REGISTERED SPEED POST AD

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
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F. No. 198/16/2014-RA / 1257 Date of Issue: 28.03.2022

ORDER NO. 315 /2022-CX(SZ)/ASRA/MUMBAI DATED 24.03.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise, Hyderabad-I

Respondent : M/s Vivimed Labs Ltd.(Unit-II)
Survey No. 202, 207/A, 207/E & 207/AA,
Bonthapally Village, Jinnaram Mandal,
Medak District – 502 313,
Andhra Pradesh

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. 108/2013(H-I)CE dated 15.11.2013 passed by the Commissioner of Central Excise(Appeals-I), Hyderabad.

ORDER

The revision application has been filed by Commissioner of Central Excise, Hyderabad-I(hereinafter referred to as "the applicant") against Order-in-Appeal No. 108/2013(H-I)CE dated 15.11.2013 passed by the Commissioner of Central Excise(Appeals-I), Hyderabad in respect of M/s Vivimed Labs Ltd.(Unit-II), Survey No. 202, 207/A, 207/E & 207/AA, Bonthapally Village, Jinnaram Mandal, Medak District – 502 313, Andhra Pradesh(hereinafter referred to as "the respondent").

2. The respondent is a manufacturer of drugs and cosmetics falling under chapter 33 of the First Schedule to the Central Excise Tariff Act, 1985 and had filed a total of 19 rebate claims for exports effected during the period 04/2011 to 12/2011 before the Assistant Commissioner, Hyderabad B Division alongwith all relevant documents, except the CAS-4 certificates which appeared to be obligatory for finalizing the claims as the exports had been made to their sister concern abroad. As the respondent had not submitted CAS-4 certificates in respect of 18 claims, deficiency memos calling for resubmission of the claims alongwith CAS-4 certificates were issued. The respondent resubmitted all the claims alongwith CAS-4 certificates on 08.03.2013 after a period of one year from the date of export which was in violation of condition laid down in Section 11B(1) of the CEA, 1944. While submitting the 18 claims, the respondent submitted another claim(19th claim) on 08.03.2013 in respect of export under ARE-1 No. 43/30.04.2011. An SCN was issued to the respondent proposing rejection of all 19 rebate claims filed by them. The jurisdictional Assistant Commissioner, Hyderabad-B Division vide OIO No. 268 to 286/2013-14-CE(Rebate) dated 09.05.2013 rejected the rebate claims on the ground that the rebate claims had been filed after expiry of one year from the date of export of goods which was in violation of the stipulation under Section 11B(1) of the CEA, 1944.

3.1 Being aggrieved by the rejection of their rebate claims by the Assistant Commissioner, Hyderabad-B Division, the respondent filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) disposed off the appeal vide OIA No. 108/2013(H-I)CE dated 15.11.2013 by setting aside the OIO passed by the Assistant Commissioner rejecting rebate in 16 claims on the grounds of limitation of time in as much as the initial date of submission was well within the period of one year. While doing so, he upheld the OIO to the extent that it disallowed rebate claims in respect of 3 claims on the ground of limitation of time. The

Commissioner(Appeals) further observed that there was force in the contention of the respondent that Board's circular in respect of CAS-4 refers to goods removed for captive consumption or removal to sister concerns located within the country and therefore the directions of the rebate sanctioning authority to furnish CAS-4 certificate was not relevant for export goods. He further averred that the FOB value of the goods was to be treated as the transaction value of the goods under the new Section 4 of the CEA, 1944 w.e.f. 01.07.2000. Duty was chargeable on excisable goods based on their value and the value adopted for each removal of goods would be the transaction value. Each invoice can have a different price and export being a different class of removal could have a different transaction value.

