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. 195/32(I to LXXXV)/2016-RA/6465 Date of Issue: 08.11.2021

ORDER NO. 431-515 /2021-CX (SZ) /ASRA/MUMBAI DATED 29/10/21 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 Limited

Respondent : Commissioner of Customs & Central Excise (Appeals), Hyderabad

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. HYD-EXCUS-002-APP-079- 15-16 CE to HYD-EXCUS-002-APP-163- 15-16 CE dated 30-11-2015 passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.

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 Order-In-Appeal as detailed in Table below passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.

Sr No	RA file Number	OIA No & Date	OIO No. & Date	Claim Amount	Sanctioned	Rejected
1.	195/32I to 32LXXXV /2016-RA	Hyd-EXCUC-002 -App-079 to 163-15-16 CE dated 30-11-2015	1429/2014 dt 26.12.14	849750	806373	43378
2.			10/2015 dt 9.01.15	486675	457324	29351
3.			11/2015 dt.09.01.15	444960	417079	27881
4.			25/2015 dt.14.01.15	2638162	2497480	140683
5.			35/2015 dt.28.01.15	947600	715707	231893
6.			47/2015 dt.30.01.15	974638	852104	122534
7.			49/2015 dt.30.01.15	966552	895749	70803
8.			50/2015 dt.30.01.15	1334494	1038616	285878
9.			54/2015 dt.30.01.15	955197	855272	99925
10.			55/2015 dt.30.01.15	1327155	1116146	211009
11.			56/2015 dt.30.01.15	1382775	995617	387158
12.			57/2015 dt.30.01.15	1078925	1000675	78250
13.			58/2015 dt.30.01.15	936579	754619	181960
14.			59/2015 dt.30.01.15	1339000	1209642	129358
15.			60/2015 dt.30.01.15	951000	808272	142728
16.			61/2015 dt.30.01.15	1239863	1187689	52174
17.			62/2015 dt.30.01.15	1465304	1221328	243976
18.			83/2015 dt.01.04.15	880650	810506	70144
19.			84/2015 dt.01.04.15	1326640	1270287	56353
20			85/2015 dt.01.04.15	648900	616577	32323
21.			86/2015 dt.01.04.15	981165	935354	45811

22.			87/2015 dt.01.04.15	718116	676917	41199
23.			90/2015 dt.01.04.15	882504	735527	146977
24.			133/2015dt.01.04.15	803622	800896	2726
25.			301/2015dt.21.04.15	479980	478051	1929
26.			335/2015dt.21.04.15	494400	424831	69569
27.			336/2015dt.21.04.15	494400	466215	28185
28.			337/2015dt.21.04.15	453859	448402	5457
29.			338/2015dt.21.04.15	138432	135925	2507
30.			339/2015dt.21.04.15	332175	311227	20948
31			341/2015dt.21.04.15	118656	115349	3307
32.			343/2015dt.21.04.15	236900	229990	6910
33.			344/2015dt.21.04.15	485316	484109	1207
34.			347/2015dt.21.04.15	1691466	1540514	150952
35.			351/2015dt.21.04.15	593280	558438	34842
36.			382/2015dt.01.05.15	865200	772980	92220
37.			383/2015dt.01.05.15	963869	948502	15367
38.			384/2015dt.01.05.15	468650	286960	181690
39.			421/2015dt.13.05.15	487190	373933	113257
40.			456/2015dt.28.05.15	478950	441243	37707
41.			457/2015dt.28.05.15	478951	454264	24687
42.			458/2015dt.28.05.15	468909	392942	75967
43			459/2015dt.28.05.15	499097	490903	8194
44.			460/2015dt.28.05.15	478126	470686	7440
45.			461/2015dt.28.05.15	325223	304382	20841
46.			462/2015dt.28.05.15	486290	479275	7015
47.			463/2015dt.28.05.15	363384	343951	19793
48.			521/2015dt.04.06.15	594825	459969	134856
49.			522/2015dt.04.06.15	580261	503012	77249
50.			605/2015dt.22.06.15	3808363	3697931	110432
51.			690/2015dt.07.07.15	210738	207546	3192

