F.No. 198/204/12-RA
195/799-800/13-RA
195/1016/13-RA

REGISTERED SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F. NO. 198/204/12-RA
195/799-800/13-RA
195/1016/13-RA

Date of Issue: 05/10/2018

ORDER NO. 330-333/2018-CX (WZ) /ASRA/Mumbai DATED 07.09.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sr. No.	Revision Application No	Applicant	Respondent
1	198/204/12-RA	Commissioner of Central Excise, Raigad.	Combitic Global Caplet Pvt. Ltd
2	195/799/13-RA	Combitic Global Caplet Pvt. Ltd	Commissioner of Central Excise, Raigad.
3	195/800/13-RA	Combitic Global Caplet Pvt. Ltd	Commissioner of Central Excise, Raigad.
4	195/1016/13-RA	Combitic Global Caplet Pvt. Ltd	Commissioner of Central Excise, Raigad.

SUBJECT : Revision Application filed under Section 35EE of Central Excise Act, 1944 against the Orders in Appeals No. US/332/RGD/2012 dated 17.05.2012 passed by Commissioner of Central Excise (Appeals), Mumbai-II, No. BC/53/RGD(R)/2013-14 dt. 09.05.2013 passed by Commissioner (Appeals) Central Excise, Mumbai-III, No. BC/54/RGD(R)/2013-14 dt. 09.05.2013 passed by Commissioner (Appeals) Central Excise, Mumbai-III and No. SK/273/RGD/2013-14 dt. 30.09.2013 passed by Commissioner of Central Excise (Appeals-II), Mumbai.

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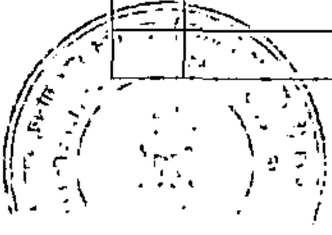
ORDER

These following revision Applications are filed by the above mentioned applicants against the Order-In-Appeals are detailed in table below passed by Commissioner (Appeals), Central Excise,Mumbai Zone-II and Zone-III.

Table

Sl. No.	Revision Application No.	Amount of Rebate Claimed in (Rs.) / Period	Amount of Rebate sanctioned (Rs.)	Amount of Rebate rejected (Rs.)	Order-In-Original No.	Order-in-Appeal No.
1.	198/204/12-RA	3,56,46,104/ March -July 2011	71,05,078/	2,85,41,026/	1981/11-12 / DC (Rebate)/ Raigad dt. 31.01.2012 passed by DC (Rebate) Central Excise, Raigad	US/332/RGD/2012 dt. 17.05.2012 passed by Commissioner (Appeals-II) Central Excise, Mumbai.
2.	195/799/13-RA	5,37,82,461/ May 2011 to June 2012	1,74,27,997/	3,63,54,464/	1832/12-13/DC (Rebate) /Raigad dt. 15.10.2012 passed by DC (Rebate) Central Excise, Raigad	BC/53/RGD (R)/2013-14 dt. 09.05.2013 passed by Commissioner (Appeals) Central Excise, Mumbai-III.
3.	195/800/13-RA	3,50,95,693/- March-August 2012	1,09,48,992/	2,41,46,701/	2413/12-13/DC(Rebate)/Raigad dt.21.12.2012 passed by DC (Rebate) Central Excise, Raigad	BC/54/RGD(R)/2013-14 dt. 09.05.2013 passed by Commissioner (Appeals) Central Excise, Mumbai-III.
4.	195/1016/13-RA	25,505,401/- March - Nov. 2011	9,735,858/-	1,57,69,543/	2113/11-12/DC(Rebate)/Raigad dt.15.02.2012 passed by DC (Rebate) Central Excise, Raigad	SK/273/RGD/2013-14 dt. 30.09.2013 passed by Commissioner of Central Excise (Appeals-II), Mumbai (Zone-II).
				10,48,11,734/		



2. Brief facts of the case are that M/s Combitic Global Caplet Pvt. Ltd. (the respondent in RA No. 198/204/12-RA) 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-C.E.(N.T.), 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 4-1-2012 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 order-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-C.E.(N.T.), 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 and not 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 be 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 judgments of the Hon'ble CESTAT in the case of *M/s. Gillette India Ltd.* - 2006 (193) E.L.T. 331 and *M/s. Indo Nissin Foods Ltd.* - 2008 (230) E.L.T. 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) E.L.T. 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 insurance 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-C.E. (N.T.), 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 materia* 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 fulfilment 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. However the Revision Application No. 198/204/12-RA was initially rejected by the Revisionary Authority vide Order No. 330/2013-CX., dated 1-4-2013 in F. No. on jurisdictional issue. Being aggrieved by the GOI order dt. 01.04.2013, the Commissioner of Central Excise, Raigad filed Writ Petition No.9997/2013 before the Hon'ble High Court of Bombay. The Hon'ble High Court of Bombay vide judgment dated 26-08-2014 remanded back the matter to the Revisionary Authority and ordered to restore the same to the file, which is now being taken up for decision (Sr. No.1 of table at para 1 above).

6. In other three cases as detailed in table at para 1 above, the Commissioner (Appeals) rejected the Appeals filed by M/s Combitic Global Caplet Pvt. Ltd. against which the Revision Applications bearing Nos 195/799/13-RA, 195/800/13-RA and 195/1016/13-RA have been filed by M/s Combitic Global Caplet Pvt. Ltd (Sr. No., 2, 3 & 4 of table at para 1 above).

7. With regard to the above mentioned Revision Application No. 198/204/12-RA, M/s Combitic Global Caplet Pvt. Ltd. are the respondent and in Revision Applications 195/799/13-RA, 195/800/13-RA and 195/1016/13-RA M/s Combitic Global Caplet Pvt. Ltd. are applicants. The issue involved in all the four Revision Applications is identical. M/s Combitic Global Caplet Pvt. Ltd. vide letter dated 26.02.2018 have submitted as under:

7.1 They are engaged in the manufacture of pharmaceutical products falling under Chapter 30 of the Central Excise Tariff Act, 1985. During course of business, the Respondent Company exported various consignments of pharmaceutical products during March 2011 to August 2012 and filed rebate claims of duty paid on the exported goods, the details of the same are available in the impugned Orders-in-Original, towards the duty paid on such goods- exported as elaborated in the above table by fulfilling all the terms and conditions as laid down under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dt. 6-9-04 and also read with Para 4.1 and 4.2 of Chapter 8 regarding 'EXPORT UNDER CLAIM FOR REBATE' of the CBEC's Excise Manual of Supplementary Instructions, issued under Section 37B of the Central Excise Act, 1944.

7.2 They have furnished all the required documents in terms of Para 8 of Chapter 8 of the CBEC's Central Excise Supplementary Instructions alongwith the rebate claim applications before the office of Dy. Commissioner of Central Excise, (Rebate) Raigad and the same has also not been disputed by the Applicant Commissioner. Details of all the rebate claims are available in impugned Order-In-Original.

7.3 The rebate claim filed by them has been partially sanctioned by the Rebate sanctioning Authority i.e. Dy. Commissioner (Rebate) Central Excise, Raigad, time to time, vide four different Orders-In-Original as detailed in the table above. The Rebate sanctioning Authority has rejected the partial amount of rebate claim by re-assessing the duty assessed in the ARE-1 application.

7.4 On being aggrieved by the first Order-in-Original i.e. impugned OIO No. 1981/11-12/DC(Rebate)/Raigad dt. 31.01.2012, the Respondent Company filed an appeal for grant of balance rebate by cheque and vides impugned Order-In-Appeal No. US/332/RGD/2012 dated 17-5-2012 the worthy Commissioner (Appeals-II) Central Excise, Mumbai has set aside the impugned Order-in-Original and allowed the appeal with consequential relief. While deciding the Appeal filed by the Respondent Company, the Commissioner (Appeals) has observed as under and the same is self-explanatory:-

> *"...It is clear from the above discussion that the appellants had correctly assessed the duty on the export goods on the basis of MRP under Section 4A ibid in conformity with the CBEC's Excise Manual of Supplementary Instructions, 2005. In particular reference may be made to Para 4.1 of Chapter 8 regarding the*

'Export under claim for Rebate' of the said Instructions. The Para stipulates that the export goods shall be assessed to duty in the same manner as the goods for home consumption and reads as under:-

"4.1. The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Act,1944 read with any exemption notification and/or the said Rules. The value shall be the 'transaction value' and should conform to Section 4 or Section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the F.O.B. value indicated by the exporter on the Bill of Export."

From the above position also, it becomes clear that the assessment of export goods and home consumption goods has to be "in the same manner".

Section 4A (2) of the Act employs a non obstante clause i.e. 'notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement , if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.' Therefore, once it is held that Section 4A of the Act was applicable to the subject goods the application of Section 4 of the Act and the transaction value is ruled out. The provisions of Rule 18 of the Central Excise Rules,2002 and Notification No. 19/2004-CE(NT) dated 6-9-2004 (as amended) issued under the said rule stipulate "rebate of duty paid on the excisable goods" and not of 'duty payable'. The scheme of the statute is to return as rebate, the actual amount of "duty paid" and not the amount of duty "payable". Accordingly, the adjudicating authority was required to grant the rebate of the whole of the duty paid by the appellants of the exported goods. There is no provision under Section 11B or Rule 18 which empowers an adjudicating authority to reject the partial amount of rebate claim if the same has been filed in time and all the required documents have been furnished. The refund of accumulated CENVAT credit under Rule 5 of the CENVAT Credit Rules, 2004 would have been available to the appellant. Therefore, the payment of higher amount of duty on the export goods that is actually due could not have given them any undue benefit.