3.2 The Commissioner(Appeals) observed that the respondent had initially filed 18 rebate claims within one year from the date of export as required under Section 11B of the CEA, 1944 and the Department had returned 18 claims to the respondent under deficiency/discrepancy memos requiring them to furnish CAS-4 as the goods had been exported to their sister concern. These 18 rebate claims had been resubmitted with CAS-4 certificates alongwith the 19th claim on 08.03.2013. He found that there was force in the contention of the respondent that Board Circular with regard to CAS-4 refers to goods removed for captive consumption or to their sister concerns located within the country and therefore the direction of the rebate sanctioning authority to furnish CAS-4 certificate was not relevant for exported goods. He averred that the FOB value was to be treated as the transaction value under Section 4 of the CEA, 1944 w.e.f. 01.07.2000 where the duty chargeable on excisable goods was to be based on their value and the value adopted for each removal of goods was to be their transaction value. Each invoice could carry a different price. It was further stated that since export was a different class of removal, it could have a different transaction value which could differ for each consignment based on international market conditions. Therefore, the FOB value was to be treated as the transaction value of goods exported and even as per Section 14 of the CA, 1962, the transaction value in respect of goods to be exported is to be the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation; i.e. the port of export.

3.3 The Board had vide Circular No. 18/2008-Cus, dated 10.11.2008 envisaged that the transaction value in terms of Section 14 of the CA, 1962 for export of goods would be the FOB value of such goods at the time and place of exportation. The Commissioner(Appeals) held that the value based on CAS-4 was relevant only

for determination of value of goods consumed captively within Indian territory and was not relevant for goods exported. In this regard, he placed reliance upon the case laws In Re : Cadila Healthcare Ltd.[2013(288)ELT 133(GOI)] and In Re : Nov Sara India (P) Ltd.[2012(286)ELT 461(GOI)]. Since the date of initial submission of claim was relevant for limitation of time, once refund claim had been filed before the proper authority with all documents, such authority cannot return the claim. In this regard, Commissioner(Appeals) placed reliance upon the judgments in the case of CCE, Ahmedabad vs. AIA Engineering Ltd.[2009(248)ELT 826(Tri-Ahmd.)], CCE, Ahmedabad vs. AIA Engineering Ltd.[2011(21)STR 367(Guj.)] and CCE, Delhi-I vs. Arya Exports and Industries[2005(192)ELT 89(Del.)]. The Commissioner(Appeals) therefore held that the date of initial filing of the 16 rebate claims by the respondent was relevant for the purpose of limitation of time and hence held that the 16 claims were not time barred. In such manner the Commissioner(Appeals) partly allowed the appeal filed by the respondent vide his OIA No. 108/2013(H-I)CE dated 15.11.2013.

4. The Commissioner of Central Excise, Hyderabad-I found that the OIA No. 108/2013(H-I)CE dated 15.11.2013 was not proper and legal and therefore filed revision application on the following grounds :

(a) The observations of the Commissioner(Appeals) that the 16 rebate claims had been filed within a period of one year and were within time were not correct in view of the recent observations of the Revisionary Authority vide Order No. 1412-1413-Cx. dated 19.12.2013 in the case of Dr. Reddy's Laboratories Ltd. vs. CCE, Hyderabad-IV Commissionerate regarding transaction value adopted by that claimant in case of exports to related party. Rule 9, Rule 10 and Rule 11 of the Central Excise(Determination of Price of Excisable Goods)Rules, 2000 were found applicable and that party's appeal filed against Commissioner(Appeals) OIA No. 02/2013(H-IV)(D)CE dated 20.03.2012 was disposed off.

(b) The CBEC Circular No. 203/37/96-CX dated 26.04.1996 clarified that ARE-1 value should be determined and arrived at in terms of the provisions of Section 4 of the CEA, 1944 and the same is relevant for sanction of rebate.

(c) Reliance was placed upon the judgments In Re : GPI Textiles Ltd.[2013(297)ELT 309(GOI)], In Re : Maral Overseas Ltd.[2012(277)ELT 412(GOI)] and CCE, Meerut vs. Majestic Auto Ltd.[2005(184)ELT 130(SC)] averring that since the export consignment had been exported to the sister

concern of the respondent located in the USA and as it was reported that they did not have domestic sales in respect of the product involved in the rebate claims, hence the value of the goods cannot be determined under the provisions of Section 4(1)(a) of the CEA, 1944. Therefore, the sale price(ARE-1 value) cannot be termed as the transaction value in terms of Section 4 of the CEA, 1944.

