REGISTERED
SPEED POST

195/485/13,195/654/13,195/470/13,195/483/13,195/665/13,
195/701-707/13,195/779/13,195/855/13,195/872/13,195/958/13
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 01/10/15

Order No. 87-102/2015-CX dated 29.09.2015 of the Government of India, passed by Smt. Rimjhim Prasad, Joint Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject	:	Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Orders-in-Appeal No. (as reflected in the table of this order) passed by Commissioner of Central Excise (Appeals), Raigad, Mumbai-III.
Applicant	:	M/s Cipla Ltd., Mumbai.
Respondent	:	Commissioner of Central Excise, Raigad/Mumbai-III.

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ORDER

These revision applications are filed by applicants M/s Cipla Ltd., Mumbai, against the Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), Mumbai-III, as detailed in the following table:-

Sl. No.	RA File No.	Name of applicant Vs.	Order-in-Appeal No. & date		Amount involved Rs.
1.	195/485/13	M/S CIPLA LTD..Vs. CCE Mumbai-III	BC/553/MUM-III (R)/2012-13	DT. 29.01.13	99,573/-
2	195/654/13	M/S CIPLA LTD. VS CCE RAIGAD	BC/ 617/RGD (R)/2012-13	DT. 28.02.13	38,98,566/-
3	195/470/13	-DO-	BC/557 /RGD (R)/2011-12	DT. 29-01-13	15,46,282/-
4	195/483/13	-DO-	BC/550/RGD (R)/2011-12	DT. 28.01.13	1,78,064/-
5	195/665/13	-DO-	BC/622/RGD (R)/12-13	DT. 28.02.13	49,50,643/-
6	195/701/13	-DO-	BC/671/RGD (R)/12-13	DT. 26-03-13	11,65,411/-
7	195/702/13	-DO-	BC/672/RGD (R)/12-13	DT.26.0313	19,37,348/-
8	195/703/13	-DO-	BC/673/RGD (R)/12-13	DT. 26-03-13	19,37,348/-
9	195/704/13	-DO-	BC/674/RGD (R)/12-13	DT. 26-03-13	11,65,411/-
10	195/705/13	-DO-	BC/675/RGD (R) /12-13	DT. 26-03-13	33,40,291/-
11	195/706/13	-DO-	BC/676/ RGD (R)/12-13	DT. 26-03-13	46,28,228/-
12	195/707/13	-DO-	BC/677/ RGD (R)/12-13	DT. 26-03-13	15,95,664/
13	195/779/13	-DO-	BC/15/RGD (R) /2013-14	DT. 22-04-13	19,23,495-
14	195/855/13	-DO-	BC/107/RGD(R) /2013-14	DT. 17-06-13	12,74,604/-
15	195/872/13	-DO-	BC/108/RGD(R) /2013-14	DT. 17-06-13	11,67,941/-
16	195/958/13	-DO-	SDK/132/RGD (R)/13-14	DT 20.08.13	4,29,614/-

2. Common brief facts of these cases, are that the applicant filed rebate claims of duty paid on exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The manufacturer had paid duty on said exported goods @ 10% under Notification No. 2/08-CE dated 01.03.2008 as amended. Similarly the manufacturer had cleared said goods for home consumption on payment of duty at effective rate @ 4% upto 28.02.11 and @ 5% w.e.f. 01.03.11 under Notification No. 4/2006-CE dated 01.03.2006 as amended. The original authority after following due process of law, held that duty was required to be paid on exported goods at the effective rate of duty @ 4%/5% in terms of Notification No. 4/2006-CE dated 01.03.2006 as amended and sanctioned the rebate claims to the extent of duty payable @ 4%/5% on the FOB value and allowed making of claim before jurisdictional authority for recredit of balance amount in cenvat credit account.

2.1 In some cases, the rebate claims were held inadmissible for the reason of failure to export the goods within six months from date of clearance from the factory.

2.2 In some other cases, the rebate claims were held inadmissible for the reason of non-submission of triplicate copies of ARE-1.

3. Being aggrieved by the said Orders-in-Original applicant filed appeals before Commissioner (Appeals) who after consideration of all the submissions, rejected their appeals and upheld impugned Orders-in-Original.