As the price declaration on the retail packs was mandatory, the appellants were required to pay duty as per Sec. 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 (N.T.) dated 6.9.2004. Accordingly, the impugned order sanctioning only the rebate of duty payable under Sec 4 of the Act cannot be sustained and has to be set aside.

In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief."

7.5 In the impugned Order-in-Appeal, the Commissioner (Appeals) has categorically held the aforesaid point of law, which are legitimately correct as per the Central Excise law for the purpose of grant of rebate of duty paid on the export goods to the respondent Company. In the impugned RA the Commissioner of Central Excise, Raigad has not rebutted the same except about Rule 5 of the CCR, which is only meant for the refund of the accumulated CENVAT credit and which is also not applicable to the instant case. Thus the Hon'ble Revisionary Authority would undoubtedly appreciate that the Applicant Commissioner has specifically accepted the following facts of law that:-

(i) the assessment of export goods and home consumption goods has to be made "in the same manner" which is in conformity with Para 4.1 of Chapter 8 regarding the 'Export under claim for Rebate' of the CBEC's Excise Manual of Supplementary Instructions, 2005.

(ii) Section 4A (2) of the Act employs a *non obstante clause* i.e. 'notwithstanding anything contained in section 4', such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement , if any , from such retail sale price as the Central Government may allow by notification in the Official Gazette. Therefore, once it is held that Section 4A of the Act was applicable to the subject goods, the application of Section 4 of the Act and the transaction value is ruled out.

(iii) the provisions of Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 6-9-2004 (as amended) issued under the said rule stipulate "rebate of duty paid on the excisable goods" and not of 'duty payable'. The scheme of the statute is to return as rebate, the actual amount of "duty paid" and not the amount of duty "payable". Accordingly, the adjudicating authority was required to grant the rebate of the whole of the duty paid by the Respondent Company of the exported goods. There is no provision under Section 11B or Rule 18 which empowers an adjudicating authority to reject the partial amount of rebate claim if the same has been filed in time and all the required documents have been furnished.

7.6 It may be appreciated that in terms of aforesaid Para 4.1 & Para 4.2 of Chapter 8 regarding the 'Export under claim for Rebate' of the CBEC's Excise Manual of Supplementary Instructions the Respondent Company is legally bound to:

(a) Assess the export goods in the same manner as the goods for home consumption; and

(b) Determine such duty on the ARE.1 and invoice and record in the Daily Stock Account and to pay such duty in the manner specified in Rule 8.

(c) To assess the goods cleared for home consumption at the effective rate of duty @ 5% leviable vide Notification No. 2/2011-CE dt. 1-3-2011 and the said duty were required to be paid on MRP (-) 35% abatement in terms of Notification No. 49/2008-CE (NT) dated 24-12-2008 (as amended)by conforming to Section 4A.

7.7 It may also be appreciated that if the impugned goods would not have been assessed in the aforesaid manner and such duty would not have been determined on the respective ARE-1and paid in the manner as specified in Rule 8, then the impugned goods might have been confiscated under the provisions of Rule 25 of the Central Excise Rules, 2002 as well as penalty under Rule 26 of Central Excise Rules, 2002 might have been imposed.

7.8 at Para 4, Para 4.1 & Para 4.2 of Chapter 8 regarding the 'Export under claim for Rebate' of the CBEC's Excise Manual of Supplementary Instructions issued by the CBEC under Section 37B of the Central Excise Act, 1944, it is clearly stipulated that, ***"Para 4.*** *Sealing of goods and examination at place of dispatch.* ***-Para4.1*** *- The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in* Annexure-14 *to Notification No. 19/2004-CE (NT) dt 6-9-2004.**The goods shall be assessed to duty in the same manner as the goods for home consumption**. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and/or Central Excise Rules, 2002. The value shall be the "transaction value" and should conform to section 4* ***or section 4A, as the case may be,*** *of the Central Excise Act, 1944.* ***It is clarified that this value may be less than, equal to or more than the F.O.B. value indicated by the exporter on the Shipping Bill;"*** and ***"Para 4.2 - The duty payable shall be determined on the ARE.1 and invoice and recorded in the Daily Stock Account and it should be paid in the manner specified in Rule 8 of the said Rules."***

7.8.1 the Respondent Company is relying upon the Government of India's Order Nos. 1152-1339/2012-CX dated 21-9-2012 passed in the matter of **M/s Intas Pharmaceuticals Ltd.**, wherein it is clearly held at Para 10.4 and 8.4 respectively that, *"Government notes that lower authorities have relied upon Para 4.1 of Part-I of Chapter 8 of C.B.E. & C. Excise Manual on Supplementary Instructions which is extracted as under :- "**4.** Sealing of goods and examination at place of dispatch. **4.1** The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in the Annexure-14 to Notification No. 19/2004-Central Excise (N.T.), dated 6-9-2004 (See Part 7). The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and/or Central Excise Rules, 2002. The value shall be the "transaction value" and should conform to Section 4 or Section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or*

more than the FOB value indicated by the exporter on the Shipping Bill." The plain reading of said Para, reveals that the export goods shall be assessed to duty in the same manner as the goods cleared for home consumption are assessed......".

7.8.2 the Respondent Company is also relying upon Government of India's Order No. 87-102/2015-CX dated 29-9-2015 passed in the matter of M/s Cipla Ltd., it is clearly held at **Para 8.4** that, *"Government observes that the instructions issued by CBEC regarding assessment of export goods are quite relevant to decide the issue involved in these cases. The instructions contained in Para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual on Supplementary Instructions are extracted under: '4. Sealing of goods and examination at place of dispatch - Para4.1 - The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in Annexure-14 to Notification No. 19/2004-CE (NT) dt 6-9-2004.The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and/or Central Excise Rules, 2002. The value shall be the "transaction value" and should conform to section 4 or section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the F.O.B. value indicated by the exporter on the Shipping Bill.' The plain reading of said Para,* ***reveals that the export goods shall be assessed to duty in the same manner as the goods cleared for home consumption are assessed****......".*

7.8.3 Similar orders have also been the then Hon'ble Revisionary Authority vide various GOI Order No. 160-225/2014-CX, 53-73/2015-CX dated 27-08-***2015 (issued on 31-8-2015), and 23-49/2015-CX dt. 29.07.2015.***

7.8.4 *It* is their most humble submission that the Government of India, in its revisionary capacity is duty bound to maintain consistency in its own determination to follow the ratio of the decisions of its own judgments. Since in its various judgments the Hon'ble Revisionary Authority has agreed with the Instructions of the C.B.E. & C. in Para 4.1 of Part-1 of Chapter 8 of C.B.E. & C. Excise Manuel on Supplementary Instructions and held that the same are binding on departmental authorities so in the instant case the Hon'ble Revisionary Authority may kindly follow the same. In this regard, the Respondent Company is relying upon the judgments of the Hon'ble High Court of Judicature at Bombay in the case of **M/s Indian Oil Corporation Ltd. Vs. UOI – reported in 2012(275) ELT.322(Bom)**, wherein it is held at Para 10 of said judgment that, *"We find merit in the contention which has been urged on behalf of the Petitioner that the Government of India, in its revisional capacity was duty bound to maintain consistency in its own* ***determination"***

7.8.5 ***They further submits that they have assessed the export goods (whether cleared*** under Bond under Rule 19 of the Central Excise Rules, 2002 or under the claim of rebate under Rule 18 ibid) in the same manner as the goods cleared for home consumption by conforming to Section 4A of *the Central Excise Act, 1944.*

7.8.6 *They have submitted the sample invoices before the adjudicating authority as* well as before all the Commissioners (Appeals) to prove that the Respondent Company is selling the same medicaments for export as well as for home consumption on the same RSP and on the same duty i.e. under Section 4A ibid. The adjudicating authority as well as the Applicant Commissioner has not refuted the same in the impugned O-in-O as well as in the instant RA.

7.8.7 On perusal of the enclosed detailed comparison chart of assessment done in Export invoices as well as domestic Invoices, the Hon'ble Revisionary Authority would appreciate that in terms of the directions made at Para 4.1 of Chapter 8 regarding 'EXPORT UNDER CLAIM FOR REBATE' of the CBEC's Excise Manual of Supplementary Instructions, the Respondent Company have correctly assessed the export goods (whether cleared under Bond under Rule 19 of the Central Excise Rules, 2002 or under claim of rebate of duty paid under Rule 18 ibid) in the same manner as the goods for home consumption by conforming to Section 4A of the Central Excise Act, 1944 (*Stress invited vehemently please*). Such sample invoices are also already enclosed with Revision Applications.

7.9 The assessment of duty on the impugned goods i.e. pharmaceutical goods is covered under Notification No. 49/2008-CE (NT) dated 24-12-2008 (as amended) issued under Section 4A of the Central Excise Act, 1944. At Sr. No. 30 of the said Notification it is stipulated that, "*Medicaments, other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems - Explanation.- For the purposes of this entry, "retail sale price"* ***means the retail price displayed by the manufacturer under the provisions of the Drugs (Prices Control) Order, 1995.***"

7.9.1 Sub Section (1) of Section 4A of the Act ibid stipulates that,"(1) *The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.*"

7.10 Keeping in view the 'Explanation' given at Sr. No. 30 of the aforesaid Notification dated 24-12-2008 it is clearly evident that for the purpose of "*under any other law for the time being in force*" for the product manufactured by the Respondent Company is 'Drugs Price

Control Order, ***1995' for declaring retail sale price on the package of the pharmaceutical products.***

7.11 **It may be appreciated that** ***the duty applicable for the Respondent Company at the relevant time period for home consumption*** was @ 5% vide Notification No. 2/2011-CE dt. 1-3-2011. The said duty were required to be assessed on MRP (-) abatement in terms of Notification No. 49/2008-CE (NT) dated 24-12-2008 (as amended) by conforming to Section 4A. The Hon'ble Revisionary Authority would further appreciate that the Respondent Company has assessed the export goods exactly in the same manner as required for home consumption in accordance with the directions contained at Para 4.1 of Chapter 8 regarding 'EXPORT UNDER CLAIM FOR REBATE' of the CBEC's Excise Manual of Supplementary Instructions.