(d) There is no sale to the sister concern and therefore the value of the export goods has to be determined in terms of Rule 4 of the Valuation Rules, 2000 as per which the value of excisable goods is to be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of removal of goods for assessment and therefore it is essential to resort to the market price of similar/identical products manufactured and sold by the assessee for comparison in order to determine the rebate amount to be sanctioned. In the present case, since there are no domestic sales of the goods and export clearances were made to sister concern, the provisions of Rule 9, Rule 10 or Rule 11 of the Valuation Rules, 2000 must be followed in terms of which the assessee was to furnish the normal transaction value to be adopted by the sister concern abroad as the export goods were not sold but cleared for export to their sister concern. However, since the respondent failed to provide such information, the option left was resort to Rule 11 of the Valuation Rules, 2000 as per which Rule 9 of the Valuation Rules, 2000 read with Rule 8 of the Valuation Rules, 2000 remained the only option to arrive at the transaction value and accordingly CAS-4 certificate was insisted upon to arrive at the value based on cost construction method in terms of Rule 8 by the rebate sanctioning authority.

(e) Since the respondent had not provided CAS-4 certificate at the time of initial filing of the 18 rebate claims, the rebate claims were returned alongwith deficiency memos seeking resubmission of the claims alongwith CAS-4 certificates. The respondent had thereupon submitted all the above claims alongwith CAS-4 certificates on 08.03.2013 after expiry of one year from the date of let export in contravention of the condition laid down in Section 11B of the CEA, 1944. Hence, the rebate claims had correctly been rejected by the Assistant Commissioner by taking the date of resubmission of complete claims as the date of filing claims in terms of Section 11B(1) of the CEA, 1944.

(f) The findings of the Commissioner(Appeals) that the CAS-4 certificates were not required and that the relevant date for computation of time limit would be the date when the rebate claims had been filed without relevant documents was not in consonance with para 2.4 of Chapter 9 of CBEC's Manual of Supplementary Instructions. It was pointed out that this para directs that submission of rebate claims without supporting documents is not to be allowed. Even if the claim is filed by post or similar mode, the claim should be rejected or returned with a Query Memo. The claim should be taken as filed only when all relevant documents are available. In case any document is not available for which the Department is solely accountable, the claim may be received so that the claim is not hit by limitation. It was reiterated that the decision of the Revisionary Authority in Order No. 1412-1413/13-Cx. dated 19.12.2013 in the case of Dr. Reddy's Laboratories Ltd. wherein Rule 9, Rule 10 or Rule 11 of the Valuation Rules, 2000 have been found to be relevant is applicable in the present case.

5.1 The respondent thereafter filed written submission dated 20.01.2015 in response to the revision application filed by the Department. They firstly stated that the impugned OIA was a reasoned order ably supported by decisions/judgments of the Hon'ble High Courts at Delhi and Gujarat, the coordinate benches of the Appellate Tribunal and Board's Circular which were binding upon the Departmental Officers. The respondent pointed out that the Department prays for annulling the OIA on the ground of valuation of the export goods which was not an issue based on which the OIA had been passed. It was submitted that the valuation issue did not figure at the SCN stage, the OIO stage or the OIA stage. They stated that if the OIA was annulled as prayed by the Department, it would amount to traversing beyond the scope of the SCN which is not permissible in law. In this regard, reliance was placed upon the decision In Re : V.S.T. Industries Ltd.[1992(57)ELT 525(GOI)].

5.2 On the issue of whether CAS-4 certificates are required to be filed alongwith rebate claims in a case where the goods are sold and exported to sister concerns situated abroad and whether the original authority acted properly in returning the rebate claims, the respondent stated that these were issues relating to procedure and did not materially affect their eligibility to refund of rebate claimed. It was averred that a statutory right had accrued to the exporter who had actually paid the duty of excise on the transaction value of the goods exported through their

CENVAT account and realised the sale proceeds from their overseas buyers in foreign exchange. The respondent adverted to para 2 of the grounds for revision in the revision application which refers to the finding of Commissioner(Appeals) holding that the initial date of submission of the rebate claims to the rebate sanctioning authority is the relevant date for computing the statutory time limit under Section 11B of the CEA, 1944 and partially allowing the appeal in respect of 16 rebate claims out of 19 rebate claims filed and the contention of the Department that it was not proper and legal. It was submitted that the Commissioner(Appeals) had given a reasoned finding and decision on the issue of relevant date that it was only the initial date of filing the claims and had ably supported it with case laws of two High Courts and various coordinate Benches of the Appellate Tribunal. The respondent observed that the Department had not given any reasons in support of this contention.

