F.No. 195/220-250/2015-RA
195/290-295/2015-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, Cuffe Parade,
Mumbai- 400 005

F NO. 195/220-250/2015-RA /6171
195/290-295/2015-RA

Date of Issue: 20/10/21

ORDER NO. 372-409 /2021-CX (WZ) /ASRA/MUMBAI20.10.21 DATED OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINICIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s . DR. Reddy's Laboratories Limted

Respondent : Commissioner (Appeals) of Central Excise & Customs & Service Tax, Hyderabad-II

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. HYD-EXCUS-002-APP-001- 037-15-16 CE (001- 006 dtd 29-04-15, 007-017 dtd 30-04-2015, 018-022 dtd 11-05-15, 023-027 dtd 13-05-15, 028-031 dtd 14-05-15 and 032-037 dated 22-06-15) passed by the Commissioner (Appeals) of Central Excise, Customs & Service Tax, Hyderabad-II.

ORDER

These Revision Applications have been filed by M/s. DR. Reddy's Laboratories Limited, Central Warehouse, Plot No.105, Bollaram Village, Jinnaram Mandal, Medak District hereinafter referred to as "the Applicant") against the Orders-In-Appeal as detailed in Table below passed by the Commissioner (Appeals) of Central Excise, Customs & Service Tax, Hyderabad-II.

Sr No	RA file Number	OIA No & Date	OIO No. & Date	Claim Amount	Sanctioned	Rejected
1.	2.	3.	4.	5.	6.	7.
1.	195/220/15-RA	Hyd-EXCUC-002 -App-007-15-16 CE dtd 29-04-2015	814/2014(R) dated 14-08-14	495600	464713	30887
2.	195/221	005-15-16 CE dtd 29-04-15	488/2014 dt 13-06-14	702790	639401	63389
3.	195/222	006-15-16 CE dtd 29-04-15	811/2014 dt 14-08-14	945294	924038	21256
4.	195/223	009-15-16 CE dtd 30-04-15	819/2014 dt 14-08-14	426420	416948	9472
5.	195/224	008-15-16 CE dtd 30-04-15	816/2014 dt 14-08-14	407880	391508	16372
6.	195/225	010-15-16 CE dtd 30-04-15	828/2014 dt 19-08-14	417150	393879	23271
7.	195/226	025-15-16 CE dtd 13-05-15	1006/2014 dt 01-10-14	690100	631445	58655
8.	195/227	004-15-16 CE dtd 29-04-15	246/2014 dt 22-04-14	2006358	1991721	14636
9.	195/228	027-15-16 CE dtd 13-05-15	1018/2014 dt 08-10-14	1481655	1473575	8080
10.	195/229	023-15-16 CE dtd 13-05-15	990/2014 dt 29-09-14	226262	208886	17376
11.	195/230	015-15-16 CE dtd 30-04-15	918/2014 dt 09-09-14	252556	233139	19417
12.	195/231	019-15-16 CE dtd 11-05-15	509/2014 dt 13-06-14	2063065	1977276	85789
13.	195/232	020-15-16 CE dtd 11-05-15	517/2014 dt 16-06-14	3520618	3471180	49438
14.	195/233	026-15-16 CE dtd 13-05-15	1007/2014 dt 01-10-14	690100	631503	58597