4. Now, being aggrieved with these Orders-in-Appeal, the applicant has filed these revision applications before Central Government under section 35 EE of Central Excise Act, 1944 mainly on the following grounds:-

4.1 Both the Notifications under consideration do not have any provision excluding the other.

4.2 When both the notifications co-exist simultaneously and do not mutually exclude each other, an assessee has an option to choose whichever is beneficial. When pluralities of exemption are available, the assessee has the option to choose any of the exemption, even if the exemption so chosen is generic and not specific.

4.3 When two Notifications – which are not mutually exclusive – co-exist in the books of law, the assessee has option to choose any one of them.

(i) In other words, when both the Notifications co-exist simultaneously and do not mutually exclude the other, they had option to choose between the aforesaid notifications. When pluralities of exemption are available, the assessee has the option to choose any of the exemptions, even if the exemption so chosen is generic and not specific. The above legal proposition is well settled by the Supreme Court in HCL Ltd. vs. Collector of Customs, New Delhi – 2001 (130) ELT 405 (SC), wherein it was held that – *"The question in these appeals is covered in favour of the applicant by the order of this Court in Collector of Central Excise, Baroda V Indian Petro Chemicals [1997 (92) ELT 13]. Where there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater relief, regardless of the fact that that notification is general in its terms and the other notifications is more specific to the goods."*

(ii) They also further referred and relied on following decision of Supreme Court, High Court and CESTAT for this proposition – (a) 1997 (92) ELT 13 (SC) – CCE vs. Indian Petro Chemicals, (b) 1991 (53) ELT 347(T) – Indian Oil Corporation Ltd. vs. CCE (c) 1990 (47) ELT 7 (T) – Coromandal Prints & Chemicals vs. CCE (d) 1989 (44) ELT 500 (T) – Dunbar Mills Ltd. vs. CCE (e) 1985 (22) ELT 574 (T) – Calico Mills vs. CCE, (f) 2009 (242) ELT 168 – Coca-cola Ltd. vs. CCE, (g) 2007 (209) ELT 321 (SC) – Share Medical Care vs. UOI (h) 1998 (108) ELT 213 – CCE vs. Cosmos Engineers (i) 2003 (160) ELT 1150 – CCE vs. Thermopack Industries (j) 1996 (83) ELT 123 (T) – Gothi Plastic Industries vs. CCE.

4.4 It is an undisputed fact that both the Notifications under consideration are in existence simultaneously. Both the aforesaid Notifications do not have any provisions

excluding the other. In other words, Sr. No. 62C of Notification No. 4/2006 does not have any provision stating that the said Notification has an over-riding effect over Notification No. 2/2008-CE dated 01.03.2008 and similarly, vice-versa. Both the Notifications have been issued under Section 5A of the Central excise act, 1944.

4.5 In view of the settled legal position as explained supra, they had the option to avail any of the Notification. The department cannot force any particular Notification on an assessee. Further, the legal position cannot be distinguished on the ground that Notification No. 2/2008 provides for general amendment to the rates in Tariff. Even if it is admitted for the sake of argument, still, this does not detract from the fact that it is still a Notification issued under Section 5A only. The respondent has conveniently ignored the fact that if the rates in the Central Excise Tariff Act, 1985, are to be amended, it has to be done legally by way of a suitable Act of Parliament. Admittedly, there has been no Act of Parliament seeking to amend the rates prescribed in the Tariff.

(iii) The Department has not pointed any provision under the Central Excise Act or rules made there under which has the effect of requiring the assessee to mandatorily avail the exemption Notification No. 4/2006-CE dated 01.03.2006 (Sr. No. 62C) only.

4.6 They are entitled to entire refund of duty paid on goods exported.

(i) The Rule 18 of the Central Excise Rules, 2002, which grants rebate of the excise duty paid on goods exported , reads as under :

> *"Rule 18 where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification."*

(ii) The conditions and procedures to claim rebate are prescribed under Notification No. 19-2004-CE(NT) dated 06.09.04 and the essential condition prescribed under the said Notification is that the goods shall be exported after payment of duty. The fact that the goods which have been exported and have suffered excise duty is also not in dispute.