5.3 This ground for revision in the revision application filed by the Department merely states that the findings of the Commissioner(Appeals) are not proper and legal in view of the observations made by the Revisionary Authority vide Order No. 1412-1413/13-Cx. dated 19.12.2013 in the case of Dr. Reddys Laboratories Ltd. The respondent stated that they could not find anything in the said order regarding the issue of time bar and that the entire order deals with only the issue of valuation of export goods for the purpose of paying duty and claiming rebate thereon. The respondents reiterated that the issue of valuation of export goods was not raised or disputed in the SCN issued by the jurisdictional Assistant Commissioner nor did he reject the rebate claims on the question of valuation. Consequently, the Commissioner(Appeals) had no reason to allow their appeal on the question of valuation. The respondent therefore averred that the impugned OIA cannot be faulted and annulled on the ground of valuation. Moreover, the Order No. 1412-1413/13-Cx. dated 19.12.2013 in the case of Dr. Reddys Laboratories Ltd. relied upon by the applicant was not in existence when the impugned OIA was passed. While the impugned OIA has been passed on 15.11.2013, the order of the Revisionary Authority in the case of Dr. Reddy's Laboratories Ltd. had been passed on 20.12.2013. The respondent opined that it was not permissible to rely upon such subsequent evidence to allege and contend that the impugned OIA was not proper and legal.

5.4 The respondent pointed out that para 3, para 4 and para 5 in the present revision application relate only to valuation of export goods and hence these

grounds are not relevant and cannot form the basis for revision and be the cause for annulling the impugned OIA. With regard to para 6 and para 7 of the present revision application, the respondent observed that they relate to the findings of the Commissioner(Appeals) on the issue of whether it is proper to require the exporter to furnish CAS-4 certificates in support of the valuation of export goods on the ground that these goods had been sold to the sister concerns of the manufacturer-exporter of export goods. The respondent opined that this issue had no relation with the issue of determination of "relevant date" under Section 11B for deciding whether the rebate claim had been filed within the statutory time limit of one year from the date of export of goods.

5.5 The respondent contended that by returning the rebate claims for resubmission alongwith CAS-4 certificates involving inevitable delay in complying with the requirement of obtaining CAS-4 certificates from the competent Cost Accountant, the Department took undue advantage of finding a convenient but invalid and unacceptable reason to reject the claims as barred by limitation of time. They further stated that as pointed out by the Commissioner(Appeals), the rebate sanctioning authority ought to have retained the claims with himself and required the claimant to submit the required certificates retaining the option to issue SCN before expiry of the three month period and to reject the claims if the exporter failed to comply with the submission of the required documents. They also alluded to the case laws cited by the Commissioner(Appeals) to restate that only the initial date of submission of claims is relevant for the purpose of determining whether the rebate/refund claim is filed within the time limit specified under Section 11B of the CEA, 1944.

5.6 The respondent drew attention to para 7 of the grounds for revision wherein the Department had relied on the instructions contained in para 2.4 of Chapter 9 of the CBEC's Manual of Supplementary Instructions and reproduced the same. The respondent in turn placed reliance upon the instructions contained in para 3 of Circular No. 510/06/2000-CX dated 03.02.2000 whereby the Board had instructed that even if the rebate sanctioning authority believed that duty had been paid in excess than what should have been paid, there was no need to reduce rebate and the question of taking re-credit would not arise. With regard to the finding of the Commissioner(Appeals) regarding the "relevant date" being the date of initial filing of rebate claims before the rebate sanctioning authority and not the date of resubmission of the returned claims, the respondent submitted that this view was

based on settled case laws which are binding on the revenue. It was contended that unless it is shown that the said case laws are no longer good law, the OIA impugned in these proceedings cannot be annulled as prayed for by the Department. The respondent submitted that the Department has failed to advance any such grounds in support of this prayer.