15.	195/234	024-15-16 CE dtd 13-05-15	1003/2014 dt 01-10-14	782800	669603	113197
16.	195/235	011-15-16 CE dtd 30-04-15	829/2014 dt 19-08-14	433527	426408	7119
17.	195/236	012-15-16 CE dtd 30-04-15	830/2014 dt 19-08-14	1218386	1195904	22482
18.	195/237	013-15-16 CE dtd 30-04-15	906/2014 dt 09-09-14	197760	189131	8629
19.	195/238	014-15-16 CE dtd 30-04-15	907/2014 dt 09-09-14	395520	391573	3947
20	195/239	018-15-16 CE dtd 11-05-15	489/2014 dt 13-06-14	1131567	1130997	570
21.	195/240	017-15-16 CE dtd 30-04-15	928/2014 dt 15-09-14	525300	492173	33127
22.	195/241	016-15-16 CE dtd 30-04-15	929/2014 dt 15-09-14	860396	852007	8929
23.	195/242	022-15-16 CE dtd 11-05-15	988/2014 dt 29-09-14	153110	151642	1468
24.	195/243	021-15-16 CE dtd 11-05-15	986/2014 dt 29-09-14	401700	363246	38454
25.	195/244	002-15-16 CE dtd 29-04-15	747/2014 dt 31-07-14	326922	320363	6559
26.	195/245	001-15-16 CE dtd 29-04-15	746/2014 dt 31-07-14	2460088	2391687	68401
27.	195/246	003-15-16 CE dtd 29-04-15	769/2014 dt 06-08-14	2141555	1993220	148335
28.	195/247	028-15-16 CE dtd 14-05-15	1020/2014 dt 08-10-14	554346	550135	4211
29.	195/248	031-15-16 CE dtd 14-05-15	1027/2014 dt 08-10-14	2025433	1996513	28920
30.	195/249	029-15-16 CE dtd 14-05-15	1022/2014 dt 08-10-14	1132967	1124512	8455
31	195/250	030-15-16 CE dtd 14-05-15	1024/2014 dt 08-10-14	2662344	2626495	35849
32.	195/290	032-15-16 CE dtd 22-6-15	1287/2014 dt 03-12-14	395520	378664	16856
33.	195/291	033-15-16 CE dtd 22-6-15	1288/2014 dt 03-12-14	475860	454170	21690
34.	195/292	034-15-16 CE dtd 22-6-15	1377/2014 dt 19-12-14	494400	453818	40582

35.	195/293	035-15-16 CE dtd 22-6-15	1376/2014 dt 19-12-14	463500	287300	176200
36.	195/294	036-15-16 CE dtd 22-6-15	1354/2014 dt 15-12-14	1191504	1159428	32076
37.	195/295	037-15-16 CE dtd 22-6-15	1305/2014 dt 08-12-14	108150	103304	4846

2. The issue in brief is that the applicants are carrying out activities of First Stage dealer and are also holders of Central Excise Registration. The Applicants had filed rebate claims in respect of duty paid goods procured from other manufacturer and exported from the said registered premises in terms of Board Circular No.294/10/97 dated 30.01.1997 and also in terms of the permission given by the Commissioner of Central Excise, Hyderabad-I Commissionerate vide letter C. No. IV/16/04/2009-CE-Tech dated 18.03.2009, with the Assistant Commissioner of Central Excise, Hyderabad-B Division which was subsequently transferred to Maritime Commissioner of Central Excise, Hyderabad-II Commissionerate under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004.

3. While scrutinizing the rebate claim filed by the Applicants, the Maritime Commissioner vide the aforesaid Orders (shown in Column 4 of the table) held that since the ARE-I values are more than the FOB value and the difference is attributable to the cost of transportation and that the freight incurred from the place of removal to the place of delivery, has to be excluded from the transaction value to arrive at Section 4 value in terms of Rule 5 of Central Excise Valuation Rules, 2000, thus the duty @ 12.36% on the differential amount is an excess payment. Since the Applicants are Registered Dealer, they do not have any Cenvat Credit account and hence the excess payment cannot be granted as rebate in form of cenvat Credit, and sanctioned only the amount as shown in the above table at Column 6. Aggrieved by the decision of the Maritime Commissioner, Applicants filed an Appeal before the Commissioner of Customs, Central Excise (Appeals). Hyderabad.

