REGISTERED
SPEED POST

F.No. 198/204/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 03/04/2013

ORDER NO. 330 /2013-Cx DATED 01.04.2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT	:	Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/332/RGD/2012 dated 17.05.2012 passed by Commissioner of Central Excise (Appeals), Mumbai-II.
APPLICANT	:	Commissioner of Central Excise, Raigad
RESPONDENT	:	M/s Combitic Global Caplet Pvt. Ltd., New Delhi

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ORDER

This revision application is filed by the applicant Commissioner of Central Excise, Raigad against the order-in-appeal US/332/RGD/2012 dated 17.05.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to order-in-original No.1981/11-12/DC(Rebate)/Raigad dated 31.1.2012 passed by Deputy Commissioner of Central Excise (Rebate) Raigad.

2. Brief facts of the case are that the respondent herein M/s Combitic Global Caplet Pvt. Ltd., New Delhi filed 90 Nos of claims for rebate of duty paid on excisable goods in terms of Section 11B(1) of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 and Notification No.19/2004-CE(NT) dated 6.9.2004 (as amended) with Deputy Commissioner, Central Excise Rebate, Raigad. During scrutiny of the rebate claims it was observed by the Deputy Commissioner (Rebate) that the respondent has claimed the rebate of duty calculated on the value of goods on the basis of MRP in accordance with Section 4A of the Central Excise Act 1944, whereas the claims in this respect should have been for duty calculated on the transaction value of goods to be determined in accordance with Section 4 of Central Excise Act, 1944. Accordingly show cause notice dated 4.1.12 was issued and after due process of adjudication the eligibility to the claim/rebate was concluded as admissible but only upto the extent of duty payable on transaction value (assessable value) under Section 4 of the Central Excise Act 1944 as declared in relevant Central Excise Invoices and not for the full amount of duty paid on (higher) MRP value under Section 4A of the Central Excise Act, 1944. The original authority vide impugned Order-in-Original sanctioned the rebate claim of Rs. 71,05,078/- and rejected the claim of balance amount of Rs. 2,85,41,026/-.

3. On being aggrieved by the above orders-in-original of Adjudicating Authority the respondent herein preferred an appeal and the Commissioner (Appeals-II), Central Excise, Mumbai vide Order-in-appeal No.US/332/RGD/2012 dated 17.5.2012 allowed

the same thereby holding that as the price declaration the retail packs was mandatory, the appellants were required to pay duty as per Section 4A of the Act. As they had correctly assessed and paid duty they were eligible for rebate of the full duty paid by them under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004. Accordingly, the impugned order sanctioning only the rebate of duty payable under Section 4 of the Act was set aside and appeal of applicant was allowed.

4. Being aggrieved by the impugned order-in-appeal, the applicant department has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Commissioner (Appeals) by opining upon manner and requirements of assessment herein has erred in going beyond the issue and submission of the claimant before the Adjudicating Authority and has also traversed beyond the ground of appeal. Besides, the Commissioner (Appeals) has erred in applying the Drugs (Price Control) Order 1995 and the Legal Metrology (Packaged Commodities) Rules 2011 etc. wrongly for goods exported outside India. Section 1(2) and Section 3 of the said Act clearly indicate that the intention of the enactment of the said law is to provide relief to the general public of India by way of equal/uniform distribution of goods at fair prices with regular availability of essential commodities being necessary for day to day life. It is certain, that this Act is brought for people of India not and for others residing outside India. Secondly, the provision of this Act will not be enforced beyond the territory of India. Therefore, the valuation of goods for export from India will not be governed as per the provisions of the Essential Commodities Act, 1955 and the orders issued thereunder.