6. Personal hearings were granted in the matter on 09.01.2020, 15.01.2020, 25.02.2020, 05.02.2021, 19.02.2021, 19.03.2021 and 26.03.2021. Neither the Department nor the respondent appeared for personal hearing. The revision application is therefore being taken up for decision on the basis of the available records.

7. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal, the Order-in-Original, the revision application and the submissions filed by the respondent. The revision application involves two main issues. The first issue is whether the rebate claims would be hit by limitation of time prescribed in terms of Section 11B of the CEA, 1944 with reference to date of resubmission of the claims with CAS-4 certificate. The second issue involved in the case is the valuation of the export goods and whether the respondent was required to submit CAS-4 certificates for arriving at the value of the goods exported to their sister concern for the sanction of rebate.

8.1 Government proceeds to discuss the issue of whether the rebate claims are hit by limitation. In the present case, there is no dispute about the fact that the 16 rebate claims which have been held to be filed within time by the Commissioner(Appeals) had originally been filed within one year of export by the respondent. The rebate claims were then returned to the respondent for want of CAS-4 certificates as the goods were being exported to the sister concern of the respondent. The original authority had taken the view that the value of the exported goods must be arrived at in terms of Section 4(1)(b) of the CEA, 1944 read with the Central Excise Valuation(Determination of Price of Excisable Goods) Rules, 2000. She has therefore held that the CAS-4 certificate would be necessary to arrive at the value of the exported goods. On going through Notification No. 19/2004-CE(NT) dated 06.09.2004 and the CBEC Manual of Supplementary Instructions, it is seen that the CAS-4 certificate has not been mentioned anywhere as a document to be submitted with rebate claim. Therefore, the respondent cannot be faulted for submitting the rebate claim without CAS-4 certificate. Be that as it

may, if the Department was of the view that CAS-4 certificate was necessary, it was an extraordinary condition cast upon the claimant. To be fair to the respondent, when the Department imposes an additional requirement upon the claimant, it cannot then strictly insist on compliance within the statutory time limit as the process of obtaining CAS-4 certificate from a Cost Accountant would undoubtedly lead to some delay. The reasonable action on the part of the original authority would have been to keep the rebate claims pending and ask the claimant to produce CAS-4 certificates.

8.2 Nevertheless, even if it is presumed that the rebate claims were deficient for lack of the CAS-4 certificates, there are several decisions in the judicial realm which have held that the initial date of filing rebate claims would be the "relevant date" for computing statutory time limit under Section 11B of the CEA, 1944. Government places reliance upon the ratio of the following judgments in this regard.

(a) United Phosphorus Ltd. vs. Union of India[2005(184)ELT 240(Guj.)]
(b) In Re : Tata Bluescope Steel Ltd.[2018(364)ELT 1193(GOI)]
(c) In Re : Dagger Forst Tools Ltd.[2011(271)ELT 471(GOI)]
(d) In Re : I.O.C. Ltd.[2007(220)ELT 609(GOI)]

In the result, Government holds that the 16 rebate claims which had initially been filed within a period of one year from the date of export are filed within time and should be decided on merits.

9.1 The issue of valuation of goods has been raised at the level of the original authority. The original authority had formed the view that the value of the goods cannot be determined under Section 4(1)(a) of the CEA, 1944. It was therefore decided that the valuation of exported goods must be done in terms of Section 4(1)(b) of the CEA, 1944 read with the Central Excise Valuation(Determination of Price of Excisable Goods) Rules, 2000. It was observed that the value of the exported goods could not be arrived at on the basis of market value of similar/identical products manufactured because there are no domestic sales of such goods. Hence, it was decided to apply Rule 9 of the Valuation Rules, 2000 with Rule 8 of the Valuation Rules, 2000. On the premise that the respondent had not revealed the transaction value adopted by their sister concern abroad, the adjudicator held that it had become mandatory for the respondent to submit CAS-4 certificates. However, the adjudicating authority then proceeded to dismiss the

rebate claims as time barred because the respondent had resubmitted the rebate claims with CAS-4 certificates beyond the limitation period of one year from the date of export.

