissionerate).

9.5 In view of the above the impugned Order in Appeal No. BC/424/RGD (R)/2012-13 dated 29.11.2012 is set aside and **Revision Applications No. 195/390/13-RA is allowed in terms of above.**

10. **Revision Applications No. 195/392/13-RA** (arising out of Order in Appeal No. BC/902/RGD /2012 dated 14.12.2012).

10.1 In this case Government observes that the Assistant Commissioner, Central Excise, Rasayani Division Raigad vide Order-in-Original No.RBO/1190/RAS/11-12 dated 29.02.2012 rejected a rebate claim of Rs.45,480/- filed by the applicant on the ground that the exports were affected from the depot situated at Wakadi, Pune which was not a warehouse under Sec.4(3)(C)(ii) of the Central Excise Act, 1944 and as the condition of direct export from the factory or warehouse on payment of duty had not been met, the rebate was not admissible.

10.2 On appeal being filed by the applicant, the Commissioner (Appeals) in his impugned Order observed that

In the instant case the appellants cleared the goods from the Rasayani factory of M/s CIPLA Ltd. to the depot at Wakadi, Pune and the goods were admittedly exported from there. Condition No.2(a) can be relaxed by the Central Board of Excise and Customs by a general or special order. It has been relaxed by the CBEC vide Circular No.294/10/97-CX., dated 30-1-1997, which states that -.....

The appellants admittedly did not follow the procedure prescribed by the Board for waiving the condition of direct export from the factory. Even if the goods could be identified with the help of Batch numbers appearing on the packages, the goods were not examined at the depot in fact. The copy of the Shipping Bill very clearly states that "this consignment was not opened for physical examination by Customs". Moreover, ARE-1 submitted by Appellants does not show whether goods were packed for export under Central Excise supervision. Therefore what has been actually exported has never been examined either by Central Excise or by Customs. Therefore identity of exported goods is not

established. Such identification is not possible now long after export of the goods. The export goods cannot be co-related with the duty paying documents. Therefore, the benefit of the Revisionary Authority's order cannot be extended to the appellants in the instant case. Accordingly, the impugned order rejecting the rebate claim has to be upheld.

Commissioner (Appeals) in his impugned order also observed that

It is seen from the impugned order that the duty had been paid @ 10.3%. The exported product falling under CH 3004 was chargeable to duty @ 4% under Notification No.4/2006-CE dated 1.3.2006 as amended, vide Sr.No.62C and Cess @ 2% and 1% i.e. total 4.12%. The appellants had paid excess duty to the extent of Rs.27,288/- and this amount could not be sanctioned as rebate in any case.

10.3. Government observes that where there is no examination by the jurisdictional officers of Central Excise, there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer in terms of Board Circular No.294/10/97-Cx dated 30.01.1997 may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd. In this case, in order to examine the issue of corelatibility, Government made sample analysis of the exports covered vide some of the shipping bills and applying the same analysis to the instant case, Government finds that in shipping bill No. 9145545 dated 15.12.2010 there is cross reference of ARE-1 No. 855 dated 11.11.2010 and vice-versa. Moreover, Government observes that original adjudicating authority in Order No. RBO/1190/RAS/11-12 dated 19.03.2012 has categorically mentioned that the description and weight of the consignment exported tallied with Bill of lading / Airway bill, Central Excise Invoice, ARE-1, Shipping Bill, AWB/Mate Receipt and other relevant document. The original authority also certified that the assessee has paid the Central Excise duty by debiting the same in their Cenvat Account which is certified by the Range Supdt. and that the claimant have produced the Original, Duplicate and Triplicate copies of ARE-Is and have also produced all the required export documents. Thus it is clear that in the above cases duty paid nature of the goods exported by the applicant stands established in order of the original authority itself. Further, description, weight and quantities exactly tally with regard to description mentioned in mentioned in ARE-1 and other export documents including Shipping Bill and export invoices. As such there is sufficient corroboratory evidence to establish that goods covered under impugned excise documents have actually been exported vide impugned export documents. Further, endorsement of customs officer at the port of export, on part B of all the aforesaid three ARE-1s also conclusively support the same observation.

