REGISTERED SPEED POST AD

सत्यमेव जयते

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. 195/1667/12-RA / 963
F. No. 195/535/13-RA

Date of Issue: 29.01.2021

ORDER NO. 44-45 /2021-CX (WZ) /ASRA/MUMBAI DATED 29.01.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Intas Pharmaceuticals Ltd.
Plot No. 457 & 458,
Village Matoda,
Taluka Sanand,
Dist. Ahmedabad

Respondent : Commissioner of CGST & CX, Belapur

Subject: Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. BC/277/RGD/2012-13 dated 25.09.2012 & OIA No. BC/474/RGD/2012-13 dated 21.12.2012 passed by Commissioner(Appeals), Central Excise, Mumbai-III

Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt. of India
Mumbai

ORDER

These revision applications have been filed by M/s Intas Pharmaceuticals Ltd., Plot No. 457 & 458, Village Matoda, Taluka Sanand, Dist. Ahmedabad(hereinafter referred to as "the applicant") against OIA No. OIA No. BC/277/RGD/2012-13 dated 25.09.2012 & OIA No. BC/474/RGD/2012-13 dated 21.12.2012 passed by Commissioner(Appeals), Central Excise, Mumbai-III.

2.1 The applicant is a manufacturer exporter and had filed rebate claims under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 for duty paid on goods exported. It was observed that in respect of all the rebate claims the applicant had paid CENVAT duty @ 10.3% adv. as per Notification No. 2/2008-CE dated 01.03.2008 as amended instead of the effective rate of 5.15% adv. prescribed under Notification No. 09/2011-CE dated 01.03.2011. Accordingly, the rebate sanctioning authority had while sanctioning the rebate, restricted the rebate claims to the extent of 5.15% adv. in respect of all the rebate claims. Accordingly the Deputy Commissioner vide OIO No. 10/11-12/DC(Rebate)/Raigad dated 03.04.2012 sanctioned rebate for Rs. 11,85,952/- as against rebate claimed of Rs. 21,00,680/-.

2.2 Aggrieved the applicant filed appeal before the Commissioner(Appeals). Commissioner(Appeals) found that during the relevant period Notification No. 09/2011-CE as amended provided for duty @ 5% while Notification No. 02/2008-CE as amended provided duty @ 10%. He further observed that Notification No. 02/2008-CE had been issued to prescribe tariff rate of duty @ 10% adv. and Notification No. 09/2011-CE had been issued to prescribe effective rate of duty @ 5% adv to be paid on clearances of the goods. The rate of duty on inputs during the period was 8% and 10% whereas the rate of duty on finished goods was 5%. He observed that manufacturers were accumulating CENVAT credit on inputs used in the manufacture of goods. Therefore, in order to encash the said credit, the applicant had paid duty on export goods @ 10% adv. The Commissioner(Appeals) placed reliance on the judgments of the Hon'ble High Court of Punjab & Haryana in the case of Nahar

Industrial Enterprises Ltd.[2009(235)ELT 22(P&H)] and Reva Electric Car Co. P. Ltd. vs. CCE, Bangalore[2010(251)ELT 45(Tri-Bang)] to infer that refund of accumulated credit under Rule 5 of the CCR, 2004 was not admissible because rate of duty on inputs was higher than the rate of duty on final goods when goods were exported. The Commissioner(Appeals) referred the provisions of Rule 18 of the CER, 2002, Notification No. 19/2004-CE(NT) dated 06.09.2004, Rule 19 of the CER, 2002 and Rule 5 of the CCR, 2004 and came to the conclusion that there is no provision for refund of CENVAT credit balance if the inputs are not used in the manufacture of export goods. He placed reliance on the judgments in the case of Purvi Fabrics & Texturise (P) Ltd. vs. CCE[2004(172)ELT 321(Tri-Del)], CCE vs. Rama Industries[2009(238)ELT 778(Tri-Del)] and Futura Fibres vs. CCE[2009(233)ELT 466(Tri-Chen)]. The Commissioner(Appeals) averred that if the applicant felt that the rebate @ 5.15% duty was less than the duty paid on their inputs, they could have opted for the brand rate of drawback fixed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 equal to duties and service tax paid on the inputs and taxable services used but could not have encashed the unutilized CENVAT credit through rebate route. In the light of these findings, the Commissioner(Appeals) vide his OIA No. BC/277/RGD/2012-13 dated 25.09.2012 held that the applicant was eligible for cash refund of duty equal to duty payable at the effective rate of 5.15% during the relevant period and the remaining portion of duty be allowed as credit in their CENVAT account.