4. Commissioner (Appeal) vide the aforesaid Orders (shown in Column 2 of the table) held that as the Applicant is a registered dealer and they do not have the facility of utilization of Cenvat Credit as per the provisions of Rule 3 of Cenvat Credit Rules, 2004, and as the refund in cash is not admissible, allowed the excess duty paid on export goods by way of allowing the rebate as a Cenvat Credit to the Applicant subject to the condition that the Applicant should pass on the amount by way of issuance of credit note to the respective manufacturers in order to balance the accounting system and, in this regard, relied the following decisions of the Revision authority:

1. IN RE; AGGARWAL FASTERNERS PVT LTD., 2014(307) ELT614(GOI).
2. IN RE: GPI TEXTILES LTD., 2013(297) ELT 309(GOI).
3. IN RE: DUKE CONSUMER CARE LTD., -2012(285) ELT 475(GOI).
4. IN RE: GTN GENGINEERING (INDIA)- 2012(284) ELT 737(GOI).
5. IN RE: WAVES FOODS PVT. LTD., 2013(292) ELT 140(GOI),

5. Being aggrieved with the above Orders-in-Appeal, applicants have filed these revision applications before Central Government under Section 35EE of Central Excise Act, 1944 on the following grounds:

a) The aforesaid Orders-in-Appeal passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad, is without proper appreciation of the facts of the case and contrary to the decisions of the Hon'ble Tribunal and merits to be set aside;

b) From their registered dealer premises they have exported certain duty paid goods procured from other manufacturer and filed the rebate claim on the basis of duty payment made by the manufacturers on the said goods under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004 as amended and the procedure prescribed by CBE & C vide Circular No.294/10/97-CX dated 30.01.1997.

c) Maritime Commissioner after satisfying with the export documents submitted, the confirmation of duty payment by the manufacturers of the subject goods by the respective Jurisdictional Range Officers of the manufacturers, the customs endorsement on the back side of

ARE-1, admitted the proof of export, and then restricted the sanction of Rebate to the FOB value instead of the ARE-1 value on the grounds that the value in respect of ARE-1is more than the FOB value;

d) Maritime Commissioner passed the impugned Order without issuing the show cause notice and/or granting an opportunity of Personal Hearing and the same is a clear cut violation of Principles of Natural Justice. Had they been given either a show cause notice and/ or an opportunity of personal hearing, applicants contended they would have explained their case with proper justification. Commissioner (Appeals) having given a finding that the impugned Order passed by the Learned Maritime Commissioner was in violation of principles of natural justice, she should have remanded back the matter to the Learned Maritime Commissioner with a direction to re-adjudicate the mater after affording an opportunity to the Applicants to Present their case, Applicants submit that on this ground alone the subject Order-in-Appeal passed by the Learned Commissioner (Appeals) merits to be set aside;

e) Applicants further submit that it is an undisputed fact that they are registered dealers and exported duty paid goods procured from other manufacturers and filed the rebate claim in respect of the goods so exported on the basis of duty payment made by the manufacturers on the said goods. Commissioner (Appeals) observing that for determining the rebate on the export goods, FOB value is transaction value on which rebate is to be sanctioned, held that rebate is not admissible for the remaining amount as it is excess duty paid on export goods by relying upon various decisions of the Hon'ble Revisionary Authority.

f) Commissioner (Appeals) failed to appreciate the facts of case properly. Applicants submitted that the Commissioner (Appeals) equated the Direct Exports from factory with the duty paid goods exported from the Registered Dealers' premises. With regard to the contention/ conclusion of the Department that the applicants claimed excess rebate than the amount worked out on FOB value (duty paid goods exported at lesser value than the procurement value), is clearly,

without appreciation of the situation and the submissions made by the applicants.

g) The decisions of the Hon'ble Revisionary Authority on which the Commissioner (Appeals) placed reliance to conclude that for determining the rebate on the export goods, FOB value is transaction value on which rebate is to be sanctioned, Applicants believe that the above decisions were in the context of the direct exports from factory of manufacturer where the manufacturer should clear the goods for export on payment of duty on the value determined under Section 4. Whereas in the present case, the applicants exported duty paid goods from their dealer's premises and claimed the total duty paid as rebate since, the manufacturer paid the duty on such subsequently exported goods on the value determined under Section 4 of Central Excise Act, 1944 only at the time clearance from his factory and most unfortunately, the Commissioner (Appeals) has not considered this point while arriving such an opinion.