9.2 What is being advocated by the Department through the revision application is that the valuation of the exported goods must be revisited and the goods must be reassessed by invoking Rule 11 of the Valuation Rules, 2000 and through it Rule 9 of the Valuation Rules, 2000 and Rule 8 of the Valuation Rules, 2000 to adopt cost construction. The ARE-1 value of the exported goods is self-assessed by the exporter under the provisions of Section 4 of the CEA, 1944. Rebate has consistently been held to be admissible to exporters to the extent of the FOB value thereof in various decisions such as In Re : Mahindra Reva Electric Vehicles Pvt. Ltd.[2014(314)ELT 972(GOI)], In Re : Sri Bhagirth Textiles Ltd.[2006(202)ELT 147(GOI)], In Re : Narendra Plastic Pvt. Ltd.[2014(313)ELT 833(GOI)] & Aarti Industries Ltd.[2014(312)ELT 872(GOI)]. The FOB value is the contracted price for the exported goods in the course of international trade and corresponds with the value under Section 14 of the CA, 1962. It would therefore follow that when the FOB value is deemed to be the correct transaction value by the Customs Authorities, rebate would be admissible on that FOB value.

9.3 In the present case, the Customs Authorities have not raised any issue regarding the value of the exported goods. The valuation of the exported goods has been accepted by the Customs Authorities and therefore the FOB value has been frozen for these exports in the Bill of Export and other export documents. Per se, the provisions under the CEA, 1944 and the Valuation Rules, 2000 do not contain any provisions for valuation of export goods. On the other hand, the Customs Valuation(Determination of Value of Export Goods) Rules, 2007 contain a definition of "related" persons. These rules also contain specific provisions for determining the value of export goods in Rule 3 to Rule 6 thereof. The text of Rule 3 of the said rules is reproduced below.

> "**RULE 3. Determination of the method of valuation.** – (1) Subject to rule 8, the value of export goods shall be the transaction value.
>
> (2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6."

9.4 It can be seen from sub-rule (2) of Rule 3 of the Valuation Rules, 2007 that the transaction value is to (*shall*) be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price. In other words, even if there are related persons involved in the export transaction, there is no direct resort to the subsequent rule 4 to rule 6 to determine the value of export goods unless the relationship between buyer and seller has influenced the price. The irony here is that although the Customs Authorities have not objected to the value of the goods, the Central Excise Authorities have directly invoked the provisions of the Central Excise Valuation Rules to determine the price of the exported goods. It is not the case of the Department that any evidence has been adduced to indicate overvaluation or undervaluation of the exported goods. As such, there was no cause for the Department to directly reject the FOB value declared by the respondent.

9.5 Such an approach goes against the ethos of the scheme of granting rebate of duties of excise paid by the exporter on exported goods. The purpose of the Government in instituting export schemes and encouraging exports is to garner foreign exchange. As an exporter, every person would try to get the highest price for the products being exported. Needless to say, there may be a difference in the prices of products in the Indian market and in the markets of developed countries and especially so in respect of pharmaceutical products. In many cases they may not be comparable. Therefore, it would be imprudent to compel an exporter to align the prices of export goods to the domestic market price and export at a lower value. This kind of an approach would place the exporter at a disadvantage and also negatively impact the inflow of foreign exchange into the country.

9.6 In this regard, the submissions made by the respondent by citing the contents of para 3 of Circular No. 510/06/2000-Cx. dated 03.02.2000 are germane.

"3. If the rebate sanctioning authority has reasons to believe that duty has been paid in excess than what should have been paid, he shall inform, after granting the rebate, the jurisdictional Assistant/Deputy Commissioner. The latter shall scrutinise the correctness of assessment and take necessary action, wherever necessary. In fact, the triplicate copy of AR-4 is meant for this purpose, which are to be scrutinized by the Range officers and then sent to

rebate sanctioning authority with suitable endorsement. Since there is no need for reducing rebate, the question of taking re-credit in RG-23A Part-II or RG 23C Part-II do not arise."