2.3 Aggrieved by the OIA No. BC/277/RGD/2012-13 dated 25.09.2012, the applicant filed revision application on the following grounds:

(a) For medicaments of heading 3004 of the First Schedule to the CETA, the government had issued two different notifications; viz. notification no. 04/2006-CE dated 01.03.2006 with entry no. 62C whereunder medicaments under heading no. 3004 of the First Schedule to the CETA are chargeable to central excise duty @ 4.12%(5.15% as amended) adv. and notification no. 02/2008-CE dated 01.03.2008 with entry no. 21 whereunder the same medicaments of heading 3004 of the First Schedule to the CETA were chargeable to central excise duty @ 10.30% adv. It was

inferred that this meant that the applicants had the option of two different tariff notifications both being approved by the parliament for the same medicaments of heading 3004 of the First Schedule to the CETA.

(b) Reliance was placed upon the judgments in the case of Mangalam Alloys Ltd. vs. CCE, Ahmedabad[2010(255)ELT 124(Tri-Ahmd)], CCE, Baroda vs. Indian Petrochemicals Corporation Ltd.[1997(92)ELT 13(SC)], HCL Ltd. vs. CCE, New Delhi[2001(130)ELT 405(SC)] and Share Medical Care vs. UOI[2007(209)ELT 321(SC)].

(c) It was averred that it was upto the applicants to select a particular notification out of two notifications enacted by the parliament and the Department cannot chose any one notification out of the two and grant lesser rebate.

(d) It was pointed out that in terms of para 7.2 of Chapter 9 of the Supplementary Instructions, a refund or rebate is always to be given by cheque and the adjudicating authority does not have any jurisdiction to allow rebate by way of CENVAT credit in the credit account of the applicant. Therefore, the order of the adjudicating authority granting rebate by way of CENVAT credit was bad in law.

(e) The applicant drew attention to the CBEC Circular No. 795/28/2004-CX dated 28.07.2004 which was in favour of the applicant. They also pointed out that Circular No. 937/27/2010-CX dated 26.11.2010 stood overruled by the decision of the CESTAT in the case of Hyva (India) Pvt. Ltd. vs. CCE, Belapur[2010-TIOL-1410-CESTAT-MUM].

(f) The Commissioner(Appeals) has in the OIA pointed out the budget speech of the Finance Minister and averred that the purpose and object of keeping duty rate of pharmaceuticals at the rate of 4% was to keep the price of pharmaceuticals as low as possible and therefore it cannot be the intention of the government to export goods at a higher price as exports were a priority area. The applicant argued that this argument was unreasonable as the foreign buyer was not going to pay the said duty element but the same was going to be returned back by the central government to the exporter. The applicant contended that this argument of the Commissioner(Appeals) was contradictory in as much as

reducing the rebate claim to just 5.15% duty, the cost of the export goods has increased.

(g) The applicant further argued that since there was delay in sanction of rebate, they should be paid interest under Section 11BB of the CEA, 1944.

3.1 In another set of proceedings, the applicants had filed rebate claims under the provisions of Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 in respect of goods exported by them. The adjudicating authority vide OIO No. 815/11-12/DC(Rebate)/Raigad dated 07.06.2012 partly sanctioned the rebate claim for an amount of Rs. 1,70,904/-. The claim in respect of rebate claim no. 15985/2010-11 dated 27.10.2010, ARE-1 No. 1762 dated 31.03.2010 was partially rejected in respect of goods covered under shipping bill no. 8324191 dated 03.04.2010 as the applicants had failed to produce self-attested copy of the shipping bill relevant to the said rebate claim and also partially allowed rebate in respect of goods covered under shipping bill no. 8325106 and 8325997 both dated 05.04.2010 at the rate of 4.12% instead of 10.3% on the FOB value of the goods.