h) The Appellant contended when the manufacturer from whom they are procured the duty paid goods have paid excise duty under Section 4, and the subject goods having exported by them from their Registered Dealers' premises, taking into account FOB value /Section 4 for the purpose of sanctioning the rebate, is not correct and entire amount of duty for which they have filed rebate claim is to be sanctioned in cash. They relied upon the decision of the Hon'ble Tribunal in the case of HINDUSTAN PETROLEUM CORPORATION LTD., VS. COMMISSIONER OF CENTRAL EXCISE, MEERUT-1- 2013(298) ELT 450 (TRI-DEL), though it was given in the context of applicability of Section 11D of the Central Excise Act, 1944 and emphasized that the same principle is applicable to sanction of rebate on export of duty paid goods.

i) Applicants submitted that it is not the issue of claiming rebate on the basis of CIF value and/or FOB value, to consider FOB value as transaction value for the purpose of sanctioning rebate in cash, in the instant case, Applicants submit as they have claimed rebate only to the extent of duty paid by the manufacturer in respect of goods

procured from him and subsequently adjusted by them in their RG-23D Register while exporting them on the grounds for the purpose of rebate FOB value/Section 4 value has to be taken and hence restricting the rebate claim is not in accordance with the provisions of law.

j) Applicants submitted considering all these facts, ie the export of duty paid goods procured from other manufacturers from the registered dealer premises, the non-availability of Cenvat Credit facility to the dealer, the non-applicability of FOB value / Section 4 in respect of the duty paid goods exported by the dealer, the intention of the Government clearly being not to export taxes but only the goods, the earlier Commissioner (Appeals) vide Order-in-Appeal No. 104/2013 (H-1) CE dated 30.08.2013 confirmed that whatever duty paid on the goods by original manufacturer is eligible as rebate on submission of proof of export. In the instant case, Commissioner (Appeals) neither considered the facts of the instant case properly nor considered the decision i.e. Order-in-Appeal No. 104/2013 (H-I) CE dated 30.08.2013, passed by the earlier Commissioner (Appeals), simply stating that the Commissioner's (Appeals) Order is not binding on the same Authority.

k) Applicants further submitted that as stated in the impugned Order-in-Appeal that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and has to be treated a 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 without the authority of law, there is no other way other than to sanction the rebate of the amount not granted in cash to them, as they cannot utilize, if the excess duty paid is sanctioned as Cenvat Credit, they being the dealers, and even if such duty is passed on to the original manufacturers by way of credit note, they cannot avail the same on the basis of credit note, as credit note is not one of the prescribed documents for availing the credit. In the absence of the above, it is nothing but retaining the said duty by the Government

without authority of law. Applicants further submit that to substantiate their contention that they are eligible for the entire amount of duty of rebate in cash, they have relied upon the decision of the Hon'ble Tribunal in the case of STERLITE INDUSTRIES (1) LTD., VS. COMMISSIONER OF C.EX., TIRUNELVELI- 2009(236) ELT 143 (TRI CHENNAI), wherein it has been held that the exporter is entitled to rebate of entire duty of excise paid by him on clearance of goods for export. However Commissioner (Appeals) did not consider the said. decision of the Hon'ble Tribunal on the ground that the Hon'ble Tribunal has no jurisdiction to decide the appeal pertaining to rebate as per Clause (b) to proviso to Section 35B (1) of Central Excise Act, 1944 which provides that the Tribunal cannot entertain any appeal against order of Commissioner (Appeals) in relation to rebate on exports as held by the Hon'ble High Court of Gujarat in the case of CCU VS. TIMEWELL TECHNICS PVT LTD., as reported in 2014 (301) ELT 11(GUJ), which has been maintained by Hon'ble Supreme Court reported in 2014 (302) ELT A90 (SC).