10.4 Government also notes that, while allowing the Revision application in favour of the applicant, Government at para 12 of its aforementioned Order observed as under:-

"In this regard Govt. further observes that rebate/drawback etc. are export-oriented schemes, A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. 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 Notifications, circulars, 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.), Alpha 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. 270 (Tri.), Creative Mobus - 2003 (58) R.L.T. 111 (G.O.I.), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (G.O.I.) and a host of other decisions on this issue.

10.5 Government further observes issue of payment of duty by the applicant @ 10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 has been decided by Government of India vide Order No 41-54/2013-CX dated 16.01.2013 in the case of M/s Cipla Ltd., holding as under :

> *" there is no merit in the contentions of applicant that they are eligible to claim rebate of duty paid @ 10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 as amended. As such Government is of considered view that rebate is admissible only to the extent of duty paid at the effective rate of duty i.e. 4% or 5% in terms of Notification No. 4/2006-C.E., dated 1-3-2006 as amended. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per Notification No. 4/2006-C.E. is to be treated as voluntary deposit with the Government. In such cases where duty is paid in excess of duty actually payable as held by Hon'ble Apex Court in the case discussed in Para 8.8.2 and also held by Hon'ble High Court of Punjab and Haryana as discussed in Para 8.8.3 above, the excess paid amount is to be returned/adjusted in Cenvat credit account of assessee. Moreover Government cannot retain the said amount paid without any authority of law. Therefore, Government allows the said amount to be re-credited in the Cenvat credit account of the concerned manufacturer".*

10.6 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.

10.7. 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.*

10.8. In view of the Revisionary Authority and Hon'ble Bombay High Court's Order 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 and the excess paid duty has be allowed as recredit in the Cenvat credit account from which it was paid/debited subject to compliance of the provisions of Section 12 B of Central Excise Act.

10.9 In view of the discussions and findings elaborated above, Government set aside Order in Appeal No.US/902/RGD/2012 dated 14.12.2012 and **allows Revision Applications No. 195/392/13-RA.**

11. **Revision Applications No. 195/393/13-RA** (arising out of Order in Appeal No. BC/426/RGD (R)/2012-13 dated 12.12.2012).

11.1 In this case Government observes that the Deputy Commissioner, Central Excise, Raigad vide Order-in-Original No.RBO/1274/RAS/12-13 dated 08.08.2012 sanctioned rebate amount of Rs.40,507/- as against amount of Rs.1,28,302/- claimed by the applicant on the ground that

- the transaction value cannot be higher than FOB Value, hence the rebate claims were restricted to duty on FOB value.
- Part of the consignment were exported through Air Cargo Complex, Sahar, Mumbai, and Maritime Commissioner, Raigad has no jurisdiction over exports effected through Air cargo Complex, Sahar.

11.2 On being appeal filed by the applicant the Commissioner (Appeals) held that the appellents are merchant exporter, hence, the excess duty paid is allowed as credit in the Cenvat Credit Account of the manufacturer and also held that the rebate sanctioning authority was correct in restricting the rebate to the extent of exports through Nhava Sheva Port.

11.3 As regards restricting of rebate amount proportionate to 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".

11.4 Government therefore, holds that the excess duty paid by the applicant over and above the FOB value be allowed as recredit in the Cenvat credit account from which it was paid/debited subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

11.5 As regards rejection of rebate claims on account of part of the consignment were exported through Air Cargo Complex, Sahar, Mumbai, in view of the findings at paras 9.1 to 9.3 above, the rebate sanctioning authority Raigad is directed to provide the attested copies of and all the required documents in respect of shipment made through Air Cargo Sahar, to the applicant for submitting the same for processing a rebate claim by the office of Maritime Commissioner, Mumbai-IV (now GST Mumbai East Commissionerate).

11.6 In view of the discussions and findings elaborated above, Government modifies Order in Appeal No.US/426/RGD(R)/12-13 dated 12.12.2012 to the above extent and **Revision Applications No. 195/393/13-RA is partially allowed in terms of above.**

12. **Revision Applications No. 195/394/13-RA** (arising out of Order in Appeal No. US/904-909/RGD /12 dated 14.12.2012).