3.2 Being aggrieved by the OIO No. 815/11-12/DC(Rebate)/Raigad dated 07.06.2012, the applicant filed appeal before the Commissioner(Appeals). On taking up the case for decision, the Commissioner(Appeals) observed that the export under claim of rebate is governed by the provisions of Notification No. 19/2004-CE(NT) dated 06.09.2004 and para 8.3 thereof provides that original copy of ARE-1, invoice issued under Rule 11, self attested copy of shipping bill, self attested copy of bill of lading and disclaimer certificate were required for filing rebate claim. Therefore, submission of self-attested copy of shipping bill was compulsory and it was one of the basic documents for filing rebate claim. He further observed that non-following of conditions was not merely a procedural lapse but was a mandatory requirement. In the absence of these documents, the rebate sanctioning authority could not have satisfied himself as to whether duty paid goods mentioned in the relevant ARE-1 had been exported or otherwise. In this regard, Commissioner(Appeals) placed reliance upon the judgments in the case of Steel Strips[2011(269)ELT 257(Tri-LB)] &

GOI Order No. 1034/2011-CX dated 12.08.2011 in the case of Zandu Chemicals Ltd.

3.3 With regard to the duty paid in excess of 4% and 5%, the Commissioner(Appeals) found that during the period upto 28.02.2011, notification no. 4/2006-CE dated 01.03.2006 as amended provided for 4% duty and from 01.03.2011 onwards it provided for 5% duty whereas notification no. 02/2008-CE dated 01.03.2008 as amended provided for 10% duty. He then noted that the duty on inputs during the relevant period was 8%/10% whereas the duty on the finished product was 4% and 5%. Since the rate of duty on the finished products was less than the duty on the inputs, the manufacturers were accumulating CENVAT credit on inputs used in the manufacture of goods and in order to encash the said credit through the rebate route they had paid duty @ 10% on the export goods. In this regard, the Commissioner(Appeals) observed that the purpose of granting rebate under CER, 2002 is not to grant accumulated CENVAT credit in cash. He therefore held that the applicant was eligible for cash refund only to the extent of duty payable at the effective rate of 4% during the relevant period.

3.4 In so far as the issue of whether rebate can be granted over and above the duty payable on FOB value, the Commissioner(Appeals) observed that the place of removal is the port and therefore the freight and insurance incurred for transport of the goods and other charges incurred beyond the port of export are not required to be included in the transaction value. He found that the applicant had paid excess duty on the value which was inclusive of freight and other expenses incurred beyond the place of removal. He further observed that the CBEC Circular No. 510/06/2000-CX dated 03.02.2000 had clarified that duty on excisable goods is to be paid on the value determined in accordance with Section 4 of the Act. The Commissioner(Appeals) relied upon the judgment of the Hon'ble Punjab and Haryana High Court in the case of Nahar Industrial Enterprises Ltd. vs. UOI[2009(235)ELT 22(P&H)], Reva Electric Car Co. Pvt. Ltd. vs. CCE, Bangalore[2010(251)ELT 45(Tri-Bang)], Panacea Bio Tech Ltd.[2012(276)ELT 412(GOI)] and Order No. 1595/2012-CX dated 14.11.2012 to hold that any amount paid as excess

duty payable is to be treated as voluntary deposit with the Government and is to be returned in the CENVAT account of the manufacturer. Therefore, since the applicant in the case is a merchant exporter, the Commissioner(Appeals) vide his OIA No. BC/474/RGD/2012-13 dated 21.12.2012 allowed the excess amount paid as credit in the CENVAT credit account of the manufacturer.