(iii) The CESTAT in the case of Gayatri Laboratories vs. CCE – 2006 (194) ELT 73 (T) held that rebate claim to the extent of duty paid is available and that the rebate claim cannot be restricted on ground that less duty should have been paid in terms of Notification.

4.7 Rebate sanctioning authority cannot question the assessment. It is well settled that rebate sanctioning authority cannot question the assessment of export consignment. As to how much duty ought to be paid is beyond the jurisdiction and

realm of a rebate sanctioning authority. The applicant placed reliance upon CBEC's Circular No.510/06/2000-CX dated 03.02.2000. Hence, the impugned portion of the order-in-original is liable to be set aside. It is well settled that there is no estoppel in taxation. Hence, the fact that the applicants were availing Notification No. 4/2006-CE dated 1.03.06 in past is irrelevant for the present dispute.

4.8 As regards to valuation issue, the applicant has stated that the issue has been decided by GOI Order No.1568-1595/2012-Cx dated 14.11.2012.

4.9 In some Revision Applications, the applicant also raised the issue of eligibility of rebate in case export beyond six month from date of clearance from factory, wherein they mainly stated as under.

4.9.1 They have cleared these goods for export purpose and same has been exported. Also the payment of excise duty and export is not in dispute. Therefore, rejection of their rebate claim on procedural lapse is hardship to us and tax on exported goods. As per Notification No. 19/2004-CE(NT) dt. 6.9.2004, in order to sanction the rebate claim there is condition that duty paid goods must be exported. In our case this condition is fulfilled and there is no dispute by adjudicating authority on this ground. The other requirements are procedural. Further, the Notification does not remotely suggest rejection of rebate claim for non-compliance of any procedural condition when duty payment and export of goods is not in dispute. Therefore rejection of rebate claim on this ground is hardship to us and tax on exported goods.

In this matter they have relied on below judgments:

- 2006 (205) ELT1093 (GOI)
- In Re: Harisaon Chemicals Order No.673/2005 dt. 2812.2005 as reported in 2006(200)ELT 171(GOI)

4.10 That with concern to triplicate ARE-1 they have submitted triplicate ARE-1 at Jurisdictional Central Excise Range. Also they have complied all the procedural part as mentioned in Notification No. 19/2004-CE(NT) dt. 6.9.2004. The para 3 (vii) (a) reads as under "the triplicate ARE-1 shall be sent to the office with whom rebate claim is to be filed, either by post or by handling to the exporter in a tamper proof sealed cover". In this case the Jurisdictional Central Excise office has not handed over triplicate ARE-1 to them, therefore, they are not in position to submit the same. In this matter they would like to rely on the decision given by the Revisionary Authority in the case of In Re: Sanket Industries Ltd as reported in 2011 (268) E.L.T. 125 (G.O.I.)

4.11 That in respect of Rebate claim No. 11523 dt.05.09.2012 covered vide one of the Revision Applications, they have removed 675 vials of "Enrovet Injection 10%" from the factory of M/s. Alpa Laboratories Ltd. on payment of excise duty under

claim for rebate as per Notification No.19/2004-CE (NT) dt. 6.9.2004 issued under Rule 18 of Central Excise Rules 2002. At the time of removal of goods, the assessable value is Rs.91564 (i.e. 675 vials x Rs.135.65 (rate per vial) = Rs.91564/-. The said goods has been exported vide shipping bill no. 5393537 dt. 13.09.2011. Copy of proof of export is enclosed as Annexure-4. However, at the time of shipment, the FOB value of goods is Rs.102,250/- i.e. more than assessable value. However, due to printing error the assessable value is not properly visible on ARE-1 and hence, the rebate sanctioning authority has wrongly taken assessable value as Rs.31,564/- and sanctioned our rebate claim to the extent of Rs.1626/- only, which is short by Rs.3090/-.

4.12 That in some cases, they have exported food products and paid central excise duty @10%. The rebate sanctioning authority mistakenly short sanction the rebate claims considering it ongoing matter of 10% rebate claims on medicament. In fact, they have correctly paid 10% on such food products and are entitled for rebate claim @10% as the same is not covered vide ongoing dispute of 4%/10%.