12.1 In this case Government observes that the Deputy Commissioner, Central Excise (Rebate), Raigad vide following six Orders-in-Original partly or

Sl.No.	Order in Original and Date	Amount
1	640/11-12/DC(Rebate)/Raigad dated 30.05.2012	Rs.16,000/-
2	418/11-12/DC(Rebate)/Raigad dated 15.05.2012	Rs.12,598/-
3	407/11-12/DC(Rebate)/Raigad dated 24.05.2012	Rs.14,234/-
4	675/11-12/DC(Rebate)/Raigad dated 24.05.2012	Rs.20,058/-
5	658/11-12/DC(Rebate)/Raigad dated 24.05.2012	Rs.18,122/-

6	746/11-12/DC(Rebate)/Raigad dated 31.05.2012	Rs.25,409/-

wholly rejected the rebate claims of the applicant on the following grounds:

i) The rate of duty on medicaments was @ 4% Ad-valorem. The duty paid by the appellants @ 10% Ad-valorem instead of the correct 4% Ad-valorem could not be considered as Cenvat duty. Therefore, the rebate of duty paid on the export goods was admissible only to that extent.

ii) In two cases the FOB value was less than the assessable value shown in the ARE-1s and therefore rebate amount was restricted only to the extent of duty payable on the FOB value.

iii) In two cases the rebate claim has been rejected on the ground that the goods were exported after six months and there was no extension by the proper officer.

iv) In one case, one rebate claim has been rejected on the ground that the triplicate copy of the ARE-1 was not submitted and therefore, the duty paid nature of the goods was not established.

12.2 Government observes that vide Order in Original at Sl. No. 1, 4, 5, and 6 at Table above, the rebate claims were partly rejected on the ground that the rate of duty on medicaments was @ 4% ad valorem. The duty paid by the appellants @ 10% ad-valorem instead of the correct 4% ad valorem could not be considered as Cenvat duty. Therefore, the rebate of duty paid on the export goods was admissible only to that extent.

12.3 As already discussed at para at paras 10.5 to 10.7 supra, and in view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in in those 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 and the excess paid duty has to be be allowed as re credit in the Cenvat credit account from which it was paid/debited subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

12.4 Government observes that vide Order in Original at Sl. Nos.3 and 6 at table above, the rebate claims were partly rejected on the ground that the FOB value was less than the assessable value shown in the ARE-1's because of addition of Freight and Insurance in the assessable value which is not allowed under Section 4 of the Central Excise Act, 1944. The rebate amount is restricted to the duty payable on FOB value as the amount paid over and above the assessable value is not duty.

12.5 As regards restricting of rebate amount proportionate to 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.)] already discussed at para 11.3 above and holds that the excess duty paid by the applicant over and above the FOB value be allowed as re credit in the Cenvat credit account from which it was paid/debited subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

12.6 Government observes that vide Order in Original at Sl. No.1 and 2 at table above, the rebate claim had been rejected on the ground that the goods were exported after six months and there was no extension granted by the proper officer for making the export. Condition 2(b) of Notification No.19/2004-C.E. (N.T.), dated 6.9.2004 is that that the goods should be exported within six months.

12.7 Government observes that as per the condition 2(b) of notification 19/2004 CE (N.T.) dated 6.9.2004 issued under rule 18 of Central Excise Rules, 2002, "the excisable goods shall be exported within six months from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allows,". In the present case Government observes that the applicant did not follow the proper procedure under notification 19/2004 CE (N.T.) dated 06.09.2004. Applicant had not obtained extension of validity of ARE-1. Further, aforesaid mentioned issue stands decided vide GOI Order No. 40/2012-CX dated 16.01.2012 in the case of M/s Cipla Ltd. 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 goods exported after six months of clearance from factory and the impugned Order in Appeal is upheld to this extent.

12.8 Government observes that vide Order in Original at Sl. No.6 at table above, one rebate claim has been rejected on the ground that the triplicate copy of the ARE-1 was not submitted and therefore, the duty paid nature of the goods was not established.

12.9 Government observes that the applicant has contended that their manufacturer had submitted triplicate copy of ARE-1 at Jurisdictional Central Excise Range within 24 hours of clearance of goods from factory. However, the jurisdictional Range Supdt did not hand over the said triplicate copy to them for onward submission alongwith rebate claim. The applicant in their Revision Application has further contended that they had submitted triplicate copy with rebate sanctioning authority vide their letter 13.03.2013 (copy of the letter and triplicate copy of ARE-1 is enclosed to Revision Application) Government in this regard relies on GOI Order Nos. 612-666/2011-CX., dated 31-5-2011 in In Re : Vinergy International Pvt. Ltd., wherein GOI observed as under:

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

condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notification, circular, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd., 1998 (99) E.L.T. 387 (Tri), Alfa Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Tri), Atma Tube Products - 1998 (103) E.L.T. 207 (Tri.), Creative Mobus - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd., 2003 (157) E.L.T. 359 (GOI) and a host of other decisions on this issue.