3.5 The applicant was aggrieved by the OIA No. BC/474/RGD/2012-13 dated 21.12.2012 and therefore filed revision application on the following grounds:

(a) The entire goods covered under ARE-1 No. 1762 dated 31.03.2010 were cleared under Rule 18 of the CER, 2002 and that the applicants had paid the duty amount of Rs. 906324/-. The triplicate copy thereof had been verified by the Range Superintendent. So also the shipping bill no. 8325997, 8325106 & 8324191 dated 05.04.2010, 05.04.2010 & 03.04.2010 respectively had duly been endorsed by the customs officer on the reverse side of the ARE-1. Unfortunately shipping bill no. 8324191 dated 03.04.2010 bore reference of ARE-1 No. 1764 and 1662 instead of ARE-1 No. 1764 and ARE-1 No. 1762. They stated that although they had informed this fact through their letter dated 02.06.2011, no cognizance was taken and the rebate claim for Rs. 7,35,420/- was rejected.

(b) The applicants submitted that there was a typographical mistake while entering the data for the shipping bill. Instead of ARE-1 No. 1762, the entry was made for 1662. They pointed out that the ARE-1 No. 1762 dated 31.03.2010 bears the endorsement of shipping bill no. 8324191 dated 03.04.2010 and that it was a minor lapse. They contended that the Department should have placed reliance on and given equal importance to mate receipt no., container number, shipping bill no., export invoice no., description of goods, quantity, value in GBP & Indian Rupees by comparing ARE-1 No. 1762 with shipping bill no. 8324191 as almost all these documents contain the reference of each other.

(c) In order to substantiate their arguments, the applicant enclosed the documentation of ARE-1 No. 1764 dated 31.03.2010 and ARE-1 No. 1662 dated 24.03.2010. They contended that the goods covered under ARE-1 No. 1662 had been exported in full vide shipping bill no. 1157005 dated

23.03.2010 and not under shipping bill no. 8324191 dated 03.04.2010. They further stated that the proof of export submitted by them and the ARE-1 had also been signed by the customs officer. They therefore stated that there was no dispute about the export of the said goods except the incorrect endorsement of ARE-1 No. 1662 instead of ARE-1 No. 1762 in the shipping bill no. 8324191 dated 03.04.2010.

(d) In this regard they placed reliance upon the judgments in the case of UOI vs. Suksha International and Nutron Gems & Others[1989(39)ELT 503(SC)], Mangalore Chemicals and Fertilisers Ltd. vs. DCCE[1991(55)ELT 437(SC)], Cotfab Exports[2006(205)ELT 1027(GOI)], Munish International vs. UOI in the High Court of Punjab and Haryana to contend that substantive benefit is not to be denied for mere procedural infractions. The applicant also submitted that although the rebate claim had been submitted on 27.10.2010, the first letter of deficiency was raised only on 28.04.2011; i.e. after a lapse of 183 days. Therefore in view of the time limit set for sanction of rebate claim under Rule 18, they stated that they were also eligible for interest.

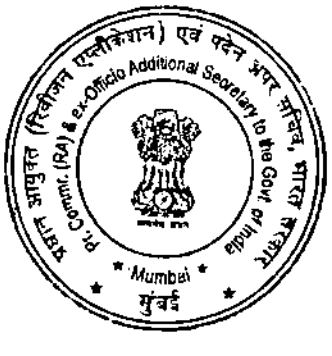
(e) The applicant submitted that in respect of medicaments under heading no. 3004 of the First Schedule to the CETA, the government had issued two different notifications; viz. Sr. No. 62-C of notification no. 04/2006-CE dated 01.03.2006 whereby the goods were chargeable to duty @ 5.15% adv. and Sr. No. 21 of notification no. 02/2008-CE dated 01.03.2008 whereby the goods were chargeable to duty @ 10.30% adv. It meant that there were two different notifications approved by the parliament for the same medicaments of heading 3004 of the First Schedule to the CETA, 1985. It was the applicants prerogative to choose the notification which was most beneficial to them.

(f) The applicant placed reliance upon the judgments in the case of Mangalam Alloys Ltd. vs. CCE, Ahmedabad[2010(255)ELT 124(Tri-Ahmd)], CCE, Baroda vs. Indian Petrochemicals Corporation Ltd.[1997(92)ELT 13(SC)], HCL Ltd. vs. CCE, New Delhi[2001(130)ELT 405(SC)] and Share Medical Care vs. UOI[2007(209)ELT 321(SC)].