l) They have filed a Miscellaneous Application/Modification Application before the Commissioner of Customs & Central Excise (Appeals), Hyderabad, praying for issuance of Corrigendum / Amendment in the impugned Orders-in-Appeal to the effect that the Maritime Commissioner is to permit the availment of Cenvat Credit by the respective manufacturers who have paid duty on the subject goods, in respect of any excess duty paid and the rebate if to be sanctioned as Cenvat Credit in the rebate sanctioning order itself on the ground that if as suggested by the Commissioner (Appeals) in the impugned Order-in-Appeal, if they pass on the credit by way of credit note the manufacturers cannot avail cenvat credit on the basis of such credit note, the reason being the credit note not being one of the prescribed documents for availing cenvat credit in terms of Rule 9 of Cenvat Credit Rules, 2004.

m) This Revision Applications is being filed in view of the prescribed time of three months for filing revision application before the Revisionary Authority.

6. A Personal Hearing was granted to the applicant in view of the change in Revisionary authority on 16.09.2021 and 23.09.2021. Mr. Sivarama Krishna, Director (Indirect Taxes) and Mr Sivakoti Reddy, Authorised Representative appeared for the hearing online. They reiterated the submissions already made. They submitted that they acted as merchant exporter and had claimed rebate of duty which was actually paid by their manufacturer supplier. They submitted that restricting the claim to FOB value is not correct. They requested to allow the rebate claims.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. The main prayer in this revision application is to decide whether the whole duty paid on the ARE-1 value can be granted as rebate or should it be restricted to the FOB value when the ARE-1 value is more than the FOB value and whether the excess amount thus paid can be given as rebate in cash since the credit note is not one of the eligible documents to avail Cenvat credit.

8. Government observes the relevant statutory provisions for determination of value of excisable goods which are extracted below:

A) *As per basic applicable Section 4(1)(a) of Central Excise Act, 1944 where duty of excise is chargeable on any excisable goods with reference to their value, then on each removal of said goods such value shall,*

(a)In a case where the goods are sold by the assessee, for delivery at time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

(b)In other case, including the cases where the goods are not sold be the value determined in such manner as may be prescribed.

Word 'Sale' has been defined in Section 2(h) of the Central Excise Act, 1944, which reads as follows:

"'Sale' and 'Purchase' with their grammatical variations and cognate expression, mean any transfer of the possession of goods by one person on another in ordinary course of trade or business for cash or deferred payment or other valuable consideration."

Place of Removal has been defined under Section 4(3)(c)(i), (ii), (iii) as:

(i) A factory or any other place or premises of production of manufacture of the excisable goods;

(ii)A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) A Depot, Premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory.

B) The Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is also relevant which is reproduced below:-

*"**Rule 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value,*

excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods.

Explanation 1. - "Cost of transportation" includes -

(i) The actual cost of transportation; and

(ii) In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods."

9. Government further notes that CBEC vide Circular No. 988/12/2014-CX dated 20.10.2014 has clarified that the place of removal needs to be ascertained in terms of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of Transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where the sale has taken place or when the property of goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

10. Government further observes that the Ministry has further clarified vide its Circular No. 999/6/ 2015-CX, dated 28-2-2015 what is the "place of removal" for taking CENVAT credit of services used for export of goods for two types of exports, one for direct export and another for deemed export. Place of removal for direct export is mentioned in para 6 as under;

6. "In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it

is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer Exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly."

Whereas for deemed export it is mentioned in para 7 as under;

7. In the case of export through merchant exporters, however, two transactions are involved. First is the transaction between the manufacturer and the merchant exporter. The second transaction is that between the merchant exporter and the foreign buyer. As far as Central Excise provisions are concerned, the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter. As explained in paragraph 4 supra, in most of the cases, this place would be the factory gate since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are sealed in the factory, either by the Central Excise officer or by way of self-sealing with the manufacturer of export goods taking the responsibility of sealing and certification, in terms of Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004, etc.