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

12.10 Relying on the aforesaid case as well as on the aforesaid discussions Government remands the 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.

12.11 In view of the discussions and findings elaborated above, Government upholds the Order in Appeal No. US/904 to 909 / RGD/2012 dated 14.12.2012 only to the extent of rejection of claim of rebate of duty paid on goods exported after six months of clearance from factory by the applicant and **Revision Applications No. 195/393/13-RA is partially allowed in terms of above.**

13. **Revision Applications No. 195/708/13-RA** (arising out of Order in Appeal No. US/83/RGD /2013 dated 22.03.2013).

13.1 In this case Government observes that the Deputy Commissioner, Central Excise, Rasayani Division Raigad vide Order-in-Original No.RBO/1003/RAS/12-13 dated 30.11.2012 rejected a rebate claim of Rs.43,182/- the goods not exported directly from the place of Manufacturing

location to the Port. The applicant had also 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.

13.2 Government observes that the issue of goods not exported directly from the place of Manufacturing location to the Port is similar to the one in Revision Applications No. 195/392/13-RA discussed and decided already in detail at para10 above and Government places its reliance on the same. In this case also Government observes that in shipping bill No. 4385419 dated 02.07.2011 there is cross reference of ARE-1 No. 170 dated 31.05.2011 and vice-versa. Moreover, Government observes that original adjudicating authority in Order No. RBO/1003/RAS/12-13 dated 30.11.2012 has categorically mentioned claimant have produced the Original, Duplicate and Triplicate copies of ARE-Is and have also produced all the required export documents. Further, description, weight and quantities exactly tally with regard to description mentioned in mentioned in ARE-1 and other export documents including Shipping Bill and export invoices. As such there is sufficient corroboratory evidence to establish that goods covered under impugned excise documents have actually been exported vide impugned export documents. Further, endorsement of customs officer at the port of export, on part B of all the aforesaid three ARE-1s also conclusively support the same observation.

13.3 Government further observes issue of payment of duty by the applicant @ 10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption Notification No. 4/2006-C.E., dated 1-3-2006 has been decided by Government of India vide Order No 41-54/2013-CX dated 16.01.2013 in the case of M/s Cipla Ltd. as discussed at length at para 10.6 & 10.7 above.

13.4 In view of the Revisionary Authority and Hon'ble Bombay High Court's Order discussed in paras 10.6 & 10.7 above, Government holds that the applicant is not entitled to rebate of duty paid in excess of duty payable at effective rate as per of Notification No. 4/2006-C.E., dated 1-3-2006 as amended and the excess paid duty has be allowed as re credit in the Cenvat credit account from which it was paid/debited subject to compliance of the provisions of Section 12 B of Central Excise Act.

13.5 In view of the discussions and findings elaborated above, Government modifies Order in Appeal No. US/83/RGD /2013 dated 22.03.2013 to the above extent and **Revision Applications No. 195/708/13-RA is partially allowed in terms of above.**

14. As such all the revision applications mentioned at Sl.No 1 to 5 of the Table at para 1 above are hereby disposed off in terms of above and as indicated below:

Sl.No.	Revision Application No.	Remarks
1.	195/390/13-RA	Allowed
2.	195/392/13-RA	Allowed
3.	195/393/12-RA	Partially Allowed
4.	195/394/13-RA	Partially Allowed
5.	195/708/13-RA	Partially Allowed

15. So ordered.

03.8.2018

(ASHOK KUMAR MEHTA)
Principal ,Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.297-301/2018-CX (WZ) /ASRA/Mumbai Dated 03.08.2018

To,

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

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, Raigad.
3. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
4. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur
5. The Deputy/Assistant Commissioner, Rasayani Division, GST & CX Raigad.
6. Sr. P.S. to AS (RA), Mumbai.
7. Guard file.
8. Spare Copy.

ATTESTED

31-8-18

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