7.11.1 Sub Section (2) of Section 4A stipulates that, "*(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette*".

7.11.2 From the above it is clear that they are required to pay duty under Section 4A of the Act ibid for clearance of goods towards home consumption and hence reading the same with Para 4 - (Sealing of goods and examination at place of dispatch), Para 4.1 and 4.2 of Chapter 8 of the CBEC's Central Excise Supplementary Instructions, regarding the 'Export under claim for Rebate' the Respondent Company is legally obliged to assess the duty on exported goods, cleared under claim for Rebate, in the same manner as the goods for *home consumption.*

7.11.3 *On perusal* of provisions of the aforesaid Section 4A ibid the Hon'ble Revisionary Authority would appreciate that the provisions of sub-section (2) of Section 4A of the Act ibid shall override the provisions of Section 4 inasmuch as sub-section (2) uses the expression "*notwithstanding anything contained in Section 4*". Effect of the use of the word 'notwithstanding' has been explained by the **Apex Court in the case of T.R. Thandur versus Union of India and Others (Supreme Court)** – reported in 1996 AIR 1643. Hence Section 4A(2) employs a *'non obstante clause'* and in view of the same the provisions of Section 4A will therefore override the provisions of Section 4, if excisable goods have been specified under Section 4A. Thus the Hon'ble Revisionary Authority would appreciate that the Respondent Company is legally bound to assess the export goods in the same manner as the goods for home consumption by conforming to Section 4A because the goods of the Respondent Company are covered under Notification No. 49/2008-CE(NT) dated 24-12-2008

(as amended) (S. No. 30) issued under Section 4A of the Central Excise Act, 1944".

7.11.4 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. On perusal of the enclosed sample invoices, the Hon'ble Revisionary Authority would appreciate that in terms of the directions made at Para 4.1 of Chapter 8 regarding 'EXPORT UNDER CLAIM FOR REBATE' of the CBEC's Excise Manual of Supplementary Instructions, 2012-13 as well as "*non obstante clause*" of Section 4A of the Act, the Respondent Company have correctly assessed the export goods (whether cleared under Bond under Rule 19 of the Central Excise Rules, 2002 or under claim of rebate under Rule 18 ibid) in the same manner as the goods for home consumption by conforming to Section 4A of the Central Excise Act, 1944.*(Stress invited vehemently please).* In this regard, the Respondent Company also draw the kind attention of the Hon'ble Revisionary Authority towards the judgments of the Hon'ble CESTAT in the case of M/s Mona Electronics Vs. CCE – reported in 2001(135) ELT.1293 (CEGAT) wherein it is categorically held at Para 4 .... that, *"no procedures or formalities are required to be observed by the appellants, who are under obligation to pay Central Excise duty on the maximum retail price, subject to abatement as allowed in the Notification. We also take note of the Tribunal's decision in the case of Bata India Ltd. - 1999 (114) E.L.T. 78 (Tribunal) = 1999 (33) RLT 703 wherein it has been held that the provisions of Section 4 are not applicable where the provisions of Section 4A are applicable. This becomes clear from the use of words 'notwithstanding of Section 4'. The said decision of the Tribunal has since been confirmed by the Hon'ble Supreme Court when appeals filed by the Revenue were dismissed. As such, we find that the issue is settled and no contrary view can be taken."*

7.12 In all the four RAs, the Applicant commissioner, Raigad has strongly contended that the Respondent Company was not legally obliged to print the RSP on the goods exported, cleared under claim of rebate and hence required to assess such goods under Section 4 of the Act ibid.

7.12.1 the Applicant Commissioner has strongly relied upon the decision in the case of (i) Gillette India Ltd, V/s commissioner of Central Excise, Jaipur reported in 2006(193) ELT.331 (Tri.-Del.); and in the case of (ii) M/s Indo Nissin Foods Ltd, V/s commissioner of Central Excise, Bangalore reported in 2008(230) ELT.143 (Tri-Bang.). It is humbly submitted that both the judgments are not relevant to the present facts and circumstances of the case due to the reasons explained in the following paragraphs:-

7.12.2 Both the aforesaid judgments, relied upon by the applicant Commissioner, were passed by solely relying on Rule 30 and 2 of Standard of Weight & Measures (Packaged Commodities) Rules,

1977,issued under the Standards of Weights and Measures Act,1976, wherein the export packages was not legally obliged to print the MRP. The Hon'ble Revisionary Authority would appreciate that since both the Rules were omitted vide GSR 425(E) dt. 17-7-2006 (w.e.f. 13-1-2007) so both the aforesaid judgments has no relevancy, even if the Packaged Commodity pertains to Standard of Weight &Measures (Packaged Commodities) Rules, 1977, what to talk of Drugs & Price Control Order, 1995. The Hon'ble Revisionary Authority would further appreciate that such Rules has also not been carried forward in the Legal Metrology (Packaged Commodities), Rules, 2011 also.

7.12.3 It may be appreciated that in terms of Rule 34 of the Standards of Weights and Measures (Packaged commodities) Rules, 1977 it is categorically stipulated that, ***"Rule 34- Exemption in respect of certain packages – nothing contained in these rules shall apply to any package containing a commodity if – (a)..... (e)- it contains scheduled formulations and non-scheduled formulations covered under the Drug Price Control Order, 1995 made under Section 3 of the Essential Commodities Act, 1955".*** Since the Standard of weight and measures Act, 1976 was repealed w.e.f. 01.04.2011 and in its place Legal Metrology Act, 2009 came into force so in terms of Rule 26 of the Legal Metrology (Packaged Commodities) Rules, 2011 it is also categorically stipulated that, ***"Rule 26- Exemption in respect of certain packages – nothing contained in these rules shall apply to any package containing a commodity if – (a)..... (c) -it contains scheduled formulations and non-scheduled formulations covered under the Drug Price Control Order, 1995 made under Section 3 of the Essential Commodities Act, 1955".*** Hence it is categorically evident that the provisions of both the Standards of Weights and Measures (Packaged commodities) Rules, 1977 and the Legal Metrology (Packaged Commodities) Rules, 2011 are not applicable on the labels/container of the scheduled formulations and non-scheduled formulations i.e. pharmaceutical products of the Respondent Company to print the RSP on the same. This aspect has also been specifically discussed in the impugned Order-In-Appeal dated 17-5-2012 issued by the Ld. Commissioner (Appeals).

7.12.4 In pursuance of Para 7 and Para 8 of the CBEC Circular No. 625/16/2002-CX dated 28-02-2002, issued by the CBEC under Section 37B of the Central Excise Act, 1944, the Respondent Company has also obtained clarification from the jurisdictional office of the Department of Drugs, Haryana as to whether declaration of the retail sale price on the label of the drugs manufactured by the Respondent Company for export is mandatory or not and whether there is any exemption for declaration of the same in the Drugs (Price Control) order, 1995. The Department of Drugs, Haryana vide Memo No. SDCO Krl-3788 dated 19-12-2012 has also categorically elucidated that - ***"....it is clarified that Paragraphs 14 and 15 of***

the Drugs (Price Control) order, 1995 issued under section 3 of the Essential Commodities Act, 1955 provides for declaration of the retail sale price of the drugs and formulations on the label of the same. There is no exemption for declaration of the retail sale price of the drugs manufactured for export in the Drugs (Price Control) order, 1995. Hence, it is mandatory to declare the retail sale price on the label of the drugs manufactured by you for export and contravention of the same is punishable under the said Act". (*emphasize supplied please*). Hence in view of the said clarification also it is clear that the Respondent Company is legally obliged to mention the MRP even on the export goods and then clear the same after determination of assessable value on the basis of MRP less admissible abatement in terms of Notification No. 49/2008-CE (NT) issued under Section 4A ibid and if the Respondent Company violates the provisions of Drugs & Price Control Order, 1995 then the Respondent Company is liable to punishment upto the extent of imprisonment. Hence the Respondent Company has correctly assessed the export goods in the same manner as the goods for home consumption by conforming to Section 4A of the Central Excise Act, 1944.

7.12.5 As regard to highly relied contentions of the Applicant Commissioner that the Drugs Price Control Order, 1995 is issued under the Essential Commodities Act, 1955, which is enacted for people of India so the goods manufactured for export by the Respondent Company does not legally required to print the RSP, it is worth to submit here that Section 1 of the Essential Commodities Act, 1955 stipulates that, "*This Act may be called the* Essential Commodities Act, 1955" *and Section 1(2) stipulates that, "It extends to the whole of India"*. Similarly Section 1 of the Central Excise Act, 1944 stipulates that, "*This Act may be called the Central Excise Act, 1944"*and Section 1(2) stipulates that, "*It extends to the whole of India"*. Both the Acts are enacted for people of India only.

7.12.6 On perusal of above, the it may be appreciated that the provisions in both the Acts are verbatim same.

7.12.7 If the highly relied contentions of the Applicant Commissioner are accepted, then relying on the same all goods cleared for export should be fully exempted from the provisions of Central Excise Law e.g. taking Registration, filing of returns, payment of Central Excise duty at the time of clearance of goods for export from the factory premises etc.