4.2 The Drugs (Price Control) Order 1995 is not an independent Act/Law/Rules/Regulation/Order. In fact it is enacted as per the provisions of Section 3 of the Essential Commodities Act, 1955. Therefore all the provisions including scope

and limitations of the Essential Commodities Act, 1955 are squarely applicable to the Drugs (Price Control) Order 1995. In this matter the Commissioner (Appeals) wrongly held that as per the provisions of para 14 and para 15 of the Drugs (Price Control) Order 1995, valuation is to done on the basis of retail prices on labels of the containers of exported goods. It is wrong to come to the conclusion on the basis that only one or few provisions of Act/Law are applicable in certain matters. Principally, all the provisions including the provisions for scope and limitation of the Act/Law are required to be read together for drawing a conclusion regarding the applicability/non-applicability of certain provisions of the Act. The Commissioner (Appeals) in the subject OIA has not examined and discussed or even mentioned the provisions of the Essential Commodities Act, 1955 under which Drugs (Price Control) Order 1995 was issued, which was only applicable to the goods sold in India and not on the export goods. Further the value as per Section 4A is five times more that the value as per Section 4 which is (declared on invoice issued under Rule 11 of Central Excise Rules, 2002) detailed below:

FOB Value as per Shipping Bill and commercial invoices	Rs.14,92,33,971/-
Value as per Section 4 of Central Excise Act, 1944	Rs.13,79,62,671/-
Value as per Section 4A of Central Excise Act, 1944	Rs.69,21,47,016/-

In this case the value as per Section 4A is 501% more than the value as per Section 4 and the FOB value is 8% more than the value as per Section 4. The FOB value is the actual realization of the goods exported. Further, the value as per Section 4A is 364% more that of FOB for value. Such inflated prices of medical formulations for the limited purpose of obtaining higher rebate would be misuse of the purpose of the Essential Commodities Act, 1955 and orders issued thereunder and hence the rebate should have been allowed only on the transaction value of Section 4 of the Central Excise Act, 1944 and not on MRP basis, which is not applicable to the export goods.

4.3 The Commissioner (Appeals) has erred in taking the mutual agreement between the buyer and the seller as legal requirement which is neither correct nor legal. In this

matter it is mutually agreed upon by the claimant and their buyer from the country outside India that "the maximum retail price in Indian Rupees is to be printed on each strip. Such maximum retail price would be printed as mutually agreed from time to time". On the other hand, the price quoted by the buyer from the country outside India for the said export is in U.S. dollar only and on the basis of these prices for different products, the FOB is calculated at the time of export. Hence it cannot be said that the prices printed on the label of container/strips being mutually agreed upon from time to time are as per the provisions of any Act/Law/Rules/Order/Drugs (Price control) order 1995. Thus the provisions of MRP based valuation as per Section 4A of Central Excise Act, 1944 are not applicable for the export of goods from India, but only the FOB value is relevant which is based on the normal Transaction value under Section 4 of Central Excise Act, 1944.

4.4 The Commissioner (Appeals) has also erred in artificially distinguishing the judgements of the Hon'ble CESTAT in the case of M/s Gillette India Ltd. (2006 (193) ELT 331 and M/s Indo Nissin Foods Ltd., 2008 (230) ELT 143 without discussing the issue and the facts of the case, wherein it was clearly held that in the case of export goods the valuation on MRP is not applicable, and the valuation should be done applying Section 4 of the Central Excise Act, 1944. It was further followed by M/s Nissin Foods Ltd., [2008 (230) ELT 143-(Tri-Bang.)] and settled laws is that export goods are to be assessed under Section 4 and not under Section 4A of the Central Excise Act, 1944.

4.5 Further, it is reflected that the transaction value shown in the invoice is less than the value shown in ARE-1, i.e. Section 4A MRP based value. The FOB value is arrived at after deducting the freight and insurant charges (if any) from the Commercial Invoice value. When the manufacturer himself is exporter, the transfer of goods takes place on board of foreign going vessel. The provisions of Section 2(h) and Section 4(3)(c)(iii) of the Central Excise Act which deal with definition of 'sale' and 'purchase' and 'place of removal' under the Central Excise Act are very relevant to decide the place of removal