5. Personal hearing was scheduled in these cases on 07.04.2015/09.04.2015. Shri Jiwan C. Patil, Manager, Indirect Taxtion attended the hearing on behalf of the applicant, who reiterated the contents of the impugned orders. Shri Rakesh Chandra, Assistant Commissioner, Central Excise, Mumbai-III attended hearing on behalf of the respondent and stated that the identical issue of the applicant has been decided vide GOI Order No.1318-1329/13-Cx dated 15.10.13.

6. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

7. Government observes that applicant filed rebate claims of duty paid on exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The manufacturer had paid duty on said exported goods @ 10% under Notification No. 2/08-CE dated 01.03.2008 as amended. Similarly the manufacturers had cleared said goods for home consumption on payment effective rate of duty @ 4% upto 28.02.11 and @ 5% w.e.f. 01.03.11 under Notification No. 4/2006-CE dated 01.03.2006 as amended. The original authority after following due process of law, held that duty was required to be paid on exported goods at the effective rate of duty @ 4%/5% in terms of Notification No. 4/2006-CE dated 01.03.2006 as amended and sanctioned the rebate claims to the extent of duty payable @ 4%/5% on FOB value. Some of the rebate claims were also rejected on grounds of non-furnishing of triplicate copy of ARE-1 and export of goods after six months from date of clearance from factory. In appeal Commissioner (Appeals), upheld the impugned Orders-in-Original. Now, the applicants have filed these revision applications against the same Orders-in-Appeal on the grounds stated in para (4) above.

8. The applicant has contended that both the above said notifications has approval of Parliament and therefore they are at liberty to avail any notification which ever they find beneficial to them. Therefore they have claimed themselves to be eligible to rebate of duty paid on export goods @10% in terms of Notification No. 2/08-CE dated 1.03.08 as amended.

8.1 It is observed that Central Government issued Notification No. 2/08-CE dated 01.03.08 which has an effect of reduction in general rate of Central Excise Duty on various products from 16% to 14%. Thereafter, this notification was amended by Notification No. 58/08-CE dated 07.12.08 reducing the said general rate from 14% to 10%. Vide Notification No. 4/09-CE dated 242.09, said Notification 2/08-CE was further amended to reduce the general rate of duty from 10% to 8%. Finally the Notification No. 2/08-CE was amended by Notification No. 6/10-CE dated 27.02.10 to enhance the said general rate of duty from 8% to 10%. Pharmaceutical drugs and medicines falling under Chapter 30 of First Schedule to Central Excise Tariff Act, 1985 covered under serial entry No. 21 of table to Notification No. 2/08-CE dated 01.03.08 as amended, attracted general tariff rate of duty @10%. At the same time the Notification No. 4/06-CE dated 01.03.06 providing for effective Nil rate of duty was amended vide Notification No. 4/08-CE dated 01.03.08 by inserting Sr. No. 62A, 62B, 62C, 62D & 62E for CETH 3001, 3003, 3004, 3005 & 3006(except 3006.60 & 3006.92) prescribing effective rate of duty @8%. Even in Joint Secretary (TRU) DO Letter No. 334/1/2008-TRU dated 29.02.08, it was clearly stated that the excise duty on drugs and pharmaceutical products falling under Central Excise Tariff Headings (CETH) No. 3001, 3003, 3004, 3005 & 3006 (except 3006.60 and 3006.92) has been reduced from 16% to 8% and thus general effective rate for all goods of Chapter 30 is now 8%. Thereafter, said Notification No. 4/06-CE was amended vide Notification No. 58/08-CE dated 7.12.08 where under effective rate of duty was reduced to 4%. The Notification No. 4/06-CE was further amended vide Notification No. 4/11-CE dated 01.03.2011 and effective rate of duty was enhanced to 5% which was prevalent during the period when said exports were made.