(g) The applicant referred para 7.2 of Chapter 9 of the Supplementary Instructions which state that refund or rebate are always to be given on

by cheque and that the adjudicating authority does not have any jurisdiction to allow rebate by way of CENVAT credit in the credit account of the applicant. They therefore requested that the original authority be directed to refund the balance amount of rebate by cheque with interest at the appropriate rate under Section 11B of the CEA, 1944 read with Section 11BB. The applicant invited attention to Circular No. 795/28/2004-CX dated 28.07.2004 which was in their favour and also referred Circular No. 937/27/2010-CX dated 26.11.2010 which had been overruled by the decision of the Hon'ble CESTAT in the case titled Hyva (India) Pvt. Ltd. vs. CCE, Belapur[2010-TIOL-1410-CESTAT-MUM].

4. The applicant was granted a personal hearing in the matter on 27.11.2019. Ms. Anjali Hirawat, Advocate appeared on their behalf. She submitted that the issue involved in F. No. 195/535/13-RA(Revision Application against OIA No. BC/474/RGD/2012-13 dated 21.12.2012) and F. No. 195/1667/12-RA(Revision Application against OIA No. BC/277/RGD/2012-13 dated 25.09.2012) were similar and that they may be taken up for decision together. She further submitted that they were in appeal against a Government of India order on the same issue before the Hon'ble Gujarat High Court. With regard to the ARE-1 mismatch in the case covered under F. No. 195/535/13-RA, she submitted that it was a clerical/typographical error and explained facts from the excise invoice & Form C. She contended that it was a genuine mistake. Upon change in Revisionary Authority, the applicant was granted a fresh opportunity of being heard. Shri Rajesh Ostwal, Advocate appeared for personal hearing through video conferencing on 16.12.2020. He reiterated the submissions made by the applicant and stated that they were eligible to pay duty at higher rate for export and claim rebate thereof. He further submitted that in view of the provisions of Section 142(3) of the CGST Act, 2017, the excess CENVAT credit should be refunded to them in cash. They contended that they should not be denied the rebate claim in respect of the shipping bill for the typographical error which had occurred at their hands. Shri Rajesh Ostwal promised that he would file additional submissions within two days however no such submission has been received till date.



5. Government has carefully gone through the case records, the written submissions made by the applicant, their submissions at the time of personal hearing, the revision application filed by them, the impugned order and the order passed by the adjudicating authority. Government finds that the issues for decision in these revision applications are twofold; viz. whether the failure to supply self-attested copy of shipping bill, failure to endorse ARE-1 No. 1762 on shipping bill no. 8324191 dated 03.04.2010 would be fatal to the rebate claim involved on the goods exported under the said shipping bill and whether the applicant is entitled to choose to avail the benefit of notification no. 02/2008-CE dated 01.03.2008 as per which the goods are chargeable to duty @ 10.3% adv. when the same goods are cleared to domestic consumption availing notification no. 04/2006-CE dated 01.03.2006 as amended by notification no. 04/2011-CE dated 01.03.2011 as per which the goods are chargeable to duty @ 5.15% adv. The issue of the rebate claim filed by the applicant being restricted to the FOB value of the goods which have been exported has also been decided in the impugned order. However, the applicant has not made out any ground for relief against this part of the order. The applicant has in effect acquiesced to the findings of the lower authorities in this regard and therefore this issue does not merit further discussion.

6.1 The Notification No. 2/2008-CE dated 01.03.2008 issued under Section 5A(1) of the CEA, 1944 is a notification prescribing effective rate of duty for goods specified under first schedule to the CETA, 1985. The said notification was amended by Notification No. 58/2008-CE dated 7.12.2008 which reduced the effective rate of duty from 14% adv. to 10% adv. Thereafter, the effective rate of duty was further reduced from 10% adv. to 8% adv. by Notification No. 4/2009-CE dated 24.02.2009.