52.			790/2015dt.30.07.15	862215	770695	91520
53.			792/2015dt.30.07.15	638600	607741	30859
54.			793/2015dt.30.07.15	535600	534445	1155
55.			794/2015dt.30.07.15	642328	637939	4389
56.			795/2015dt.30.07.15	564286	561842	2444
57.			796/2015dt.30.07.15	698403	679093	19310
58.			797/2015dt.30.07.15	882762	757078	125684
59.			808/2015dt.04.08.15	1401869	1372689	29180
60.			809/2015dt.04.08.15	796293	769219	27074
61.			821/2015dt.06.08.15	700400	622249	78151
62.			822/2015dt.06.08.15	659200	608421	50779
63.			823/2015dt.06.08.15	772500	706078	66422
64.			831/2015dt.06.08.15	1457833	1345860	111973
65.			840/2015dt.12.08.15	952879	891372	61507
66.			841/2015dt.12.08.15	1026138	803057	223081
67.			844/2015dt.12.08.15	669500	625287	44213
68.			845/2015dt.12.08.15	597400	566971	30429
69.			846/2015dt.12.08.15	1396402	1340502	55900
70.			864/2015dt.12.08.15	1971860	1754943	216916
71.			879/2015dt.19.08.15	797008	789813	7195
72.			880/2015dt.19.08.15	955815	889018	66797
73.			881/2015dt.19.08.15	1021480	791346	230134
74			882/2015dt.19.08.15	726841	717843	8998
75.			883/2015dt.19.08.15	573484	536939	36545
76.			924/2015dt.21.08.15	1469913	1426647	43266
77			925/2015dt.21.08.15	1402860	1356204	46656
78.			878/2015dt.19.08.15	1470700	1287120	183580
79.			1011/2015dt09.09.15	518873	514569	4304
80.			1018/2015dt10.09.15	1020087	911036	109051
81.			1064/2015dt16.09.15	540750	503454	37296

82.			1065/2015dt16.09.15	974895	889035	85860
83.			1066/2015dt16.09.15	894032	839718	54314
84.			1103/2015dt22.09.15	1208190	1042828	165362
85			1104/2015dt22.09.15	990654	948531	42123

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 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. The Applicants was permitted by the Commissioner to clear duty paid goods for export from their registered dealer's premises under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE (NT) dated 06.09.2004.

3. The adjudicating authority vide the aforesaid Orders (shown in Column 4 of the table) rejected some portion of the rebate claims on the ground that the excess payment was made in some of the ARE-1s, where assessable value is more compared to the FOB value of the shipping bill, the difference is attributable to the cost of transportation and the amount of duty involved on the cost of transportation worked out as an excess payment. Since the Applicants are Registered Dealer, they do not have any Cenvat Credit account and hence the excess payment cannot be returned back in form of Cenvat Credit, and sanctioned only the amount as shown in the above table at Column 6. Aggrieved by the said Order, 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 the adjudicating authority erred in rejecting the balance outright on the ground that they did not hold a Cenvat credit account. Relying on Sterling ruling 2009(236)ELT143(Tri-Chennai),

Commissioner Appeal ordered that the difference between the duty debited and the cash refund is to be allowed as re-credit at the same entry in RG23-D in each case.

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, he 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 Commissioner Appeals has gone into the extent of refunding the excess duty paid to be re-credited in the way it is paid to the Cenvat account – RG23-D to satisfy that no duty amount is retained by the Revenue, even though it is of no use to the applicant since they are a dealer and not a manufacturer. This would hamper the applicant from being competitive in the International Market in procuring the export orders. He should have allowed the differential amount as credit to the manufacturer's who supplied the goods to them and who could use the same for future transactions.

l) 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.

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 Orders-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.

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 8.5 to 8.7 has observed that:

"8.5. .....The restriction of cash refund to the duty assessed on FOB value, has been consistently laid down by the Revisionary Authority in a catena of rulings, notably the Mahindra Reva Electric Vehicle [2014(314) ELT 972(GOI)]: Narendra Plastic [2014(313) ELT 833(GOI)] and Unique

Pharmaceutical Laboratories [2013(295) ELT 129(GOI)] cases. Therefore, the lower authority has correctly held that the cash refund is restricted to the duty assessed on FOB value.

8.6 However, the lower authority erred in rejecting the balance, outright on the ground that the appellant did not hold a credit account. This is contradictory to the findings recorded at relevant para of the impugned order(s), to the effect that the field officers verified the entries, in the RG-23D, which is the credit account maintained by the appellant. In terms of the Revisionary Authority ruling cited supra, the rejection of the impugned portion of the claim is not legally sustainable and has to be set aside. The difference between the duty debited and the cash refund is to be allowed as re-credit at the same entry at RG23-D in each case. It is so ordered. This would also be consistent, with the Sterlite ruling (supra), relied upon by the appellant, since the whole of the duty paid would stand refunded, partly in cash and partly as credit.

8.7 This raises the question of having a credit balance in RG-23D, against the entry where goods have been exported and physically unavailable. The Rule 5 of the CCR 2004 applies only to manufacturers and service providers. Therefore, there exists no legal provision under which this residue can be encashed and I find that in its absence, no relief can be sought from the Appellate Commissioner under the fiscal statute, a creature of the same statute. For the same reason, I am compelled to depart from the view taken in the previous cases for settling the re-credited portion with the manufacturers by means of credit notes, since this procedure has no legal sanction and is also beyond the jurisdiction of the claims proper....."

17. Government finds that Commissioner Appeal's decision is proper in respect to the rebate sanctioned in cash which is restricted to the duty assessed on FOB value. Government also agrees to the decision of re-crediting the difference amount at the same entry at RG23-D as this is their Cenvat documents. How this credit is to be settled between the applicant and the respective manufacturers is for them to decide in accordance with the law.

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

29/10/21

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

ORDER No. 431-515/2021-CX (WZ)/ASRA/Mumbai DATED 29.10.2021

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. Notice Board.