8.2 The Joint Secretary (TRU) CBEC in his D.O. Letter DOF No. 334/1/2008-TRU dated 29.02.08 explained the changes made in excise and customs duties through Finance Bill, 2008 introduced in Lok Sabha on 29.02.08. In para 1, 2 & 3, he informed as under :-

"1. Central Excise

2. General Cenvat Rate: (Notification No. 2/2008-CE)

2.1 The general rate of excise duty (CENVAT) has been reduced from 16% to 14%. This reduction applies to all goods that hitherto attracted this general rate of 16%. In some cases, a deeper reduction has been made, the details of which are indicated in the subsequent paragraphs. These changes have been carried out by notification. The other ad volorem rates of 24%, 12% and 8% have bee retained.

2.2 Since the reduction in the general rate has been carried out by notification, the possibility of the same product / item being covered by more than one notification cannot be ruled. In such a situation, the rate beneficial to the assessee would have to be extended if he fulfils the attendant conditions of the exemption.

3. Drugs and Pharmaceuticals

3.1 Excise duty on drugs and pharmaceuticals falling under Heading Nos. 3001, 3003 (export Menthol crystals), 3004, 3005 and 3006 (except 3006 60 and 3006 92 00) has been reduced from 16% to 8%. Thus, the general effective rate for all goods of Chapter 30 is now 8%. However, certain specified items such as life saving drugs continue to be fully exempt. Excise duty has been fully exempted on Anti-AIDS drug ATAZANAVIR, and bulk drugs for its manufacture."

The Joint Secretary (TRU) CBEC has made it amply clear that reduction in General Tariff Rate has been carried out by Notification and therefore there could be a possibility of same item being covered by two notifications and directed that the rate beneficial to assessee may be extended. In the instant case, the applicant has availed both the rates of duty, which is not allowed in TRU letter. Here basically the issue involved is whether rebates of duty paid at tariff rate or effective rate is to be allowed and not exactly regarding applicability of two notifications for payment of duty.

8.3 It is felt that it is necessary to go into background to find out the reason behind the issue of these two notifications. Notification No. 4/2006-CE dated 1.03.06 when issued, originally did not prescribed any concessional rate of duty to medicaments of Chapter Heading 3004 and a concessional rate of duty @8% was prescribed by amending the said notification vide notification no. 4/2008-CE dated 1.03.08 and the same was further reduced to 4% vide amending the said notification vide notification no. 58/2008-CE dated 7.12.08. Further Notification No. 4/06-CE was amended vide Notification No. 4/11-CE dated 01.03.2011 and the effective rate of duty was enhanced to 5%. On the other hand, the tariff rate of duty for the Chapter heading 3004 was 16% adv. However subsequently reduction in general tariff rate of duty was effected as under:

The Hon'ble Finance Minister in his speech while presenting the Union Budget for 2008-09 in the Parliament stated that :-

"PART-B
VIII. PROPOSALS TAX

"Para 144. The manufacturing sector is the backbone of any economy. It is consumption that drives production and it is production that drives investment. Having carefully studied current trends of production and consumption, I believe there is a need to give a stimulus to the manufacturing sector. Hence, I propose to reduce the general CENVAT rate on all goods from 16 per cent to 14 per cent."

This proposed reduction in general tariff rate cenvat duty was carried out vide notification no. 2/2008-CE dated 1.03.08.

Further, the Hon'ble Finance Minister in his speech while presenting the Union Budget for 2009-10 in the Parliament stated that:

"PART B
PROPOSALS TAX

116. Hon'ble Members are aware that the Government announced a series of fiscal stimulus packages, one of the key elements of which was the sharp reduction in the ad valorem rates of Central Excise Duty for non-petroleum products by 4 percentage points across the board on 7th of December, 2008 and by another 2 percentage points in the mean Cenvat rate on the 24th February, 2009.

117. .....
118. .....
119. .....

120. With --- --- further convergence of central excise duty rates to a mean rate – currently 8 per cent. I have reviewed the list of items currently attracting the rate of 4 per cent, the only rate below the mean rate. There is a case for enhancing the rate on many items appearing in this list to 8 per cent, which I propose to do, with the following major exceptions: food items; and drugs, pharmaceuticals and medical equipment. Some of the other items on which I propose to retain the rate of 4 per cent are : paper, paperboard & their articles; items of mass consumption such as pressure cookers, cheaper electric bulbs, low priced footwear, water filers / purifiers, CFL etc.: power driven pumps for handling water and paraxylene."