6.2 While presenting Budget 2010-11, the Finance Minister mentioned in his speech that "The improvement in our economic performance encourages a course of fiscal correction even as the global situation warrants caution. Therefore, I propose to partially roll back the rate reduction in Central Excise duties and enhance the standard rate on all non-petroleum products from 8 per cent to 10 per cent *ad valorem*." Accordingly, Notification No. 2/2008-CE

dated 01.03.2008 was amended by Notification No. 6/2010-CE dated 27.02.2010 and the effective rate of duty for the goods specified under the first schedule to the CETA, 1985 was enhanced from 8% adv. to 10% adv. Although, the Central Excise Notification No. 2/2008-CE, 58/2008-CE. 4/2009-CE and 6/2010 are issued under the power of Section 5A(1) of the CEA, 1944 which empowers the Central Government to exempt excisable goods of any description from the whole or any part of the duty of excise leviable thereon. However, it can be seen that by Notification No. 6/2010-CE dated 27.02.2010, the effective rate of duty was enhanced from 8% adv. to 10% adv.

6.3 It simply means that the standard rates of excise duty or merit rate are changed by the Central Government by issuing notification under the powers of Section 5A(1) of the CEA, 1944. At the same time, concessional rates of duty on all excisable goods are also effected by the Central Government through the notifications which are also issued under the powers of Section 5A(1) of the CEA, 1944. These concessional rates may be linked to some conditions.

7.1 As per the provisions of Para 4.1 of Part I of Chapter 8 of the Supplementary Manual, the goods cleared for export shall be assessed to duty in the same manner as the goods cleared for home consumption. In the case laws relied upon by the applicant, the appellate authority had held that when two exemption notifications are available, it is up to the assessee to choose the one which is beneficial to him. In the present case, the applicant had availed the benefit of two notifications simultaneously which was not permissible as per law. If two exemption notifications are in existence, it would be his prerogative to avail the one which is beneficial to him. The applicant could not have availed the benefit of two notifications simultaneously for the same goods without maintaining separate accounts of inputs. The applicant was entitled to the benefit of only one notification out of the two which was beneficial to him and pay duty accordingly. The benefit of both notifications

selectively without separate accounting of inputs cannot be availed simultaneously.

7.2 The availment of higher rate of CENVAT credit on the inputs utilised for the manufacture of medicaments entailed that only part of such CENVAT credit was being used to pay lower rate of duty on the final products cleared for home consumption by availing the benefit of exemption under Notification No. 4/2006-CE dated 01.03.2006 whereas the balance of the accumulated CENVAT credit on such inputs was used to pay duty on medicaments cleared for export at higher rate of duty in terms of Notification No. 2/2008-CE dated 01.03.2008 which specified the effective rate of duty. Such a practice would detract from the concept and purpose of the CENVAT scheme. When the applicant preferred to utilise two separate notifications for home consumption and export of the same goods, the CENVAT credit utilised for clearance of the exported goods was required to be restricted to the proportion of inputs utilised in their manufacture. Concept of tax on export to be zero rated cannot mean that tax not concerning with export is loaded on export goods somehow to encash the same. Alternatively, the applicant should have maintained separate account for the inputs utilised in the manufacture of exported goods and claimed rebate at higher rate utilising CENVAT credit on such inputs used in the manufacture of such goods.

7.3 Ratio laid down by the judgment of the Hon'ble Gujarat High Court in the case of Arvind Ltd. vs. UOI[2014(300)ELT 481(Guj.)] which has thereafter been affirmed by the Hon'ble Supreme Court[2017(352)ELT A21(SC)] is relevant here. In that case, inspite of there being an exemption notification which fully exempted their goods, Arvind Ltd. had availed the benefit of Notification No. 59/2008-CE dated 07.12.2008 and paid duty on the export goods. The relevant portion of the said judgment of the Hon'ble Gujarat High Court is reproduced below.

"9. On, thus, ...It is, thus, an undisputed fact that the petitioner on final products discharged the duty liability by availing the

benefit of Notification No. 59/2008 and as has already been noted in the record, it has reversed the amount of Cenvat credit taken by it on the inputs used for manufacturing of such products. Thus, when the petitioner is not liable to pay duty in light of the absolute exemption granted under Notification No. 29/2004 as amended by Notification No. 59/2008-C.E. read with the provision of Section 5A(1A) of the Act and when it has not got any other benefit in this case, other than the export promotion benefits granted under the appropriate provision of the Customs Act and Rules (which even otherwise he was entitled to without having made such payment of duty), we are of the firm opinion that all the authorities have committed serious error in denying the rebate claims filed by the petitioner under Section 11B of the Act read with Rule 18 of the Rules. The treatment to the entire issue, according to us, is more technical rather than in substance and that too is based on no rationale at all.