It would be clear from the circular that even if he has reasons to believe that duty has been paid in excess than what should have been paid, the rebate sanctioning authority is not supposed to reduce rebate. Instead, he has been advised to grant rebate and then inform the jurisdictional Assistant/Deputy Commissioner who shall then scrutinize the correctness of assessment and take necessary action wherever necessary.

10.1 Government observes that in the grounds for revision, the Department has placed strong reliance upon the decision in Revision Order No. 1412-1413-Cx. dated 19.12.2013 in respect of Dr. Reddy's Laboratories Ltd. In that case the Commissioner(Appeals) had decided the valuation of the goods exported to the subsidiary of Dr. Reddy's Laboratories Ltd. adopting cost of production with a markup of 10%. The method of valuation which is being canvassed in the present revision application by the Department is also based on cost of production. Since the Department has placed reliance upon the Revision Order No. 1412-1413-Cx. dated 19.12.2013, the present status of this order was ascertained. It was found that Writ Petition had been filed by Dr. Reddy's Laboratories Ltd. against this Revision Order. The W.P.(C) No. 818 of 2014 & C.M. Appl. Nos. 1650 & 4321 of 2014 has since been disposed off by the Hon'ble Delhi High Court vide its Order dated 14.08.2014[2014(309)ELT 423(Del.)]. The para 15 to para 20 of the order of the Hon'ble Delhi High Court is reproduced hereinafter.

"15. Independent of the difference between the sanctioning authority in the order-in-original and the appellate authority subsequently on the applicability of the 2007 Rules to cases arising under Section 11B of the Central Excise Act – read with Rule 18 of the 2002 Rules, the appellate/revisionary authority relied on condition (e) of Notification 19/2004 to deny the rebate as earlier granted (as the revisionary order notes : *"market price of the similar/identical goods at the time of exportation is found to be less than the amount of rebate of duty claimed"*). Indeed, this resolution is necessary to activate condition (e). In this case, Dr. Reddy's had stated that no similar goods are marketed in the Indian market, and a comparison of similar goods sold in the United States would show that the transaction value was not overstated. In support of that stance, the following prices – of Eli Lilly (the inventor) and Prasco Labs (its assign) – were provided, which have not been disputed by the Revenue.

16. The revisionary authority discarded these prices on the ground that the price charged by the inventor cannot be a basis for comparison and that the substantially lower price charged by Sun Pharmaceuticals in India is a better comparison. It was further held that the substantial markup in the transaction between Dr. Reddy's and its Jersey subsidiary implied some distortion in the transaction value. Thus, the best judgment method was used with a cost plus 10% markup as the correct value.

17. This reasoning is unacceptable. Under Rule 18 – which contemplates return of the excise duty paid in cases of exported goods, - the market price must necessarily refer to the market *where the goods are sold*, - in this case, the United States market. The goods in question are neither meant for, nor did they ever enter, the Indian market. If this were not to be the position, the valuation of goods meant for export (in cases of export to countries with a stronger currency valuation; or simply, "developed" countries) would always be incongruous even bizarre. In such cases, the actual value of goods sold abroad would likely exceed the value domestically. Following the Revenue's logic, unless the exporter decides to export the goods at the lower domestic price, he or she may never recover the entire excise duty paid on the higher international price. This extinguishes the purpose of Rule 18 of the 2002 Rules, and the policy of ensuring competitive exports.

18. In the present case, approximately ₹ 411 crores was received in India in foreign exchange from the sale of these drugs. On this basis, excise duty was paid and later recovered. At no point did Dr. Reddy's receive a net benefit from the transaction. If the Revenue's argument is to be accepted, a higher price is accepted by it at the time of payment of excise duty on the basis of the price in the foreign market, but a different (and lower) price is mandated on revaluation for the purpose of refunding that very amount. Far from meeting the purpose of Rule 18, this approach results in a net positive for the Revenue on the basis of differential valuation at different points of the same process. A consistent value based on a distinct principle is to be followed during the entire process. This value – the 'market value' – must be the value in the market to which the goods are exported. Whilst undoubtedly there may be cases where the valuation ought to be considered more closely if the transaction is between related parties, this case does not present any difficulty. The generic price of $ 0.69 relied upon by the revisionary authority is the price prevailing in the United States market after the expiry of the 180 days window period. The exports however were made during that window period, when the patent was manufactured by only 3 bodies (Eli Lily, Prasco Labs and Dr. Reddy's) and the prevailing price was higher. Condition (e) itself notes that the relevant time is *"at the time of exportation"*, and the comparison of generics – who did not exist in the market at the time of export – violates that condition. Similarly, the price that allegedly prevailed in India - ₹ 104.50 for 10 tablets – is again irrelevant, since that refers to