Further, the Hon'ble Finance Minister in his speech while presenting the Union Budget for 2010-11 in the Parliament stated that :

"PART – B
INDIRECT TAXES

142. Unlike the time I presented the last Budget, symptoms of economic recovery are more widespread and clear-cut now. The three fiscal stimulus packages that the Government introduced in quick succession have helped the process of recovery significantly. 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. –"

From above, it is quite clear that Notification No. 2/08-CE dated 1.3.08(14%) and subsequent amending Notification No. 58/08-CE dated 7.12.08 (10%), 4/09-CE dated 24.02.09(8%) and 6/10-CE dated 27.02.10(10%, were issued to reduce / alter the general tariff rate of duty.

8.4 Government observes that the instructions issued by CBEC regarding assessment of export goods are quite relevant to decide the issue involved in these cases. The instructions contained in para 4.1 of Part-I of Chapter 8 of CBEC Excise

Manual on Supplementary Instructions may be perused which are extracted as under :

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

4.1 The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in the Annexure-14 to Notification No. 19/2004-Central Excise (NT) dated 6.9.2004(See Part 7). The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and / or Central Excise Rules, 2002. The value shall be the "transaction value" and should conform to Section 4 or section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the FOB value indicated by the exporter on the Shipping Bill."

The plain reading of said para, reveals that the export goods shall be assessed to duty in the same manner as the good cleared for home consumption are assessed. Further the classification and rate of duty should be as stated in schedule of Central Excise Tariff Act, 1985 read with any exemption notification and / or Central Excise Rules, 2002. The CBEC instructions clearly stipulate that applicable effective rate of duty will be as per the exemption notification. The said instruction is issued specifically with respect to sanctioning of rebate claim of duty paid on exported goods and therefore the whole issue will have to be examined in the light of these instructions. As explained above, Notification No. 2/08-CE dated 1.03.08 as amended prescribed General Tariff rate of duty @10% which was in fact brought down from 16% to 14% and then to 8% and finally to 10% by different amending notifications. The notification No. 4/06-CE dated 1.03.06 as amended prescribed effective rate of duty from initial rate of 0% to 8%, 8% to 4% and finally to 5% by different amending notifications. As such it is not correct to say that it is a case of applicability of two notifications only and assessee is at liberty to choose any one notification which is beneficial to him. In this case, notification No. 2/08-CE as amended provided for General tariff rate of duty and Notification No. 4/06-CE as amended provided for effective rate of duty and they have to be strictly construed as such. Therefore they have to be read together as stipulated in para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual. In fact, this confusion has arisen since in this case the General tariff rate was reduced through Notification when special economic stimulus package was announced in 2008 by Government to deal with ongoing economic recession. Normally changes in General tariff rate are carried out through Finance Bill / Act. Government, therefore is of the view that duty was payable @4%/5% on the export goods also and rebate cannot be granted on the duty paid in excess of effective rate prescribed in the Notification No. 4/06-CE dated 01.03.06 as amended, as stipulated in the above said CBEC Instructions.

8.5 Further, it is also noticed that applicant are clearing goods for home consumption on payment of duty @ 4% or 5% in terms of Notification No. 4/06-CE

as amended. The above said CBEC Instructions state that export goods are to be assessed in the same manner as the goods for home consumption. So, applicant has to assess all goods whether cleared for export or home consumption in a same manner. He cannot assess export goods as higher rate of duty @ 10% and good cleared for home consumption at lower rate of duty @ 4% or 5%. He has to choose any one notification and assess all clearance of goods in the same manner even if there are two effective rates of duty as per two notifications. In this case, the situation is different since Notification No. 2/08-CE as amended prescribed duty at General Tariff rate of 10% whereas effective rate of duty is 4% or 5% vide Notification No. 4/06-CE as amended. Even the Joint Secretary (TRU) CBEC D.O. Letter dated 29.02.08 stipulated that rate of duty beneficial to assessee have to be extended. The said letter has not allowed payment of duty under both notifications. Assessee could have opted for one notification for all clearance even if it is considered as case of applicability of two notifications.