8. However, in isolated cases it may extend further also depending upon the facts of the case but in no case, this place can be beyond the Port / ICD / CFS where shipping bill is filed by the merchant exporter. The eligibility to CENVAT Credit shall be determined accordingly.

11. Government observes that from the perusal of above provisions it is clear that the place of removal may be factory/warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. Government finds in this case that the applicant is a First stage dealer and that the difference in the ARE-1 value and the FOB value is attributed to cost of transportation, insurance etc. The transfer of ownership of the goods from the manufacturer to the dealer was at the factory gate following the

procedure prescribed under CBEC Circular No. 294/10/94-CX dated 30.1.97 under the physical supervision of the jurisdictional range officer. Hence for determining the rebate on the export goods in this case, Section 4 value can only be considered after deducting cost of transportation, insurance, etc.

12. Government draws attention to the judgment of the Hon'ble Supreme Court in Civil Appeal No. 5541 of 2004, decided on 23-4-2015 in the case of Roofit Industries Ltd. [2015 (319) E.L.T. 221 (S.C.)] wherein the question of determination of 'place of removal' for the purpose of Central Excise Act, 1944 was considered by the Supreme Court. In this case, the Supreme Court was considering the issue as to whether the goods were sold at the factory gate or at the premises of the buyer where the seller had arranged for transportation and insurance of the goods during transit. The Supreme Court, vide order dated 23.04.2015 set aside the order of CESTAT and confirmed inclusion of freight, insurance and unloading charges in the assessable value for excise duty under Section 4 of the Central Excise Act, 1944, thus holding the buyers' premise to be 'the point of sale'.

At para 11 & 12 of the said judgment, the Hon'ble Supreme Court has observed as under :

> *"11. In Commissioner of Central Excise, Noida v. Accurate Meters Ltd. - (2009) 6 SCC 52 = 2009 (235) E.L.T. 581 (S.C.), the Court took note of few decisions including in the case of Escorts JCB Ltd. and reiterated the aforesaid principles by emphasizing that the place of removal depends on the facts of each case.*
>
> *12. The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected namely whether it is on factory gate or at a later point of time, i.e., when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with Valuation Rules."*

The ratio of the aforesaid judgement is squarely applicable in this case as it clarifies as to at what point of time, transfer of ownership takes place, namely whether it is on factory gate or at a later point of time, and what

component of expenditure would form part of Valuation under Section 4 of the Central Excise Act.

13. Moreover, Government observes that GOI in its Orders No. 411-430/13-Cx dated 28.05.2013 In Re: M/s GPT Infra Projects Ltd. and Order No. 97/ 2014-Cx dated 26.03.2014 In re : Sumitomo Chemicals India Pvt. Ltd. [2014(308) E.L.T.198(G.O.I.)] has categorically held that

> *"it is clear that the place of removal may be factory/warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. The meaning of word "any other place" read with definition of "Sale", cannot be construed to have meaning of any place outside geographical limits of India. The reason of such conclusion is that as per Section 1 of Central Excise Act, 1944, the Act is applicable within the territorial jurisdiction of whole of India and the said transaction value deals with value of excisable goods produced/manufactured within this country. Government observes that once the place of removal is decided within the geographical limit of the country, it cannot be beyond the port of loading of the export goods. It can either be factory, warehouse or port/Customs Land Station of export and expenses of freight / insurance etc. incurred upto place of removal form part of assessable value. Under such circumstances, the place of removal is the port/place of export since sale takes place at the port /place of export.*

At para 9 of its Order dated 26.03.2014 in Re: Sumitomo Chemicals India Pvt. Ltd. [2014(308) E.L.T.198(G.O.I.)] GOI held that

> *"9. Government notes that in this case the duty was paid on CIF value as admitted by applicant. The ocean freight and insurance incurred beyond the port, being place of removal in the case cannot be part of transaction value in terms of statutory provisions discussed above. Therefore, rebate of excess duty paid on said portion of value which was in excess of transaction value was rightly denied. Applicant*

has contended that if rebate is not allowed then the said amount may be allowed to be re-credited in the Cenvat credit account. Applicant is merchant-exporter and then re-credit of excess paid duty may be allowed in Cenvat credit account from where it was paid subject to compliance of provisions of Section 12B of Central Excise Act, 1944".

14. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11-9-2008 in CWP Nos. 2235 & 3358 of 2007, in the case of *M/s. Nahar Industrial Enterprises Ltd.* v. *UOI* reported as 2009 (235) E.L.T. 22 (P & H) has decided as under :-

"Rebate/Refund - Mode of payment - Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable - Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty - Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat credit is appropriate. As such the excess paid amount/duty is required to be returned to the respondent in the manner in which it was paid by him initially.

15. In view of the facts and discussion herein above, Government observes that in this case the applicant is a Merchant exporter and hence the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter and transaction value is required to be arrived at accordingly and that the excess paid duty can be re-credited in Cenvat account only.

16. In respect to the excess duty paid amount to be re-credited in cash, Government finds Commissioner (Appeals) in the impugned orders at para 11 has observed that:

"11. ..... The C.B.E &C Manual of Supplementary Instructions 2005 and Notification No. 19/2004-CE (NT) prescribes that the rebate claim can be filed either by manufacturer or merchant-exporter. In the instant case, the appellant is an exporter who has filed the rebate claim but not the manufacturer from whom the duty paid goods were procured and exported, the appellant is a registered dealer and they do not have the facility of utilization of Cenvat credit as per the provisions of Rule 3 of Cenvat Credit Rules, 2004. It is settled issue that the excess excise duty paid in Cenvat Credit needs to be refunded, in the manner in which it was paid, as the refund in cash is not admissible. In view of the above circumstances, I find it is appropriate to allow the excess duty paid on export goods by way of allowing the rebate as a Cenvat Credit to the appellant subject to the condition that the appellant should pass on the amount by way of issuance of credit note to the respective manufacturers in order to balance the accounting system....."

17. Government finds that Commissioner Appeal has addressed to all the issues and summarized in the aforesaid para and allowed the Cenvat credit to the Applicant in the only possible way. Contention of the applicant that Cenvat credit cannot be taken on the basis of credit note is fallacious as credit was to be taken based on the Order of Adjudicating/Appellate authority and not on the basis of credit note. Further the case law of Sterlite Industries (I) Ltd. vs CCE, Tirunelveli-2009(236) ELT 43 (Tri-Chennai), relied by the appellant is in respect of recovery of erroneous refund granted and hence not relevant in this case.

18. In view of the above, Government finds that the Commissioner Appeal's Orders are proper and judicious and needs no interference and hence the 37 Revision applications filed are rejected being devoid of merit

19. Accordingly, the Revision Applications are disposed off in the above terms.

Shrawan 20/10/21

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

ORDER No. 372-409 /2021-CX (WZ)/ASRA/Mumbai DATED 20.10.2021

To

M/s Dr Reddy's Laboratories Ltd.,
Central Warehouse, Plot No. 105,
Ballaram Village, Jinnaram Mandal,
Medak District, Andhra Pradesh-502325

Copy to :

1. The Commissioner of CGST, GST Bhavan, L. B. Stadium Road, Basheer Bagh, Hyderabad-500004
2. The Commissioner of GST & CX (Appeals) GST Bhavan, L. B. Stadium Road, Basheer Bagh, Hyderabad-500004
3. The Deputy / Assistant Commissioner of (Rebate), GST & CX B, Hyderabad, L. B. Stadium Road, Basheer Bagh, Hyderabad-500004
4. Sr.P.S. to AS(RA),Mumbai.
5. Guard File.