the domestic market. Thus, the market must be correctly chosen, both geographically and temporally. In this case, the United States market during the 180 days window period has prevailing prices between $ 19.22(Prasco Lab's lowest price) and $ 33.38(Eli Lily' highest price), which are both clearly above the price of $ 7 at which the sale was made between Dr. Reddy's and its Jersey subsidiary. Moreover, this exercise is typically revenue-neutral. Rule 18 ensures any duty paid is returned, and that excise duty is not added to the cost of exports who are selling abroad. The revenue effect in such cases is to be nil. Thus, it is unfortunate that in the present case it has resulted in two orders of revision under Section 35E(2), the two appellate orders and the common revisionary order, which have led to an appeal before the CESTAT and the present writ petition.

19. The stated purpose of Rule 18 is revenue neutrality, yet, time and resource has been expended on this exercise to neither party's benefit. The Supreme Court has also – at various points – recognized that minimum, if any, interference should occur in such cases; [see, Commissioner of Income Tax v. Glaxo Slithkline Asia (Pvt.) Ltd., [2010] 195 TAXMAN 35 (SC), paragraphs 3-4, Commissioner of Income Tax v. Bilahari Investment (Pvt.) Ltd., (2008)4 SCC 232].

20. Accordingly, for the above reasons, the order of the Department of Revenue dated 19-12-2013 – Order Nos. 1412-1413-CX, under Section 35EE of the Central Excise Act is hereby set aside, along with any consequential demands raised for recovery of the rebate of excise duty. The Orders-in-Original No. 462/2011-REBATE and No. 3/2012-REBATE, dated 30-9-2011 and 13-1-2012 are accordingly restored. There shall be no order as to costs."

10.2 The Hon'ble Delhi High Court has held that the value of the goods is to be determined in terms of their market price in the country where the goods are sold. The inference that follows is that, the approach of determining the price of the exported goods on the basis of market price in India or on the basis of cost of production is not proper. This Order of the Hon'ble Delhi High Court has since been reaffirmed by the Hon'ble Telangana & Andhra Pradesh High Court by setting aside consequential demands raised by the Department in that case in Central Excise Appeal No. 146 of 2015 decided on 24.06.2016(Commr. Of Cus., C. Ex. & Service Tax vs. Dr. Reddy's Laboratories Ltd[2016(341)ELT 580(A.P.)]).

11. The judgments of the Hon'ble Delhi High Court and the Hon'ble High Court of Telangana & Andhra Pradesh in the case of Dr. Reddy's Laboratories Ltd. are binding precedents. In the present case, the Department has not adduced any evidence to show that the exported goods have been overvalued/undervalued in

terms of the price of the same goods/similar goods in the country of the buyer. Government, therefore, respectfully follows the judgments of the Hon'ble Delhi High Court and the Hon'ble High Court of Telengana & Andhra Pradesh to conclude that the rebate claims filed by the respondent exporter are admissible.

12. In the result, the impugned OIA No. 108/2013(H-I)CE dated 15.11.2013 passed by the Commissioner of Central Excise(Appeals-I), Hyderabad is upheld. The revision application filed by the Department is disposed off as being devoid of merits.

24/3/22

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

ORDER No. 315/2022-CX(SZ) /ASRA/Mumbai DATED 24.3.2022.

To,
M/s Vivimed Labs Ltd.(Unit-II)
Survey No. 202, 207/A, 207/E & 207/AA,
Bonthapally Village, Jinnaram Mandal,
Medak District – 502 313,
Andhra Pradesh

Copy to:

1) The Commissioner of CGST & CX, Medchal
2) The Commissioner (Appeals-II), CGST & CX, Hyderabad
3) Sr. P.S. to AS (RA), Mumbai
4) Guard file