and transaction value in the instant case. While applying the definition of sale of goods in terms of Section 2(h) of the Act, the sale of goods takes place on board of foreign going vessel and while applying the definition of 'place of removal' in terms of Section 4(3)(c)(iii) of the Act, the same will have to be on board of foreign going vessel where transfer of goods takes place. Hence, the place of removal is on board the foreign going vessel. Accordingly, the transaction value shall be FOB which is at the place of removal viz. port of exportation. In terms of Notification No.43/2011-CE(NT) dated 1.7.2011, the FOB value has been defined as "the price actually paid or payable to the exporter for goods when the goods are loaded onto the carrier at the named port of exportation, including the cost of the goods and all costs necessary to bring the goods onto the carrier and the valuation shall be in accordance with the WTO Agreement on Implementation of Rule VII of GATT, 1944" which is pari material in Central excise matters. Therefore, 'place of removal' in the instant case is on board the foreign going vessel. Accordingly, in the instant case, the transaction value is FOB value and the duty should have been paid on the FOB value in case of export of goods. This implies that any amount paid in excess of transaction value cannot be duty. This is squarely applicable in case of rebate under Section 11B as this portion of statute provides for rebate of duty; hence, rebate of any amount other than duty cannot be sanctioned on rebate. Hence, 'the whole of duty of excise' would mean the duty payable under the provision of Central Excise Act 1944 which is only legally payable. Any amount paid in excess of the duty liability on one's own volition cannot be treated as duty.

4.6 The Commissioner (Appeals) also has wrongly held that the refund of accumulated Cenvat credit under Rule 5 of the CENVAT Credit Rules, 2004 was available to the claimant. He has further held that the payment of higher amount of duty on the goods exported than what is actually due could not result in any undue benefit. This finding of Commissioner (Appeals) is incorrect because refund under Rule 5 of Cenvat Credit Rules, 2004 requires fulfillment of some conditions. However, no justification has been provided as to how the higher amount of duty on goods exported is eligible for sanction of rebate under Rule 18 ibid or refund under Rule 5 ibid. Further

while determining the correct amount of Refund under Rule 5 ibid the transaction value of the goods will be one of the factors.

5. In response to show-cause notice dated 27.09.2012 issued to the respondents under Section 35 EE, they filed their cross objection dated 27.11.2012 and then further vide written submissions dated 04.03.2013 mainly stated as under:

5.1 The goods produce and manufactured by the respondent i.e. medicaments is absolutely covered under Section 4A of the Central Excise Act (Notification No.49/2008-CE (NT) dated 24.12.2008) for the purpose of assessment of duty whether for export or for home consumption. Moreover, as per the Central Excise Law the rebate sanctioning authority even cannot reassess the payment of duty made on the export goods by the respondent.

5.2 In this regard the respondent also rely on the judgement of the Hon'ble CESTAT in case of M/s J.K.Papers Vs. CCE – reported in 2003 (157)ELT(CESTAT) wherein it is held that goods are to be assessed on the basis of ex-factory price at the time of removal. Subsequent deterioration and depreciation is immaterial. In this case, goods cleared without payment of duty for Export were subsequently diverted in local market as they were not accepted by the foreign buyer. Thus it is axiomatic that the rate of duty or tariff value applicable is the rate or value in force on the date when such goods were removed from the factory premises of the respondent and it is immaterial whether the goods are cleared for export or for home consumption because similarly after clearing the goods for export the foreign buyer of the respondent can also cancel the order, on any reason.

5.3 Section 4A(2) of the Act employs a 'non obstante clause' by using the words "notwithstanding anything contained in section 4". Hence it is obvious that, when Section 4A is applicable, then the provisions of Section 4 for determination of assessable value are not applicable whether for home clearance or for export (stress

invited vehemently pl). The provisions of Section 4A override the provisions of Section 4 ibid. Thus, in case of products covered under Section 4A i.e. 'RSP Scheme', 'value' means value under Section 4A only and not the value as per Section 4 ibid. In brief, it is submitted that the allegation made in the impugned Revision Application that the respondent should have assessed the duty under Section 4 ibid is totally wrong and against the provisions of Section 4A(2) ibid. In this regard, the respondent also draw your kind attention towards the following judgements of the Hon'ble CEGAT in the case of M/s Mona Electronics Vs. CEE – reported in 2001(135)EOL.1293(CEGAT) wherein it is categorically held that, "Valuation (Central Excise) – Maximum retail price – Provisions of Section 4A are mandatory and no option available to assesse – Section 4A of Central Excise Act, 1944 (Para 4) and judgement in the case of M/s Bata India Ltd. Vs. CCE reported in 1999 (114) ELT78(CEGAT) wherein it is held that, "Valuation (Central Excise) – 'Footwear' having been specified under Section 4A of Central Excise Act, 1944 value thereof to be determined thereunder and not under Section 4 ibid in view of non obstante clause – 'Value' occurring in sub-heading 6401.12 of Central Excise Tariff Act, 1985 refers to value under Section 4A only. Similar is the judgement in the case of M/s Indica Laboratories Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad [2007(213)ELT 20(Tri-LB)].

5.4 In respect of exports made by the respondent under the same procedure under Bond in terms of Rule 19 of the Central Excise Act, 2002 the jurisdiction Central Excise Divisional Office had regularly accepted the proof of export and allowed credit entry in the Bond Register. But when the respondent made the export under the same procedure under the claim of rebate of duty in terms of Rule 18 ibid then denial of partial rebate claim by the rebate sanctioning-cum-Adjudicating Authority/applicant in the impugned Order-in-original is totally against the Central Excise Law. As per the Central Excise Law there is no difference when credit entry is allowed in the Bond Register by accepting that goods have been exported viz-a-viz by allowing rebate claim of duty paid on the exported goods. Because in both the situations duty liability has to be neutralized in respect of the duty paid on the export goods. (stress invited pl).

Even if the Department wants to re-assess the duty then also the proper authority would be jurisdictional Central Excise Office, Sonipat. Relied upon case laws are:

i. Judgement in the case of M/s Reliance Industries Ltd. Vs. CCE – reported in CCE 1999 (112)ELT 653 (CEGAT)
ii. M/s India Poly Fibres Ltd. Vs. CCE 1999(111)ELT-48(CEGAT)
iii. M/s Orissa Synthetics Vs. CCE 1999(111)ELT-111(CEGAT)
iv. M/s Miltan Polyplast Vs. CCE 2004(166)ELT.122(CESTAT)

5.5 It is worth to mention that in other case also where duty has been paid on RSP i.e. in terms of Section 4A of the Act and the RSP is lower than FOB value of the export goods, the Asstt. Commissioner of Central Excise, Sonipat has allowed the rebate claim by assessing the goods on RSP value vide Order-in-Original No.75/AC/SNP/2012 dated 15.8.2012. The said Order-in-Original has been accepted by the Government as there is no such appeal has been filed by the department against the said Order-in-Original.

(i) In the matter of M/s Vishnu Trader Vs. State of Haryana and Others [1995 Supple (1)SCC 461] it is ruled by the Hon'ble Supreme Court of India that "the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment." The said decision is also relied by the Double Bench of Hon'ble High Court of Delhi in the matter of Sh. Deeksha Suri Vs. Income Tax Appellate Tribunal [1998(102)ELT524(Del.)]

(ii) In this regard, the respondent also draw your kind attention towards the judgment of the Hon'ble CESTAT in the case of CCE Vs. M/s Maini Precision Products – reported in 2010(252)ELT409.

5.6 If the triplicate copy of ARE-1 carries the endorsement of Excise Officer (Superintendent in charge of manufacturing unit) to the effect that the export clearance

was recorded in Daily Stock Register/duty was paid through PLA/CENVAT and the duty payments has been ascertained from the Central Excise invoice then in the light of the relevant Circular, the rebate claims of the respondent are absolutely payable.

5.7 The Circulars/Instructions issued by the CBEC, which are relevant to the instant case are as follows:

(a) Para 4.1 of Chapter 8 of the CBEC's Excise Manual of Supplementary Instruction, 2005;

(b) Circular No.510/06/2000-CX, dated 3.2.2000 issued from F.No.209/29/99-CX.6;

(c) Circular No.625/16/2002-CX, dated 28.2.2002 (issued under F.No.6/44/2000-CX.1);

(d) Circular No.687/3/2003-CX, dated 3.1.2003 (issued under F.No.267/57/2002-CX.8);

(e) Circular No.278/112/2002-CX dated 11.12.1996.

5.8 The goods produced by the respondent being 'Scheduled formulations' and 'non-scheduled formulations' are categorically legally obliged to declare the retail sale price of the said formulations on the retail packs under the Drugs (Price Control) Order, 1995. Paragraphs 14 and 15 of the Drugs (Price Control) Order, 1995 provide for declaration of the retail sale price of the drugs/medicines and formulations on the label or container. The respondent has properly displayed retail sale price under the provisions of the Drugs (Price Control) Order 1995, which is the only essential requirement under Section 4A ibid for the purpose of valuation of goods of the respondent.

5.9 From the above it is self-evident that the prices of the medicaments are exclusively controlled under the Drugs (Price Control) Order, 1995, and there is no discrimination whether such medicaments are meant for 'home consumption' or for

'export'. On careful perusal of all the provisions of Essential Commodity Act, 1995, Drugs (Price Control) Order, 1995 and various Notifications issued thereunder, your goodself would find that there is no whisper that for the purpose of 'Export goods' which are produced in India, such provisions will not be applicable (stress invited vehemently pl.) and that if the respondent contravenes any of the provisions of the Drugs (Price Control) Order, 1995 including displaying of RSP, then the penalties for such offence are stipulated in the said Order.

5.10 It is vehemently submitted that in cases where either the respondent could not export the goods or the respondent could not submit proof of export, for the goods cleared for export, the Audit officers of the Central Excise Commissionerate, Rohtak pointed out and also recovered the duty by assessing under Section 4A ibid in accordance with the provisions of Para 4.1 of Chapter 8 of the Supplementary Instructions issued by the CBEC on RSP (less abatement) basis by using the same principle as the goods were cleared for home consumption. The audit officers also directed the respondent to assess the duty under Section 4A ibid for the export goods. In this regard, your goodself would appreciate that different parameters cannot be maintained by the department for assessment of duty i.e. when the duty is demanded on the export goods which are not exported due to any reason vis-à-vis when the duty is to be rebated on the export goods which are exported.

5.11 The respondent has even obtained clarification from the Metrology Department also. The Deputy Controller of the Legal Metrology, Haryana vide Memo No.652 dated 17.4.2012 has categorically clarified that – "This is to inform you that as per the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities)Rules 2011 it is mandatory to mention Maximum Retail Price on the packages which are not manufactured exclusively for export". Your goodself would appreciate that in the light of the sample invoices submitted by the respondent it is clearly beyond doubt that the respondent is not manufacturing the pharmaceutical products exclusively for export. Hence in view of the said clarification also it is clear that the respondent is bound and

legally obliged to mention RSP on the export goods. In this regard, the respondent is relying upon the judgement made by your goodself in the matter of M/s Triveni Impex Pvt. Ltd., Delhi vide GOI Order No.236-237/11-CX dated 16.3.2011.

5.12 The aforesaid Notification 43/2011-Cus (NT) dated 1.7.2011 referred to by the applicant in the impugned RA pertains to the determination of Origin of Goods Under the Preferential Trade Agreement Between the Governments of the Republic of India and Malaysia. It is worth to mention here that the above Notification is neither part of the impugned SCN and order-in-original nor order-in-appeal also. Your goodself would appreciate that the said Notification referred to by the applicant in the impugned RA are far far irrelevant to the present facts and circumstances of the case. It is quite evident that the impugned RA has been filed totally without applying mind and with the sole motive to reject the legitimate rebate claim of the respondent by hook or crook.

5.13 The instant case is not related to the refund of accumulated CENVAT credit under Rule 5 of the Cenvat Credit Rules, 2004 and is related to the rebate of duty paid on the export goods under Rule 18 ibid. Hence it is clearly evident that the referred allegation is not relevant to the instant case and hence not tenable in the eyes of law. The respondent herein has also relied upon observations as contained in below mentioned case laws:

i. Adarsh Metal Corporation Vs. UOI [1993(067)ELT 0483(Raj.)]
ii. M/s Bharat Chemicals Vs. CCE, Thane [2004(170)ELT.568(Tri Mumbai)]
iii. Collector of Central Excise, Vadodara Vs. M/s Dhiren Chemical Industries [2002(139)ELT.3(SC)]

5.14 The Revision application before Revisionary authority is not maintainable as the same is beyond jurisdiction of Joint Secretary (Revision Application). In this case the disputed issue is determination of value of the goods for the purpose of assessment, which doesnot fall under category of cases mentioned in 35(B) of the Central Excise

Act, 1944 and hence, the issue involved in this case is beyond jurisdiction of Joint Secretary(Revision Application).

6. Personal hearing scheduled on 21-02-2012 at Mumbai was attended by Shri Pratul Tiwary DC (Rebate) and Shri S.S. Narkar Supdtt. (Rebate) Raigarh on behalf of applicant department. They reiterated the grounds of revision application. On a query regarding jurisdiction of this authority in terms of section 35 EE r/w proviso to section 35 B (1) Central Excise Act, 1944, since the main issue involved was of valuation of goods, Shri Pratul Tiwari stated that they will file a written reply separately. Nobody attended said hearing on behalf of respondent party.

6.1 However, the next hearing scheduled on 04-03-2013 at Delhi was attended by Shri Pavel Garg, Director of applicant party who mainly reiterated the submission made in their written counter reply dated 27-11-2012 and 04-03-2003.

6.2 The applicant department vide their letter F. No. V/15-282/Reb./Combitic/ Rgd/12/1035 dt. 29-01-2013 mainly contended that as per section 35EE of Central Excise Act, 1944 r/w proviso to section 35 B (1), Tribunal has no jurisdiction to decide appeal against an Order-in-Appeal relating to rebate of duty and appeal has been rightly filed with JS (RA).

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. On perusal of records, Government notes that the respondents herein as manufacturer exporter has cleared the impugned goods for export on payment of duty after making assessments under Section 4A of the Central Excise Act, 1944. The rebate sanctioning authority after noticing that the claimant exporter has assessed the duty on the subject export goods on the basis of MRP in accordance with Section 4A of the Central Excise Act, 1944 has issued a deficiency-cum-show cause notice on the point

that the relevant assessments should have been made in accordance with Section 4 ibid because the impugned goods were cleared for the purpose of exports only for which consideration of "MRP" and hence Section 4A of the Central Excise Act are not relevant in any manner. Accordingly, the original authority sanctioned the rebate claim of duty payable on value determined under section 4 of the Central Excise Act, 1944, amounting to Rs. 71,05,078/- and rejected the remaining claim of Rs. 2,85,41,026/-. Commissioner (Appeals) decided the case in favour of respondent party. Now, the applicant department has filed this Revision Application on grounds mentioned in para (4) above.

10. Government while taking note of respondent's objection of maintainability of this revision application before Central Government under the provisions of Section 35EE of the Central Excise Act, 1944, finds it proper to first examine the issue of jurisdiction. Hence, Government proceeds to discuss relevant statutory provisions.

10.1 Section 35EE of Central Excise Act, 1944.

"Section 35 EE. Revision by Central Government - (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annual or modify such order:....."

10.2 Section 35 B(1) of Central Excise Act, 1944.

"35B. Appeals to the Appellate Tribunal.—(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-

(a) a decision or order passed by the [Commissioner of Central Excise] as an adjudicating authority;
(b) an order passed by the [Commissioner (Appeals)] under section 35A;
(c) .....
(d) .....

[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,-

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods, exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

[(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:]

Provided further that] the appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where-

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) the amount of fine or penalty determined by such order."

11. From the above, it is clear that if the Order-in-Appeal relates to rebate of duty of excise on goods exported or on excisable materials used in the manufacture of goods which are exported, then revision application lies before Central Government in terms of section 35 EE. The main issue to be considered is whether the said Order-in-Appeal relates to rebate of duty paid goods exported. In this regards, Government notes that in this case there is no dispute with regard to export of goods and compliance of

provisions of Rule 18 of Central Excise rules 2002 r/w Not. No. 19/04-CE (NT) dt. 06-09-2004. The conditions and procedure stipulated in Not. No. 19/04-CE (NT) stands fully complied with and export of duty paid goods is also established. So, there is no violation of any statutory provisions relating to rebate claim as far as Rule 18 of Central Excise Rules, 2002 of r/w Not. No. 19/04-CE (NT) dt. 06-09-2004 is concerned. The dispute is whether valuation of export goods should be in terms of section 4 or 4A of Central Excise Act, 1944. This case matter involves two issues of rebate claim as well as valuation of goods. The issue of admissibility of rebate claim depends upon determination of value of exports. Commissioner (Appeals) has decided both the issues together in the impugned order. The rebate claims of Rs. 71,05,078/- was sanctioned whereas balance amount of Rs. 2,85,41,026/- was rejected by original authority which account for 80% of total rebate claim of Rs. 3,56,46,104/-. However, Commissioner (Appeals) has accepted the valuation of goods done under section 4A and held that duty was correctly paid on the value determined under section 4A. So, he allowed the full rebate claim. Since the 80% of duty paid is disputed on account of valuation dispute, the valuation issue is the major issue in this case. So, the impugned order cannot be called as only relating to rebate claim but it also relates to valuation dispute which is the major issue in this case matter. Government has no jurisdiction to pass order in respect of Order-in-Appeal relating to valuation issue in terms of section 35EE r/w provision (i) (ii) of section 35 (b) (1) of Central Excise Act, 1944. The jurisdiction to decide valuation issue lies with the Hon'ble CESTAT.

12. Government further notes that applicant department has relied upon decisions of Hon'ble CESTAT Principle Bench New Delhi in the case of M/s Gillette India Ltd. Vs CCE Jaipur 2006 (193) ELT 331 (T-Del) & CESTAT South Zonal Bench, Bangalore in the case of Indo Nissin Food Ltd. Vs. CCE Bangalore-I 2008 (230) ELT 143 (T-Bang) where in it was held that export consignments was required to be valued in terms of transaction value under section 4 and not in terms of section 4A of Central Excise Act, 1944. The decision in these cases also strengthen the view that the jurisdiction to decide Order-in-Appeal relating to valuation dispute which is a major issue in this case, lies with the Hon'ble CESTAT.

13. It is also emphasized here that for interpreting the (above) provisions of law, Hon'ble Supreme Court of India in its judgements in case matters of M/s ITC Vs. CCE [2004(171) ELT-433(SC)] and M/s Paper Products Ltd. Vs. CCE [1999 (112) ELT-765(SC)] has made it unambiguously clear that "simple and plain readings of wordings of law are to be strictly adhered to" thereby leaving no room to interpret and twist the purpose and meaning of such legal provisions written in the applicable statute.

14. In view of above discussions, Government is of opinion that major issue involved in this case is determination of value of excisable goods exported which does not fall within the jurisdiction of this authority and hence, the issue is required to be agitated before proper legal forum, i.e. tribunal if the applicant department deemed fit to do so. The admissibility of rebate claim in dispute will depend on the decision in valuation issue since the impugned orders do not point out any violation of governing statutory provisions of rebate claim as stipulated under rule 18 of Central Excise Rule 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. However, the original authority will process the disputed rebate claim as per decision of Hon'ble Tribunal in the valuation issue. The revision application is thus not maintainable before this authority for want of jurisdiction in terms of section 35EE read with 35(B)(1) proviso of Central Excise Act, 1944.

15. The revision application thus stands rejected being non maintainable for lack of jurisdiction.

16. So ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

Commissioner of Central Excise, Raigad
Ground Floor, Kendriya Utpad Shulk Bhavan
Plot No.1, Sector-17, Khandeshwar
New Panvel-410206

(Attested)

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (वित्तीय विभाग)
Ministry of Finance (Deptt of Rev.)

G.O.I. Order No. 330/13-Cx dated 1.4.2013

Copy to:-

1. Commissioner of Central Excise & Customs, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai-410206

2. Commissioner of Central Excise (Appeals-II), Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (East), Mumbai-400051.

3. The Deputy Commissioner of Central Excise (Rebate), Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai-410206

4. M/s Combitic Global Caplet Pvt. Ltd., M-15, D-2 & D-3, Industrial Area, District-Sonepat, Haryana-131001

5. PS to JS(Revision Application)

6. Guard File

7. Spare Copy.

(B.P.SHARMA)
OSD (Revision Application)