10. We also cannot be oblivious of the fact that in various other cases, the other assessees have been given refund/rebate of the duty paid on inputs used in exported goods. ……."

7.4 In the above judgment, Hon'ble High Court has laid down that when there are two exemption notifications which co-exist, the assessee can avail one for domestic clearances and the other one which is beneficial to them for export so as to obtain refund/rebate of duty paid on inputs used in the exported goods(emphasis supplied). Thus, as long as, intent is to get refund/rebate of duty paid on inputs consumed in exported goods, exporter can choose to pay higher rate of duty on exported goods, even if it is an effective rate. Hon'ble High Court has not decided that an applicant while paying higher duty on exported goods can utilise the CENVAT credit not related to inputs consumed/used in exported goods but accumulated due to availment of another notification prescribing lower rate of duty for domestic clearances. This would result in encashment of accumulated credit not related to inputs consumed/used in exported goods.

7.5 In the instant case, since applicant did not maintain separate accounts for utilising inputs while availing concessional rate for domestic clearances and paying duty at effective rate while exporting, the applicant was required

to follow provisions of Supplementary Manual, and the goods cleared for export were required to be assessed to duty in the same manner as the goods cleared for home consumption.

8. It is observed that the applicant has pleaded at length regarding the fact that there was a typographical mistake while entering the data for shipping bill no. 8324191 and that the entry made thereon as ARE-1 No. 1662 was an error. The applicant has produced several evidences to corroborate their submission that the goods exported under the said shipping bill were in fact covered under ARE-1 No. 1762/09-10 dated 31.03.2010. The contentions of the Department that the applicant has not submitted self-attested copy of shipping bill is also a curable defect. It is seen that there are a plethora of judgments which hold that procedural infractions should be condoned if exports have actually taken place and the law is settled that substantive benefit cannot be denied for procedural lapses. In this view, Government finds considerable force in the contention of the applicant that the rebate claim should be considered for sanction after confirming whether the documents substantiate the submissions of the applicant asserting it to be a typographical mistake.

9. The applicant has also made some arguments about the fact that with the implementation of GST, allowing re-credit of the excess duty paid was no longer an option. They have also drawn attention to GST Circular No. 37/11/2018-GST dated 15.03.2018 wherein it has been clarified that post 1st July 2017, any amount allowable as re-credit of CENVAT credit has to be granted as cash refund in terms of Section 142(3) of the CGST Act, 2017. Be that as it may, Government seeks to emphasise that the present proceedings are in exercise of the powers vested in terms of Section 35EE of the CEA, 1944 and must be exercised within the framework of the Central Excise Act, 1944. The provisions of the CGST Act, 2017 are not exercisable in revision proceedings. Therefore, the relief in this regard can not be entertained at this stage.

11. In the light of the findings recorded above, Government does not find sufficient ground to modify the OIA No. BC/277/RGD/2012-13 dated 25.09.2012 & OIA No. BC/474/RGD/2012-13 dated 21.12.2012 passed by Commissioner(Appeals), Central Excise, Mumbai-III except with reference to Shipping Bill no. 8324191 dated 03.04.2010. For this shipping bill, Government directs the original authority to consider the rebate claims for sanction after examining the documents submitted by them to co-relate the shipping bill no. 8324191 dated 03.04.2010 with ARE-1 No. 1764 within a period of six weeks from receipt of this order.

12. The revision applications are disposed off in the above terms.

Shrawan 19/01/21

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

ORDER No. 44-45 /2021-CX (WZ) /ASRA/Mumbai DATED 19.01.2021

To,
M/s Intas Pharmaceuticals Ltd.
Plot No. 457 & 458,
Village Matoda,
Taluka Sanand,
District Ahmedabad,
Gujarat – 382 210

Copy to:

1. The Commissioner of CGST & CX, Belapur Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Raigad
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy