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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
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Mumbai- 400 005

F.No.195/363-379/15-RA/2086 Date of Issue: 18.07.2022

683-699

ORDER NO. /2022-CX (SZ)/ASRA/MUMBAI DATED 14.07.2022OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Aurobindo Pharma Limited

Respondent: Commissioner of Central Excise, Hyderabad-I

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. HYD-CEX-001-APP-002 to 018-15-16 dated Aug'15 passed by the Commissioner, Customs & Central Excise(Appeals), Hyderabad.

ORDER

Seventeen Revision Applications have been filed by the M/s. Aurobindo Pharma Limited (Unit-VIII), Survey No.13,Gaddapotharam, IDA, Kazipally Industrial Area, Jinnaram Mandal, Medak District – 502319 (hereinafter referred to as "the Applicant") against the following Orders-in-Appeal passed by the Commissioner, Customs &Central Excise(Appeals), Hyderabad:-

	OIA No./Date	OIO No./Date	Amount of rebate rejected (in Rs.)
1	HYD-CEX-001-APP-002-15-16-CE/ 07-08-2015	660/13-14-R/AC/Hyd-B Division/ 09-12-2013	3,28,528
2	HYD-CEX-001-APP-003-15-16-CE/ 10-08-2015	703/13-14-R/AC/Hyd-B Division/ 27-12-2013	45,010
3	HYD-CEX-001-APP-004-15-16-CE/ 10-08-2015	679/13-14-R/AC/Hyd-B Division/ 12-12-2013	2,55,788
4	HYD-CEX-001-APP-005-15-16-CE/ 10-08-2015	680/13-14-R/AC/Hyd-B Division/ 12-12-2013	1,55,389
5	HYD-CEX-001-APP-006-15-16-CE/ 10-08-2015	704/13-14-R/AC/Hyd-B Division/ 27-12-2013	2,04,144
6	HYD-CEX-001-APP-007-15-16-CE/ 12-08-2015	713/13-14-R/AC/Hyd-B Division/ 31-12-2013	2,14,666
7	HYD-CEX-001-APP-008-15-16-CE/ 12-08-2015	715/13-14-R/AC/Hyd-B Division/ 31-12-2013	13,63,603
8	HYD-CEX-001-APP-009-15-16-CE/ 12-08-2015	702/13-14-R/AC/Hyd-B Division/ 27-12-2013	65,593
9	HYD-CEX-001-APP-010-15-16-CE/ 12-08-2015	705/13-14-R/AC/Hyd-B Division/ 27-12-2013	1,26,929
10	HYD-CEX-001-APP-011-15-16-CE/12-08-2015	706/13-14-R/AC/Hyd-B Division/ 27-12-2013	1,57,490
11	HYD-CEX-001-APP-012-15-16-CE/12-08-2015	720/13-14-R/AC/Hyd-B Division/ 10-01-2014	1,93,636
12	HYD-CEX-001-APP-013-15-16-CE/ 12-08-2015	721/13-14-R/AC/Hyd-B Division/ 10-01-2014	2,18,689
13	HYD-CEX-001-APP-014-15-16-CE/ 12-08-2015	722/13-14-R/AC/Hyd-B Division/ 10-01-2014	2,31,350
14	HYD-CEX-001-APP-015-15-16-CE/ 14-08-2015	723/13-14-R/AC/Hyd-B Division/ 10-01-2014	56,328
15	HYD-CEX-001-APP-016-15-16-CE/ 14-08-2015	726/13-14-R/AC/Hyd-B Division/ 10-01-2014	3,37,369
16	HYD-CEX-001-APP-017-15-16-CE/ 14-08-2015	777/13-14-R/AC/Hyd-B Division/ 12-02-2014	13,93,925
17	HYD-CEX-001-APP-018-15-16-CE/ 14-08-2015	778/13-14-R/AC/Hyd-B Division/ 12-02-2014	3,16,756

2. Brief facts of the case are that the Applicant, a manufacturer exporter of medicaments falling under Chapter Heading No. 3004, had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The rebate sanctioning authority sanctioned the rebate claims, adopting FOB value as transaction value, vide 17 Orders-in-Original as detailed at aforementioned table. However, the Department filed appeals against the OIOs on the ground that when there are no domestic sales of the goods exported, transaction value is to be determined under cost construction method and rebate should be sanctioned on the value so arrived at and consequently excess rebate sanctioned (as detailed at aforementioned table) should be recovered alongwith interest. The appeals were allowed by the Appellate authority vide impugned Orders-in Appeal.

3. Hence, the Applicant has filed the impugned Revision Applications mainly on the following grounds:

i. In the findings the appellate authority has also considered the Board's Circulars No. 203/37/960-CX dated 26.4.1996 and510/06/2000-CX dated 02.02.2000. It is the contention of the applicant that the said Board Circular No. 510/06/2000-CX dated 03.02.2000 clearly clarifies that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of duty paid on the export covered by a claim. In view of this clarification the appellate authority held that the transaction value again should be arrived at in terms of Section 4(1)(b) of CEA, 1944 which is not correct as per law. The Board in their Circular No. 354/81/2000-TRU dated 30.6.2000 has further categorically stated that the following requirements are to be satisfied for applicability of transaction value in a given case for assessment purpose.

a. The goods are sold by an assessee for delivery at the time of place of removal. The term place of removal has been defined basically to mean a factory or a warehouse.
b. The assessee and the buyer of the goods are not related; and
c. The price is sole consideration for the sale.

ii. In the present case the applicant and buyer are not related and the place of removal is factory. Further the price is the sole consideration in the absence of evidence of any flow back. The applicant has also realized the sale value of the products exported through the normal banking channels.

iii. In view of the above, the contention of the appellate authority holding that the transaction value is to be arrived in terms of Section 4(1)(b) of CEA, 1944 read with Central Excise Valuation Rules is not tenable.

iv. On this point the applicant rely on the following case law:

Narendra Plastic Pvt. Ltd. reported in 2014 (311) E.L.T. 958 (G.O.I.). An extract of the para 9.7 is furnished below:

"9.7 Government observes that the respondent in their counter reply relied upon the C.B.E. & C. Circular 203/37/96-CX, dated 26-4-1996 and Circular No. 510/06/2000-CX, dated 3-2-2000. In this regard, the Government observes that w.e.f. 1-7-2000, the concept of transaction value was introduced for valuation of goods under Central Excise Act. Though the C.B.E. & C. Circular 203/37/96-CX, dated 26-4-1996 was issued when transaction value concept was not introduced yet the said circular clearly states that AR4 value of excisable goods should be determined under Section 4 of Central Excise Act, 1944 which is required to be mentioned on the Central Excise invoices. Even now the ARE-I value is to be the value of excisable goods determined und Section 4 of Central Excise Act, 1944 i.e. the transaction value defined in Section 4(3)(d) of Central Excise Act. C.B.E. & C has further reiterated in its

subsequent Circular No. 510/06/2000-CX, dated 3-2-2000that as clarified in circular dated 26-4-1996 the AR4 value is to be determined under Section 4 of Central Excise Act, 1944 this value is relevant for the purpose of Rules 12 and 13 of Central Excise Rules. The AR4 and Rule 12/13 are now replaced by ARE-I and Rule 18/19 of Central Excise Rules, 2002. It has been stipulated Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and the C.B.E.&C" Circular No. 510/06/2000-CX, dated 3-2-2000 that rebate of whole of duty paid on all excisable goods will be granted"

v. In the written submissions made at the time of personal hearing before the Appellate Authority by the applicant, it was stated that the Order-in-Appeal Dt. 30.04,2013 attained finality and the GOI Order No. 1412-1413 /13 CX dated 19.12.2013 on the basis of which the revenue have filed the impugned appeal before the Commissioner (Appeals) has been set aside by the Hon'ble High Court of Delhi vide its order dated 14.8.2014. This aspect is not at all considered and discussed by the Appellate authority. Hence the impugned order is not tenable. Further as it stands now the above said Delhi High Court dated 14.8.2014 has not been appealed by the Revenue and as such it reached finality.

vi. In all the impugned OIOs (Rebate sanction orders), the original authority relied upon the OIA No. 6/2013(H-I)(D)CE dated 30.04.2013 passed by the Commissioner (Appeals I & III), Hyderabad relating to the same issue of the same respondent (i.e., M/s. Aurobindo Pharma Limited, Unit VIII) in the earlier rebate claims filed by them and the said Order in Appeal dated 30.4.2013 has reached finality and as such the Order in Original has to be upheld. In this connection Para 11 of the Order in Appeal dated 30.4.2013 is reproduced for convenience of ready reference:

"Para11: Moreover, the appeal of the department is based on the premise that the sale of the goods removed for exports was taking place in the

foreign territory/soil and hence the value of the goods for export had to be determined as per valuation rules framed under Section 4(1)(b) of CEA. I am in complete disagreement to the presumption of the department that the sale of the goods for export was taking place in foreign soil. Although as per Section 4(3)(c)(iii) , the place or removal can be any other or premises from where sale takes place, it cannot be construed that the sale in respect of the goods exported took place out of Indian territory, since the Central Excise Act, 1944 is applicable within the geographical limits of India. Further, in respect of the goods exported, the sale takes place at the port of export, which is to be treated as the place of removal. In fact the sale takes place when the export documents are submitted to the Customs authorities. In this regard I rely on the following decision ..... (Emphasis Supplied)".

vii. The applicants (as respondent in the Revenue Appeal) argued before the Commissioner (Appeals) that the stand taken by the Revenue for rejecting the rebate claim in the present rebate proceedings is totally different as explained in Para 4 of the grounds of appeal filed before the Commissioner (Appeals) and as such it is the contention of the respondent that there is no consistency in the stand taken by the Department and as such the Commissioner(Appeals) has not given any findings on the plea taken by the respondent and the impugned Order in Appeal is not sustainable.

4. A Personal hearing was held in this case on 02.03.2022. Shri N.Ram Reddy, Advocate appeared on behalf of the Applicant for the online hearing and reiterated their earlier submissions. He submitted that Applicant should be given rebate of duty paid on FOB value. He submitted that copies of several case laws have been submitted.

5. In the additional submissions, the Applicant has inter alia contended that:

i. The Respondent relied upon 4 orders passed by R.A. in para 8 of the impugned order.

(i) In the 1st case Hindustan Zinc. Ltd, (2014 (313) E.L.T 854 (G.O.I.) the value claimed for rebate was 3 times the nearest

value for the goods cleared to DTA. The Respondent erred in relying upon the case law.

(ii) In the 2nd case Bhagirth Textiles Ltd reported in 2006;(202) E.L.T.147 (G.O.I.) export proceeds were realized less and the assessee accepted, which is not relevant.

(iii) In the 3rd case GPI Textiles Ltd. reported in 2013 (297) E.L.T.309 (G.O.I.) in para 9 it is held that FOB value. It is against Revenue and in favour of this applicant.

(iv) In the 4th case Maral Overseas Ltd reported in 2012 (277) E.L.T. 412 (G.O.I.), the applicant claimed rebate on CIF value which is not relevant.

ii. The Respondent relied upon case laws which are not relevant. This applicant was sanctioned rebate on F.O.B. Value and the applicant relies upon the observations of the Government of India IN RE: Mahindra Reva Electric Vehicles Pvt. Ltd-2014 (314) E.L.T. 972 (G.O.I.) has held that inbuilt provisions under notification 19/2004 (C.E) prevail over circular dated 03-02-2000. Rebate sanctioned on FOB value is proper. Relevant para is reproduced below.

> 10. Any other plea of scope of limits of rebate sanctioning authority as not to check the correctness of assessments. In this regard it is emphasized that when cited case laws are read along with M/S. Jain Shudh Vanaspati Ltd. case - [1996 (86) E.L. T. 460 (S.C.)], in proper perspective then it is transpired that when there are inbuilt provisions in separate self-sufficient rebate sanctioning provisions then the rebate sanctioning authority should neither wait nor depend upon any other action of review process or otherwise by any jurisdictional authority.

iii. When in the grounds of appeal, the department relied upon the Order No.1412-1413/13-Cx dated 19-12-2013 passed by the Government of India in the case DRL Vs. Hyd-IV and the same is set aside by the Hon'ble High Court of Delhi, the Respondent erred in passing the order in favour of Revenue. The

Hon'ble High Court of Delhi in the case of DR. REDDY'S LABORATORIES LTD. Versus UNION OF INDIA reported in 2014 (309) ELT.423 considered the scope of Rule 18. The observations of Hon'ble High Court which are relevant for this application are:

a The stated purpose of Rule 18 is revenue neutrality

b Rule 18 ensures any duty paid is returned, and that excise duty is not added to the cost of exports who are selling abroad.

c A lower price cannot be mandated on revaluation for the purpose of refunding that very amount when a higher price is accepted at the time of payment of duty.

(iv) In the following cases Revisionary Authority upheld the sanctioning of rebate on FOB value.

a) IN RE: Electro Steel Casting Ltd. 2015 (321) E.L.T.150 (G.O.I.)
b) IN RE: Marol Overseas Ltd. reported in 2014 (314) E.L.T. 983 (G.O.I)
c) IN RE: Banswara Syntex Ltd. 2014 (314) E.L.T. 886 (G.O.I.)
d) IN RE: Sulzer India Ltd. 2014 (313) E.L.T. 929 (G.O.I.)
e) IN RE: Narendra Plastic Pvt. Ltd. 2014 (313) E.L.T. 833 (G.O.I.)
f) IN RE: Aarti Industries Ltd.2014 (312) E.L.T. 872 (G.O.I.)
g) IN RE: Sumitomo Chemicals India Pvt. Ltd. 2014 (308) E.L.T. 198 (G.O.I.)
h) IN RE: Unique Pharmaceutical Laboratories 2013(295) E.L.T. 198 (G.O.I.)
i) IN RE: Cadila Healthcare Ltd. 2013 (288) E.L.T. 133 (G.O.I.)

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. Government observes that the issue involved is whether FOB value can be considered for arriving at transaction value under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) in the absence of any domestic sale value of the goods exported.

8.1 Government observes that as per section 4(1)(a) of the 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.*

8.2 Government observes that the word 'transaction value' has been defined in Section 4(3)(d) of the Central Excise Act, 1944, which reads as follows:

"transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

8.3 Place of Removal has been defined under Section 4(3)(c) ibid 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.***

8.4 The Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is also relevant in the instant context which is reproduced below:

> *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 upto 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.*

8.5 Government observes that Section 5 of the Central Sales Tax Act,1956 clarified that in the case of export and import, the sale or purchase of goods shall be deemed to take place in the following manner:-

> *a sale or purchase of goods shall be deemed to take place in the course of export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the Customs frontiers of India.*

8.6 Government notes that para 2(e) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 states as follows:–

"that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;"

9. From perusal of the above provisions, Government observes that the place of removal may be factory, warehouse, depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery. Further, in respect of export goods, place of removal is the place where the documents are presented to the Customs officers and from where the goods leave the territory of India for export and not the factory gate. However, the cost of transportation till the place of delivery is not to be considered for deriving transaction value of the excisable goods and therefore freight charges are to be excluded. Thus, Government concludes that the place of removal in case of export is the port where export documents are presented to the customs officer and all the expenses from factory gate to place of removal shall be included in computation of FOB value and rebate on same is allowable under Rule 18 of Central Excise Rules, 2002.

10. The case laws quoted by the applicant confirms this conclusion. Further, Government finds support in the decision of the Hon'ble High Court of Delhi in the case of Dr. Reddy's Laboratories Limited v/s UOI [2014 (309) ELT 423 (Del)],wherein in it was held that:-

"Under Rule 18 - which contemplates return of the excise duty paid in cases of exported goods, - the market price must necessarily refer to the market where the goods are sold, - in this case, the United States market. The goods in question are neither meant for, nor did they ever enter, the Indian market. If this were not to be the position, the valuation of goods meant for export (in cases of export to countries with a stronger currency valuation; or simply, "developed" countries) would always be incongruous even bizarre. In such cases, the actual value of goods sold abroad

would likely exceed the value domestically. Following the Revenue's logic, unless the exporter decides to export the goods at the lower domestic price, he or she may never recover the entire excise duty paid on the higher international price. This extinguishes the purpose of Rule 18 of the 2002 Rules, and the policy of ensuring competitive exports....

..... The stated purpose of Rule 18 is revenue neutrality, yet, time and resource has been expended on this exercise to neither party's benefit. The Supreme Court has also - at various points - recognized that minimum, if any, interference should occur in such cases, [see, Commissioner of Income Tax v. Glaxo Smithkline Asia (Pvt.) Ltd., [2010] 195 TAXMAN 35 (SC), paragraphs 3-4, Commissioner of Income Tax v. Bilahari Investment (Pvt.) Ltd., (2008) 4 SCC 232]."

Incidentally, the above judgment reverses the decision taken by this authority vide Order No. 1412-1413 /13-CX dated 19.12.2013 and which was one of the grounds on which the Department had appealed against the impugned Orders of original authority.

11. In view of the findings recorded above, Government sets aside the impugned Orders-in-Appeal No. HYD-CEX-001-APP-002 to 018-15-16 dated Aug'15 passed by the Commissioner, Customs & Central Excise (Appeals), Hyderabad and allows the subject Revision Applications.

14/7/22

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

ORDER No. 683 - 699/2022-CX (SZ)/ASRA/Mumbai dated 14.7.2022

To,

M/s. Aurobindo Pharma Limited (Unit-VIII),
Survey No.13, Gaddapotharam, IDA,
Kazipally Industrial Area, Jinnaram Mandal,
Medak District – 502 319.

Copy to:

1. Commissioner of CGST,
   Medchal, GST Bhavan,
   Basheerbagh,
   Hyderabad – 500 004.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.