7.12.8 it is also submitted that even the export under Bond does not mean that goods are 'exempt' from payment of duty. The Rule 19(1) of the Central Excise Rules state that any excisable goods may be exported without payment of duty under bond, from factory of producer or manufacturer. Thus the goods are cleared 'without payment of duty'.

They are not 'exempt' goods. Ministry of Law Advice dated 29-10-1996 – confirmed and circulated vide CBEC Circular No. 278/112/96-CX dated 11-12-96 clearly states that, Under Central Excise, "exemption" means exemption by Notification under Section 5A of CEA. Thus, goods exported under bond are not 'exempt' from duty. These goods also cannot be termed as 'chargeable to Nil rate of duty', as in fact, the goods are dutiable.

7.12.9 it is most humbly submitted that if the contentions of the Applicant Commissioner is accepted by the Hon'ble Revisionary Authority then in such scenario, the Government should not charge Income Tax also on the income accrued from the goods exported, because in the Income Tax Act, 1995 also the same statutory provisions have been enacted wherein at Section 1 of the Income Tax Act, 1995, it is stipulated that, "*This Act may be called the* Income Tax Act, 1995" *and Section 1(2) stipulates that, "It extends to the whole of India"*.

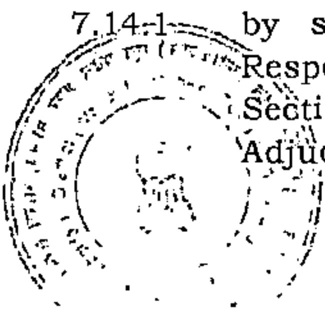
7.13 the provisions of Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 6-9-2004 (as amended) issued under the said rule stipulate "rebate of **duty paid** on the excisable goods" and not of **'duty payable'**.

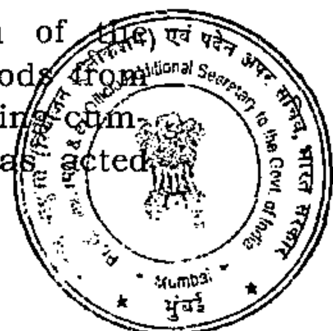
7.13.1 For sake of clarity Rule 18 of the Central Excise Rules, 2002 reads that, "*Rebate of RULE 18.duty. — Where any goods are exported, the Central Government may, by notification, grant rebate of **duty paid on such excisable goods** or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification*".

7.13.2 the Ld. Commissioner (Appeals), has also categorically accepted in the impugned Order-In-Appeal dt.17.05.2012 that, *The scheme of the statute is to return as rebate, the actual amount of "duty paid" and not the amount of duty "payable"*. The same has also not been rebutted by the Applicant Commissioner in the impugned RA.

7.14 vide Circular No. 687/3/2003-CX., dated 3-1-2003, issued under F. No. 267/57/2002-CX-8 by the CBEC clearly stipulates that "*It is the view that there is no discretion with the sanctioning authority to give the refund of the duty paid on goods exported through credit accounts. It is therefore clarified that the duty paid through the actual credit or deemed credit account on the goods exported must be refunded in cash.*" Hence in terms of the said Circular, issued under Section 37B of the Central Excise Act, 1994, rebate of duty paid on the export goods is absolutely admissible to the Respondent Company in cash.

7.14.1 by sanctioning the partial amount of rebate claim of the Respondent Company by way of re-assessing of the goods from Section 4A to Section 4 ibid, the Rebate Sanctioning-cum-Adjudicating Authority, being not a proper officer, has acted





beyond his jurisdiction and has also disobeyed the aforesaid CBEC's Circular dated 3-1-2003 issued by the CBEC under Section 37B of the Central Excise Act, 1944. In this regard the Respondent Company is relying upon the judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Customs Vs. Sayed Ali – reported in 2011 (265) E.L.T. 17 (S.C.). It is worth to mention here that the review petition filed in the case by the Department has also been vacated by the Hon'ble apex court as reported in the [**Commissioner of Customs Vs. Sayed Ali - 2011 (274) E.L.T. A109 (S.C.)**]

7.15 vide Government of India's Order No. 87-102/2015-CX dated 29-9-2015 the Government also held at Para 8.6 that, "**Para 8.6**- *Government notes that departmental authorities are bound by C.B.E. & C. Circulars/Instructions and they have to comply with the same. Hon'ble Supreme Court has held in the case Paper Products Ltd. v. CCE - 1999 (112) E.L.T. 765 (S.C.) that circulars issued by C.B.E. & C. are binding on departmental authorities, they cannot take a contrary stand and department cannot repudiate a circular issued by Board on the basis that it was inconsistent with the statutory provision. Hon'ble Apex Court has further held that department's actions have to be consistent with the circulars, consistency and discipline are of far greater importance than winning or losing Court proceedings. In view of said principles laid by Hon'ble Supreme Court, Government upholds the applicability of above said C.B.E. & C. Instructions in this case*".

7.15.1 in the light of aforesaid judgment of the Government, it is axiomatic that the following Circulars/Instructions, issued by the CBEC under Section 37B of the Central Excise Act, 1944 are binding on the Department:-

a) The directions contained in Para 4, Para 4.1 and 4.2 of Chapter 8 of the CBEC's Central Excise Supplementary Instructions, regarding the 'Export under claim for Rebate';
b) The clarifications contained in the Circular No. 510/06/2000-CX, dated 3-2-2000 issued from F.No. 209/29/99-CX.6; and
c) The clarification contained in the Circular No. 687/3/2003-CX., dated 3-1-2003, issued under F. No. 267/57/2002-CX-8;

7.16 vide Circular No. 510/06/2000-CX, dated 3-2-2000 issued from F.No. 209/29/99-CX.6,issued by the CBEC under Section 37B of the Central Excise Act, 1944, the CBEC has issued directions as to whether rebate-sanctioning authority may re-determine the amount of rebate in certain cases or not and directed to the departmental officers that, "........ *Thus, the duty element shown on AR-4 has to be rebated,* ***if the jurisdictional Range officer certifies it to be correct****. There is no question of re-quantifying the amount of rebate by the Rebate Sanctioning Authority by applying some other rate of exchange prevalent subsequent to the date on which the duty was paid. It is also clarified that the* ***Rebate Sanctioning Authority should not examine the correctness of assessment but should***

examine only the admissibility of rebate of the duty paid on the export goods covered by a claim." (See Para-2 of Circular).

7.16.1 the Government of India the matter of M/s Reva Electric Car Company Pvt. Ltd. [2012(275)ELT 488 (GOI)] has held that, *"Rebate - Export Rebate - Sanctioning of Rebate and assessment to duty - Jurisdiction - No violation of C.B.E. & C. Circular No. 510/06/2000-CX., dated 3-2-2000 when jurisdictional Assistant Commissioner while assessing the amount of the rebate with regards to excess duty paid, also sanctioned the rebate - Rebate sanctioned and duty assessed by one and the same officer - Rule 18 of Central Excise Rules, 2002. [paras 4, 9]."*It is worth to mention that in the instant case the rebate sanctioning authority is at Raigad (Maharashtra) and the jurisdictional Central Excise authority of the Respondent Company is at Sonepat (Haryana) and hence both are the different authorities and hence in terms of the said judgment the rebate sanctioning authority at Raigad is not 'Proper Officer'/'Competent Officer' to re-assess the duty paid at the time of removal of export goods while deciding the rebate claim and there is a violation of C.B.E. &C. Circular No. 510/06/2000-CX. Dated 3-2-2000 issued by the CBEC under Section 37B of the Central Excise Act, 1944.

7.17 Para 13.6 of Chapter-7 of the Supplementary Instructions reads that, *" In case of non-export within six months from the date of clearance for export (or such extended period, if any, as may be permitted by the Deputy/Assistant Commissioner of Central Excise or the bond-accepting authority) or any discrepancy, the exporter shall himself deposit the excise duties along with interest on his own immediately on completion of the statutory time period or within ten days of the Memorandum given to him by the Range/Division office or the Office of the bond-accepting authority. Otherwise necessary action can be initiated to recover the excise duties along with interest and fine/penalty. Failing this, the amount shall be recovered from the manufacturer-exporter along with interest <u>in terms of the Letter of Undertaking furnished by the manufacturer.</u> In case where the exporter has furnished bond, the said bond shall be enforced and proceedings to recover duty and interest shall be initiated against the exporter."*

7.17.1 That Para 2(v) of Notification No. 42/2001-CE(NT) dt. 26-6-01 issued under Rule 19 of the CER reads that,***"Cancellation of applications. –***

(a) If the excisable goods are not exported, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise or Maritime Commissioner or such other officer as authorised by the Board on this behalf, as the case may be, to whom the bond or letter of undertaking has been furnished, may, on written request for cancellation of application, cancel the said application and allow diversion of goods for consumption in India subject to the sub-para (b);

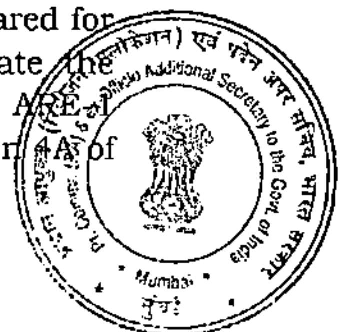
(b) The ***exporter shall pay the duty as specified in the***

***application** along with interest at the rate of twenty four per cent per annum on such duty from the date of removal for export from the factory or warehouse or any other approved premises till the date of payment of duty."*

7.17.2 it would be appreciated that there is no provision in the Central Excise law for recovery of duty more than the duty assessed and declared in the relevant ARE-1 Application. The aforesaid Notification No.42/2001-CE(NT) dt. 26-6-01 issued under Rule 19 of the CER clearly stipulates that, "*The exporter shall pay the duty as specified in the application...*". Thus it is evident that the exporter has to assess the CE duty as is equivalent to the home consumption in terms of Para 4.1 of Chapter 8 of the Supplementary Instructions, otherwise there will be contravention of Rules and Regulations as well as the same will be construed as short payment of duty. It is worth to mention that if the Department will allow the assessment of duty under Section 4 ibid at the time of export (in the similar case of the Respondent Company wherein Applicant Commissioner is insisting for assessment of duty under Section 4 of the Act ibid, then there will be huge loss of revenue to the Government exchequer because in that situation if the goods are diverted for home consumption or any other then the Department would not be in a position to recover the amount of duty more than the amount assessed in the relevant ARE-1 Application by imposing the provisions of Section 4A ibid. Thus the Respondent Company has correctly and statutorily assessed the duty under Section 4A ibid on the basis of RSP.

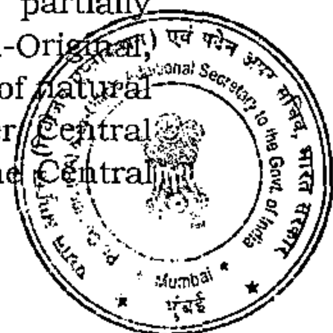
7.17.3 Where the Company have exported the goods under Bond or under LUT the jurisdictional Central Excise Divisional office has certified the correctness of assessment of Central Excise duty in the relevant ARE-1 in accordance with Section 4A of the Central Excise Act, 1944 and invariably accepted the proof of export and allowed credit entry in the Bond Register. The department has also recovered duty by assessing export goods U/s 4A ibid where the Respondent Company could not submit proof of export.

7.17.4 they started paying duty under Section 4A ibid on direction of the jurisdictional Audit Branch of the Central Excise Commissionerate, Rohtak because in cases where the Respondent Company could not submit proof of export within the stipulated time period of six months, for the goods exported, the Audit officers of the Central Excise Rohtak Commissionerate pointed out and also recovered the duty by assessing the goods under section 4A ibid (and not under Section 4 ibid) in accordance with the provisions of *non-obstante clause* of Section 4A of the CEA read with Para 4.1 of Chapter 8 of the Supplementary Instructions issued by the CBEC on MRP basis (less abatement) by using the same principle as the goods were cleared for home consumption. It is submitted that accordingly till date the jurisdictional Central Excise office is regularly accepting the ARE-1 Applications and allowing the assessment of duty under Section 4A of



the Central Excise Act, 1944 on the export goods. The Hon'ble Revisionary Authority would appreciate that as to why the jurisdictional competent Central Excise office has not filed any appeal on the aspect of assessment/valuation of the impugned goods to re-assess the same, if the same was required. It is very traumatic situation before the Respondent Company as when the Respondent Company prepare the ARE-1 and assess the duty on the export goods under Section 4 ibid then the jurisdictional Range Superintendent/Audit Branch of Rohtak Commissionerate invariably compelled the Respondent Company to assess the duty in accordance with Section 4A ibid by pointing out the Para 4.1 of the Chapter 8 of the CBEC's Supplementary Instructions and intimidate to treat the same as short payment of duty and when the Respondent Company clear the goods under claim rebate of duty paid and file rebate claim of the same with rebate sanctioning authority for sanction of the rebate claim then the impugned Orders-in-Original have been issued to re-assess the duty in accordance with Section 4 ibid for the purpose of grant of rebate claim.

7.17.5 where the Respondent Company have exported the goods under Bond or under LUT, the jurisdictional Central Excise office has certified the correctness of assessment of Central Excise duty in the relevant ARE-1 and invariably accepted the proof of export and allowed credit entry in the Bond Register or under LUT in the same manner as cleared under claim of Rebate. The Respondent Company rely upon the judgment of the Ld. Commissioner of Central Excise (Appeal) Delhi-III, Gurgaon vide his O-I-A No. 69-72/BK/RTK/2011 dated 23-02-2011, wherein it is held at Para-22 that "*I find from the records that when the Appellant exported the same goods i.e. P&P medicines under the same procedure through the FPO under Bond in terms of Rule 19 of the Central Excise Rules, 2002 then the jurisdictional Central Excise Divisional office had accepted the proof of export and allowed credit entry in their Bond Register. But when the Appellant made the export under the same procedure through the FPO under the claim of rebate of duty in terms of Rule 18 ibid then the Rebate sanctioning authority has rejected the subject rebate claims, which is wrong. Because in both the situations of export the intention of the Government of India is to neutralize the duty liability on the export goods.*" In the instant case the facts are similar as in this case also when the Respondent Company exported the same goods i.e. P&P medicines under the same procedure under Bond in terms of Rule 19 of the Central Excise Rules, 2002 by assessing the goods under Section 4A of CEA, then the jurisdictional Central Excise Divisional office had regularly accepted the proof of export and allowed credit entry in the Bond Register but when the Respondent Company has applied the rebate claim of duty paid on the export goods under Rule 18 of the CER then the Rebate sanctioning cum Adjudicating Authority has partially rejected the rebate claim vide the impugned Orders-in-Original, which is quite against the Central Excise Law and principle of natural justice. Since the said judgment of the Ld. Commissioner Central Excise (Appeal) Delhi-III, Gurgaon has been accepted by the Central

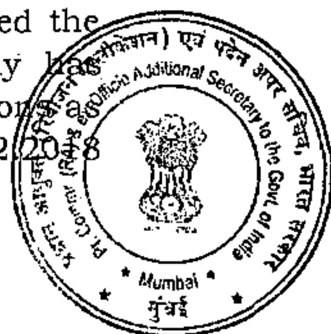


Excise Department and the same has attained finality so the impugned RA filed by the Applicant Commissioner, is liable to be set aside in toto this ground alone for maintaining consistency of approach and uniformity in the exercise of judicial discretion.

7.18 It would be appreciated that in the impugned SCN, O-in-O as well as Order-in-Appeal and even in the impugned Revision Application there is no indication that the Respondent Company has contravened any of the provision and procedure of Section 11B of the Central Excise Act, 1944, Rule 18 of Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 6.9.2004 as well as Chapter 8 of the CBEC's Central Excise Supplementary Instructions. Thus the whole amount of the rebate claims is absolutely allowable to the Respondent Company. Hence the impugned Revision Application filed by the Applicant Commissioner, against the Order-in-Appeal No. US/332/RGD/2012 dated 17-5-2012, may kindly be vacated and further Orders-in-Appeals passed by the subsequent Commissioner (Appeals), rejecting rebate claims of the respondent company, may also kindly be set aside and the Hon'ble Revisionary Authority may kindly grant the rebate claim of duty in full in accordance with the ratio of impugned Order-In-Appeal No. US/332/RGD/2012 dated 17-5-2012 alongwith the consequential relief.

8. A personal hearing was held in this case on 26.02.2018 and 08.03.2018 and Shri Pavel Garg, Director and Shri D. K. Singh Advocate, duly authorized by the applicant Company i.e. M/s Combitic Global Caplet Pvt. Ltd. (the respondent in RA No. 198/204/12-RA) re-iterated the contents of Order in Appeal No. US/332/RGD/12-13 dated 17.05.2012, cross objections and additional submissions filed on the dates of personal hearing and it was pleaded that in view of the submissions, Order in Appeal be upheld and Revision Application filed by the Department be dismissed. They made additional submission on 08.03.2018 under which they further pleaded that:

8.1 That it is reiterated that the Respondent Company is manufacturing medicaments both for export as well as home clearance and thus not manufacturing exclusively for export and clearing the same on the same rate of duty. In order to face the competition in the market every manufacturer have to keep certain finished goods readily available in order to supply immediately as and when required by the buyers either for domestic market or for foreign market. The Respondent Company has submitted the sample invoices before the adjudicating authority to prove that the Respondent Company is selling the same medicaments for export as well as for home consumption on the same RSP and on the same duty i.e. under Section 4A of the Central Excise Act, 2002. But the rebate sanctioning-cum-adjudicating authority has not even discussed the same in the impugned O-in-O. The Respondent Company has already submitted the sample invoices alongwith cross objections as well as alongwith additional written submissions filed on 26.02.2018 during the course of personal hearing.



8.2 from such sample invoices the Hon'ble Revisionary Authority would appreciate that the Respondent Company have exported the impugned export goods by _assessing the duty in the same manner as the goods for home consumption_ categorically as per the directions contained in Para 4, Para 4.1 and 4.2 of Chapter 8 of the CBEC's Central Excise Supplementary Instructions, regarding the 'Export under claim for Rebate'. From the sample invoices it is also axiomatic that in comparison to the goods cleared for home consumption the respondent company has not printed/affixed higher amount of RSP on the impugned export goods.

8.3 it is general trade practice in pharmaceutical trade that RSP of the goods occurs higher in comparison to the F.O.B. value and hence, Govt. has prescribed the valuation under Section 4A of Act ibid for the purpose of levy of duty which is required to be calculated on its MRP, by reducing the abatement (35% on MRP) in terms of Notification No. 49/2008-Central Excise (NT) dated 24.12.2008. Since for determining assessment of duty for the purpose of claim of rebate of duty paid on the export goods, the same is statutorily required to be in the same manner as the goods for home consumption categorically as per the specific directions contained in Para 4, Para 4.1 and 4.2 of Chapter 8 of the CBEC's Central Excise Supplementary Instructions, regarding the 'Export under claim for Rebate', so there cannot be any reason of fixing higher amount of RSP in comparison to the F.O.B. value of the impugned export goods.

8.4 for the sake of further explanation to the effect that the Respondent Company has not printed higher amount of RSP on the impugned export goods, the Respondent Company is furnishing herewith a comparative chart showing amount of RSP printed by the other manufacturers of India in respect of the same formulation containing same bulk drugs. On perusal of the said comparative Chart the Hon'ble Revisionary Authority would appreciate that the Respondent Company has not printed higher amount of RSP on the impugned export goods. The Respondent Company is also submitting some of the physical samples of the products as detailed in the enclosed chart for the kind perusal of the Hon'ble Revisionary Authority.

9. Government has carefully gone through the relevant case records and perused the impugned order-in-originals and impugned order-in-appeals in all the Four Revision Applications (one filed by the Commissioner of Central Excise Raigad (hereinafter referred to as 'Department') and another three Applications by M/s Combitic Global Caplet Pvt. Ltd. (hereinafter referred to as the 'Company'). Since the issue involved in all the Revision Applications is identical Government proceeds to decide the same vide single order.

10. Government in the instant cases observes that the 'Company' who are manufacturer exporters had filed rebate claims under Rule 18 of the said Rules read with Notification No. 19/2004 CE (NT) dated 06.09.2004 for

the duty paid on goods exported. The Company had paid applicable duty as per section 4A of the Central Excise Act, 1944 after availing abatement on the MRP for the clearances effected for export and claimed the rebate on the said amount. The Company was also showing the transaction value as per Section 4 of Central Excise Act, 1944 in their invoices but were paying duty as per Section 4A of Central Excise Act, 1944. This Section 4 value was tallying with the FOB value in the Shipping Bills in respect of all claims except in few cases where FOB value was less than Section 4 value in the invoices. The rebate sanctioning authority held that the rebate only to the extent of duty paid on exported excisable goods on Transaction value under Section 4 of the Central Excise Act, 1944 was admissible to the Company and restricted the same proportionate to FOB value wherever FOB value was less than Transaction value shown in the Central Excise invoice.

11. Being aggrieved, the Company filed appeal before Commissioner (Appeals) who vide impugned Order in Appeal No. US/332/RGD/2012 dated 17.05.2012 set aside Order of the Original authority and allowed the appeal of the Company holding that the Company had correctly assessed and paid duty as per Section 4A of the Central Excise Act, 1944 and hence they were eligible for rebate of full duty paid by them under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004.

12. Being aggrieved by the Order in Appeal, the department filed Revision Application bearing number 198/204/12-RA (Sr. No.1 of Table at para 1) on the grounds mentioned at para 4 supra.

13. The subsequent rebate claims filed by the Company were sanctioned in the similar manner, stated in paras supra, by the rebate sanctioning authority even though the Company had paid duty as per Section 4A of the Central Excise Act, 1944. Aggrieved with such Orders in Original, the Company filed appeals before Commissioner (Appeals). However, Commissioner (Appeals) upheld the orders of Original authority thereby rejecting the appeals filed by the Company.

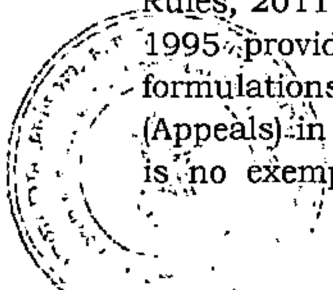
14. Being aggrieved, the Company filed three Revision applications bearing number 195/799/13-RA, 195/800/13-RA and 195/1016/13-RA (Sr. No.2,3,& 4 of Table at para 1) before Revisionary Authority, Government of India on ground mentioned therein as also on grounds mentioned at para 7 and 8 Supra.

15. Government notes that the issue involved in the present applications is whether the valuation of goods under section 4A of the Central Excise Act, 1944 on the basis of the retail sale price (RSP) printed on the impugned goods (which were exported) in terms of Notification No. 49/2008-CE(NT) dated 24-12-2008 by the Company for assessment of duty was proper or the valuation of the impugned export goods should have been under Section 4 ibid on the basis of transaction value for the assessment of duty for the impugned goods.

16. Government observes that in these cases the Company exported P and P medicines. The Company paid excise duty on the export consignments after assessing them to duty on MRP in terms of Section 4A of the Central Excise Act, 1944. The consignments cleared for home consumption in India were being subjected to duty based on the MRP printed on the packets, in terms of Section 4A ibid.

17. Government notes that the Department relied upon the decision in the case of (i) Gillette India Ltd, V/s Commissioner of Central Excise, Jaipur reported in 2006(193) ELT.331 (Tri.-Del.); and in the case of (ii) M/s Indo Nissin Foods Ltd, V/s Commissioner of Central Excise, Bangalore reported in 2008(230) ELT.143 (Tri-Bang.) to elucidate that export consignments are required to be valued in terms of transaction value under Section 4 and not in terms of Section 4A, even if the goods under export are specified under Section 4(A) of the Act. However, the Company has contended that both the judgments pertain to the goods where MRP are required to be printed under the provisions of Standard of Weight & Measurement Act, 1976 and under Rule 30 and 31 of the Standards of Weights and Measures (Packaged commodities) Rules, 1977, issued under the said Act, there is a specific exemption from printing of MRP if such goods are intended for export or are exported, Whereas, in their case, the MRP is mandatorily required to be printed on the goods in terms of Drug Price Control Order, 1995 only as there is no exemption under the Drug Price Control Order, 1995 from the declaration of MRP on the labels/container of the scheduled formulations and non-scheduled formulations i.e. pharmaceutical products, when they are intended for export or are exported.

18. The company has further contended that both the Rule 30 and 31 of the Standards of Weights and Measures (Packaged commodities) Rules, 1977 were omitted vide GSR 425(E) dt. 17-7-2006 (w.e.f. 13-1-2007), so both the aforesaid judgments has no relevancy, even if the Packaged Commodity pertains to Standard of Weight & Measures (Packaged Commodities) Rules, 1977. It is the contention of the company is that it is mandatory to show the "retail sale price" on the packages of the medicaments, whether such medicaments are meant for Domestic clearance or for export as per the provisions of Drugs (Prices Control) Order, 1995. In support of their claim the Company has also furnished a letter No. SDCO Krl-3788 dated 19-12-2012 from the Office of Drugs Controller, Haryana to this effect. Government further observes that Commissioner (Appeals) in his order dated 17.05.2012 also observed that the goods exported by the Company being the scheduled formulations and non-scheduled formulations, they were required by law to declare the price of the said formulations on the retail packs under the Drugs (Price Control) Order, 1995 and not the Standard of Weights and Measures (Packaged Commodities) Rules, 1977 or the Legal Metrology (Packaged Commodities) Rules, 2011 and Paragraphs 14 and 15 of the Drugs (Price Control) Order, 1995 provide for declaration of the price of the drugs/medicines and formulations on the label or container. Accordingly Commissioner (Appeals) in his Order dated 17.05.2012 arrived at a conclusion that there is no exemption under the Drugs (Price Control) Order, 1995 from the



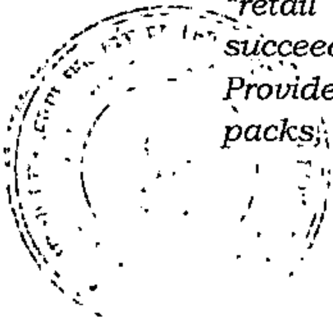
declaration of the sale price of the drugs, medicines and formulations on the labels /containers when they are intended for export or exported. Therefore, the appellants were required by law to declare the maximum retail price on the retail packs.

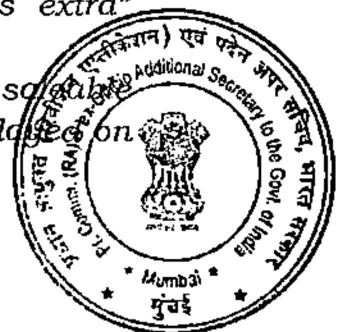
19. Government finds it pertinent to reproduce the contents of letter No. SDCO Krl-3788 dated 19-12-2012 from the Office of Drugs Controller, Haryana which claims that "*it is mandatory to declare the retail sale price on the label of the drugs manufactured for export*" which are reproduced below :

> *Sub :- Clarification regarding declaration of the retail sale price of the drugs manufactured for export under the Drugs (Price Control) Order, 1995.*
>
> *"This is with reference to your office letter No. GC/2012-13/0612/01 dt. 6-12-12 on the subject cited above. In this regard it is clarified that Paragraphs 14 & 15 of the Drugs (Price Control) Order 1995 issued under Section 3 of Essential Commodities Act, 1955 provides for declaration of the retail sale price of the drugs and formulations on the label of the same. There I no exemption for declaration of the retail sale price of the drugs manufactured for export in the Drugs (Price Control) Order 1995, Hence it is mandatory to declare the retail sale price on the label of the drugs manufactured by you for export and contravention of the same is punishable under the said Act.*
>
> *Senior Drugs Control Officer*
> *Karnal Zone.*

20. Government observes that that Drugs (Prices Control) Order, 1995 is enacted as per the provisions of Section 3 of the Essential Commodities Act, 1955. Government refers to the provisions of Para 14, 15 & 16 of Drugs (Price Control) Order, 1995 which are reproduced as under:

> ***"14. Carrying into effect the price fixed or revised by the Government, its display and proof thereof, -***
> *(1) Every manufacturer or importer shall carry into effect the price of a bulk drug or formulation, as the case may be as fixed by the Government from time to time, within fifteen days from the date of notification in the Official Gazette or receipt of the order of the Government in this behalf by such manufacturer or importer.*
> *(2) Every manufacturer, importer or distributor of a formulation intended for sale shall display in indelible print mark on the label of container of the formulation and the minimum pack thereof offered for a retail sale, the retail price of that formulation notified in the Official Gazette or ordered by the Government in this behalf, with the words "retail price not to exceed" preceding it, and "local taxes extra" succeeding it, in the case of Scheduled formulations:*
> *Provided that in the case of a container consisting of smaller saleable packs, the retail price of such smaller pack shall also be displayed on*





the label of each smaller pack and such price shall not be more than the pro-rata retail price of main pack rounded off to the nearest paisa.
(3) Every manufacturer or importer shall issue a price list and supplementary price list, if required, in form V to the dealers, State Drugs Controllers and the Government indicating reference to such price fixation or revision as covered by the order or Gazette notification issued by the Government, from time to time.
(4) Every retailer and dealer shall display the price list and the supplementary price list, if any, as furnished by the manufacturer or importer, on a conspicuous part of the premises where he carries on business in a manner so as to be easily accessible to any person wishing to consult the same.

(15) Display of prices of non-Scheduled formulations and price list thereof, -
(1) Every manufacturer, importer or distributor of a non-Scheduled formulation intended for sale shall display in indelible print mark, on the label of container of the formulation and the minimum pack thereof offered for retail sale, the retail price of that formulation with the words "retail price not to exceed" proceeding it and the words "local taxes extra" succeeding it.

Provided that in the case of a container consisting of smaller saleable packs, the retail price of such smaller pack shall also be displayed on the label of each smaller pack and such price shall not be more than the pro-rata retail price of the main pack rounded off to the nearest paisa.

(2) Every manufacturer or importer shall issue a price list and supplementary price list, if required of the non-Scheduled formulations in Form V to the dealers, State Drugs Controllers and the Government indicating changes from time to time.

(3) Every retailer and dealer shall display the price list and the supplementary price list, if any, as furnished by the manufacturer or importer, on a conspicuous part of the premises where he carries on business in a manner so as to be easily accessible to any person wishing to consult the same.

***(16) Control of sale prices of bulk drugs and formulations** – No person shall sell any bulk drug or formulation to any consumer at a price exceeding the price specified in the current price list or price indicated on the label of the container or pack thereof. whichever is less, plus excise duty and all local taxes, if any, payable in the case of scheduled formulations and maximum retail price inclusive of all taxes in the case of non-scheduled formulations".*

21. On perusal aforesaid provisions Government observes that they provide for declaration of the price of the scheduled formulations and non-scheduled formulations on the label or container by every manufacturer, importer and distributor thereby clearly indicating that prices are required

to be affixed in respect of the medicines intended for sale in India. The aforesaid provisions make it mandatory to display the price when goods / medicines are intended for sale in India. Further, from the wordings that "*the retail price of that formulation with the words "retail price not to exceed" preceding it and the words "local taxes extra" succeeding it, appearing at paras 14* & 15 of Drugs (Price Control) Order, 1995 it is clear that these requirements are only for goods required to be sold in India and it has nothing to do with the goods to be exported. Further, these provisions do not categorically state anywhere that the declaration of the sale price of the drugs, medicines and formulations on the labels/containers is compulsory even when they are intended for export or being exported.

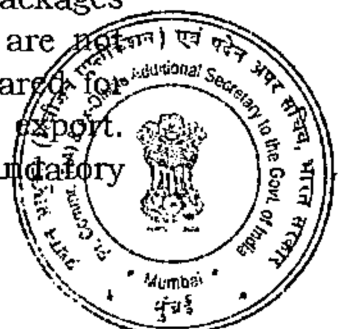
22. Government finds it pertinent to reproduce the para 7 of Order in Original No. 1832/12-13/DC(Rebate)/Raigad dated 15.10.2012 which mentions the Company's reply dated 25.09.2012 to the deficiency memo issued by the rebate sanctioning authority. The Company has stated as under :-

> *"7. That they are mandatorily required to display the "retail sale price" on the packages of the medicaments, whether such medicaments are meant for domestic clearance or for export as per the provisions of the Drugs (Prices Control) Order, 1995 issued under the Essential Commodity Act. 1955. There is no exemption under Drugs (Prices Control) Order, 1995 to mention the `retail sale price' if cleared for export. So it is compulsory for a manufacturer to display the "retail sale price" on the packages of the medicaments during the course of manufacturing. Hence it is mandatory for them to display retail sale price on the specified goods and any lapse in this regard may cause heavy penalty and imprisonment to them".*

23. Similarly Government reproduces para 3 (m) of the Order in (Appeal) No. BC/53/RGD (R) /2013-14 dated 09.05.2013 which is mentioning the grounds of appeal of the Company while filing appeals against Order in Original No. 1832/12-13/DC(Rebate)/Raigad dated 15.10.2012 which are as under :

> *"3m) They are selling the same medicines for export as well as for home consumption on the same RSP on the same duty under Section 4A, At the time of production they are not sure which goods will be cleared for export and which will be cleared for home consumption and therefore production is not exclusively for export. Accordingly it is mandatory to print RSP during course of production".*

24. Government from the combined reading of para 7 and 3(m) reproduced above, observes that it is mandatory to print RSP on the packages of the medicaments during the course of manufacturing as they are not sure which goods will be cleared for export and which will be cleared for home consumption and therefore production is not exclusively for export. Thus from the Company's contention itself it is clear that it is mandatory



to print RSP on the packages of the medicaments as per the provisions of the Drugs (Prices Control) Order, 1995 issued under the Essential Commodity Act. 1955, during the course of manufacturing / production when it is not clear when the goods are cleared for export or home consumption.

25. Thus, Government is of the considered view that the opinion of the Senior Drugs Control Officer, Karnal, "***that it is mandatory to declare the retail sale price on the label of the drugs manufactured by you for export and contravention of the same is punishable under the said Act***" has to be read in the context of the explanation tendered above and cannot be read independently, otherwise, such averment would be beyond any statutory provision of Drugs (Price Control) Order 1995. Government further observes that the Essential Commodities Act, 1955, was passed by the Parliament to provide, in the interests of the general public of India, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. Section 3 of the said empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of any essential commodity and trade and commerce therein for the purpose of maintaining and increasing supplies of such essential commodity or for securing their equitable distribution and availability at fair prices for the people of India. Thus, the provisions of the said Act are not applicable beyond the territory of India and accordingly pricing/valuation of export goods will also be beyond the preview of the said Act and Orders issued there under.

26. Government further observes that Commissioner (Appeals) in his impugned order dated 17.05 2012 has also observed that the appellants have printed the MRP of their products in terms of Section 48 of the Standards of Weight and Measures Act 1976 because the foreign buyers have also categorically required from the appellant to print / quote price i.e. MRP of the Pharmaceutical products on the label and therefore the appellant have affixed the MRP on the label of the subject export goods in terms of buyer's Order also. Government observes that Section 48 of the said Act provides that if the person to whom the export is to be made so requires, then the requirements of quoting any price, indication of weight or measures, any dimensions according to any other system can be allowed which clearly indicates that if the buyer so desires then all such requirements of Standard Weights and Measures Act 1976 which is otherwise applicable stands waived. This clearly indicates that affixing of MRP on export goods is not a mandatory requirement.

27. Government also observes from impugned Order in Appeal dated 17.05.2012 that terms of dispatch of one of the buyers' purchase order states that "*the maximum retail price in Indian Rupees to be printed on each strip. Such maximum retail price would be printed as mutually agreed time to time*". Government observes that when the goods are exported in a country where they are sold in that country's currency, printing of MRP in Indian Rupees on packages is not only irrelevant but illogical as well. Also such declaration of MRP in Indian Rupees is not legally warranted in importing country. Further, the condition that '*retail price would be printed as*

mutually agreed time to time' is indicative of the fact that the retail price printed on the export goods which is arrived at in agreement with the foreign buyer is a voluntary requirement and hence cannot be claimed to be a mandatory requirement under any law.

28. Government further notes that CBEC vide following circulars has clarified that even if the commodity is notified for the purposes of Section 4A(1) of the Central Excise Act, 1944, if there is no statutory requirement under the law i.e. MRP Rules for declaring MRP on the packages cleared by the manufacturer, then, the assessment will be done under Section 4 and not under Section 4A.

(a) Circular/Letter F.No. 341/64/97-TRU dated 11-08-1997
(b) Circular No. 411/44/98-CX dated 31-07-1998
(c) Circular No. 625/16/2002-CX dated 28-02-2002

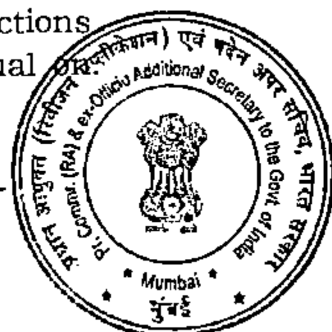
In all these circulars, it has been clarified that valuation under Section 4A will be restored to only when there is a statutory requirement for declaring the MRP on the packages by the manufacturer and such commodities are notified by the Government under Section 4A(1). **It has also been clarified that even if an item is notified under a Notification issued under Section 4A(1), if there is no statutory requirement to affix MRP, then Section 4A cannot be resorted to.**

As it is clear from the aforesaid discussion that as the affixing of MRP was not mandatory on the export goods, the Company was not required to assess the duty on exported goods cleared under claim of rebate under Section 4A of Central Excise Act, 1944.

29. In view of the detailed discussion at para 17 to 27 supra, Government is of the considered view that the retail prices printed on the label of container / strips being discretionary and also as per mutually agreed upon terms from time to time, they are not in consonance with the Legal provisions and hence cannot be considered as a mandatory for resorting to MRP based valuation as per Section 4A of Central Excise Act, 1944 and hence the Company was not legally obliged to print the RSP on the goods exported, cleared under claim of rebate.

30. Government further observes that the Company has also contended that in terms of the directions made at Para 4.1 of Chapter 8 regarding 'EXPORT UNDER CLAIM FOR REBATE' of the CBEC's Excise Manual of Supplementary Instructions, they have correctly assessed the export goods (whether cleared under Bond under Rule 19 of the Central Excise Rules, 2002 or under claim of rebate of duty paid under Rule 18 ibid) in the same manner as the goods for home consumption by conforming to Section 4A of the Central Excise Act, 1944. Government, thus observes that the instructions issued by CBEC regarding assessment of export goods are quite relevant to decide the issue involved in these cases. The instructions contained in Para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual of Supplementary Instructions are extracted under:

"4. Sealing of goods and examination at place of dispatch -



Para 4.1 –
The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in Annexure-14 to Notification No. 19/2004-CE (NT) dt 6-9-2004.The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and/or Central Excise Rules, 2002. The value shall be the "transaction value" and should conform to section 4 or section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the F.O.B. value indicated by the exporter on the Shipping Bill.'
The plain reading of said Para, reveals that the export goods shall be assessed to duty in the same manner as the goods cleared for home consumption are assessed".

31. From the afore stated para 4.1 of Chapter 8, Government observes value of the export goods shall be the **transaction value** and **shall conform to** Section 4 **or** Section 4A of the Central Excise Act, 1944, as the case may be. Government observes that the value of the export goods shall not only conform to Section 4 or Section 4A but shall also be the transaction value. Thus, these instructions also contemplate assessment under transaction value only. Government observes that in view of the detailed discussions in foregoing paras the value of the export goods determined under Section 4A of the Central Excise Act, 1944 by the Company, assessing them to duty on MRP in terms of Section 4A of the Central Excise Act, 1944 for payment of excise duty is not the transaction value.

32. Government further observes that the Company has relied upon Government of India's Order No. 87-102/2015-CX dated 29-9-2015 passed in the matter of M/s Cipla Ltd., GOI Order No. 160-225/2014-CX, 53-73/2015-CX dated 27-08-2015 (issued on 31-8-2015), and 23-49/2015-CX dt. 29.07.2015 in which the Government has reiterated instructions contained in Para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual on Supplementary Instructions. Relying on the same, the Company has also contended that they have assessed export goods to duty in the same manner (under Section 4 A of the Central Excise Act, 1944) as the goods cleared for home consumption are assessed which is in consonance with the instructions contained in Para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual on Supplementary Instructions.

33. Government finds that the riposte to the Company's aforesaid contention lies in the most of the GOI Orders referred supra, in as much as while deciding the admissibility of the rebate claim of the Applicant therein, who paid lesser duty on goods cleared for home consumption and higher duty on export product, relying on the instructions contained in Para 4.1 of Part-I of Chapter 8 of C.B.E. & C. Excise Manual on Supplementary Instructions which stipulated that export goods shall be assessed to duty in same manner as the goods cleared for home consumption are assessed, Government in those orders held that the rebate

claims were admissible to the extent of duty payable at effective rate of duty @ 4% or 5% as the case may be and not of duty paid at the tariff rate (10%) by availment of two notifications as all goods whether cleared for export or home consumption, to be assessed in same manner. From the above, it is clear that wording "*assessing the duty in the same manner as the goods for home consumption*" contained in Para 4.1 of Part-I of Chapter 8 of C.B.E. & C. Excise Manual on Supplementary Instructions relates to applying same rate of duty in the case of exports and home consumption and cannot be construed to mean that the value of exported goods should also be determined under Section 4A of Central Excise Act, 1944 and chargeable to duty under MRP based valuation in the same manner when cleared for home consumption.

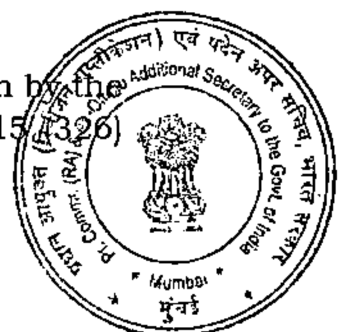
34. Government relevantly observes that in the aforesaid GOI Orders relied upon by the Company, the applicant were also manufacturing Medicaments falling under Chapter Heading 3003/3004 of Central Excise Tariff Act, 1985 which were chargeable to duty @ 4% or 5% adv. under MRP based valuation as per Notification No. 49/2008-C.E (N.T.), dated 24-12-2008 when cleared for home consumption. However, in all such orders, despite the fact that said medicaments were chargeable to duty under MRP based valuation for home consumption, the Government in all such orders has held as under:

> *"In view of position explained in foregoing paras, Government finds that there is no merit in the contentions of applicants 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, as applicable on the relevant date on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944".*

35. Government further observes that in the following GOI orders also, Government has held that rebate is admissible on the duty paid as applicable on the relevant date on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944 even when the medicaments were chargeable to duty under MRP based valuation under Section 4A of the Central Excise Act, 1944 for home consumption.

- GOI Order No. 332/2014-CX, dated 25-9-2014 [2015 (320) E.L.T. 657 (G.O.I.)], Re: Umedica Laboratories (Pvt) Ltd.
- GOI Order Nos. 167-173/2015-CX, dated 11-12-2015 [2016 (344) E.L.T. 691 (G.O.I.)], Re : Intas Pharmaceuticals Ltd.
- Order Nos. 316-331/2014-CX, dated 24-9-2014 [2016 (343) E.L.T. 852 (G.O.I.)] Re: Cadila Healthcare Ltd.

36. Government also observes in one of the GOI orders relied upon by the Company, viz. GOI Order No. 23-49/2015-CX dt. 29.07.2015 [2015 (326) E.L.T. 399 (G.O.I.)] in Re: Intas Pharmaceuticals Ltd.GOI held that



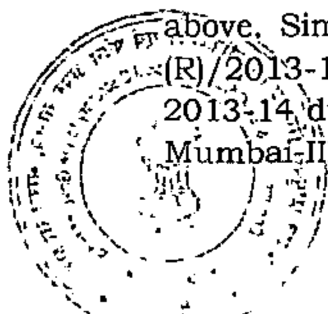
"In view of position explained in foregoing paras, Government finds that there is no merit in the contentions of applicants that they are eligible to claim rebate of duty paid @ 10%, i.e., General Tariff Rate of Duty ignoring the effective rate of duty @ 0%/4% or 5%. As such, Government is of considered view that lower authorities are legally right in holding that rebate is admissible only to the extent of duty paid at the effective rate of duty, i.e., 0%/4% or 5% in terms of Notification No. 4/2006-C.E., dated 1-3-2006 as amended, as applicable on the relevant date on the transaction value of exported goods determined under Section 4 of Central Excise Act, 1944. Hence the Order-in-Appeal are upheld to that extent".

Government from the aforesaid findings observes that GOI while upheld the views of the lower authorities holding the admissibility of rebate to the extent of duty payable at 4% or 5% and not duty paid at 10%. Hence, contentions of the Company in this regard are unacceptable.

37. As already contended by the Company in its submissions that Government of India, in its revisionary capacity is duty bound to maintain consistency in its own determination to follow the ratio of the decisions of its own judgments. Therefore, in order to maintain uniformity in practice, Government views that the present proceedings are required to be decided on the same lines as in the GOI orders mentioned supra. Following the ruling in case laws discussed above, Government in this case holds that rebate would be admissible to the extent of duty paid on the transaction value (equivalent to FOB) value of exported goods determined under Section 4 of Central Excise Act, 1944" as held by the original authorities.

38. Government holds that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and has to be treated as voluntary deposit with the Government, which is required to be returned in the manner in which it was paid as the said amount cannot be retained by the Government. Government therefore, holds that the excess duty paid by the Company 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. Government however, directs that the re-credit of the excess duty paid is to be allowed by the original authority in all the above cases subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944 and only after examining the aspect of unjust enrichment to satisfy himself that the duty incidence had not been passed on and realised by the Company from the overseas buyer.

39. In view of the discussions and findings elaborated above, Government sets aside Order-in-Appeal No. US/332/RGD/2012 dated 17.05.2012, passed by Commissioner of Central Excise (Appeals), Mumbai-II and allows Revision Application 198/204/12-RA filed by the Department in terms of above. Similarly, Government modifies Order-in-Appeal No. BC/53/ RGD (R)/2013-14 dt. 09.05.2013 and Order-in-Appeal No. BC/54/RGD(R)/2013-14 dt. 09.05.2013 passed by Commissioner (Appeals) Central Excise, Mumbai-III and Order-in-Appeal No. SK/273/RGD/2013-14 dt. 30.09.2013



passed by Commissioner of Central Excise (Appeals-II), Mumbai to the above extent and the Revision Applications No.195/799/13-RA,195/ 800/ 13 -RA and 195/1016/ 13-RA filed by the 'Company' are dismissed.

40. All the four Revision Applications are disposed off in above terms.

41. So ordered.

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

ORDER No. 330 - 333 /2018-CX (SZ) /ASRA/Mumbai Dated 07.09.2018

To,

1. The Commissioner of GST & CX, Belapur,
   1st Floor, CGO Complex, CBD Belapur,
   Navi Mumbai 400614.

2. M/s Combitic Global Caplet Pvt. Ld.,
   M-15,D-2 & D-3, Industrial Area,
   Sonepat (Haryana) 131 001.

Copy to:

1. The Commissioner of GST & CX (Appeals) Belapur, 6th floor,CGO Complex, CBD, Belapur Navi Mumbai 400 614.
2. The Deputy / Assistant Commissioner of (Rebate), GST & CX Belapur, CGO Complex, Navi Mumbai 400 614.
3. Shri D.K. Singh, Advovate, 16/267, 1st Floor, Galli No.9, Joshi Road, Karol Bagh, New Delhi-110 005.
4. Sr.P.S. to AS(RA),Mumbai.
5. Guard File.
6. Spare copy.

ATTESTED

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