8.6 Government notes that departmental authorities are bound by CBEC Circulars / Instructions and they have to comply with the same. Hon'ble Supreme Court has held in the case Paper Products Ltd. vs. CCE 1999 (112) ELT 765 (SC) that circulars issued by CBEC are binding on departmental authorities, they cannot take a contrary stand and department cannot repudiate a circular issued by Board on the basis that it was inconsistent with the statutory provision. Hon'ble Apex has further held that department's actions have to be consistent with the circulars, consistency and discipline are of far greater importance than winning or losing court proceedings. In view of said principles laid by Hon'ble Supreme Court, Government upholds the applicability of above said CBEC Instructions in this case.

8.7 Applicant has relied upon number of case laws to the proposition that it was upto the assessee to choose a notification which is most beneficial to him. Government notes that in the cases cited namely CCE Baroda vs. India Petro Chemicals and HCL Ltd. vs. CC New Delhi, Hon'ble Supreme Court has categorically held that when two notifications co-exit simultaneously, then assessee has the option to choose any one of the notifications beneficial to him. Apex court has not stated that assessee can avail both the notifications simultaneously. Whereas in the instant case applicant has not chosen one notification for all the clearance but decided to avail benefit of both the notification. The apparent motive of clearing export goods at higher rate of duty @10% and goods for home consumption at 4% is to encash the accumulated cenvat credit. In terms of above said judgements also, the applicant is required to choose one notification whereas he has acted otherwise.

8.8 Moreover, the said judgements are not in the context of sanctioning of rebate claims in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 6.09.04 of the duty paid either at general tariff rate or at the effective rate. The cited case laws mainly relate to admissibility of exemption

notification benefit in case of dispute of classification / eligibility of claimant. None of the said judgement are on the issue of sanctioning rebate of duty paid on exported goods. Hon'ble Supreme Court in paras 10 & 11 of the judgement in case of Escorts Ltd. vs. CCE Delhi-II 2004 (173) ELT 113 (SC) observed that circumstantial flexibility, one additional or different fact may make a world of difference between conclusion of two cases Disposal of two cases by blindly placing reliance on a decision, not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus :

" *...."Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect in deciding such cases. One should avoid temptation to decide cases by matching the colour of one case against the colour of another .....".*

Therefore, it needs to be reiterated that there cannot be any strict relied upon citation which can be taken as guiding precedents because each one of the citations have different set of facts pertaining to manufacturing goods of different sub-headings, following different set of Notifications, choosing different beneficial schemes and changing thereof in between a given financial year thereby, leading to different question of law.

8.9 Government further notes that following case laws lend support to the view that rebate is to be allowed of the duty paid on exported goods at effective rate prescribed in the notification and the excess paid amount as duty from the cenvat credit is to be refunded in the cenvat credit account.

8.9.1 Hon'ble Supreme Court has held in the case of CCE vs. Parle Exports 1988 (38) ELT 741 (SC) that when a notification is issued in accordance with power conferred by statute, it has statutory force and validity and therefore exemption under notification is, as if it were contained in the Act itself. Apex Court has clearly observed that any exemption notification specifying effective rate has to be complied with. In this regard, Hon'ble CESTAT Ahmedabad Bench in its judgement in the case of Mahindra Chemicals vs. CCE Ahmedabad 2007 (208) ELT 505 (T. Ahd.) while relying on above said Apex Court judgement has held that exemption notification has to be construed as if this rate was prescribed by statute and when the legislature has decided to exempt certain goods by notification, the exemption cannot be negated by an assessee by opting for payment of duty.

8.10 Government further notes that the applicants have relied upon CBEC 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 and therefore said Circular issued prior to the introduction of transaction value concept, cannot be strictly applied after 1.07.2000. As per para 3(b)(ii) of Notification No. 19/04-CE(NT) dated 6.09.04, the rebate

sanctioning authority has to satisfy himself that rebate claim is in order before sanctioning the same. If the claim is in order he shall sanction the rebate either in whole or in part. The said para 3(b)(ii) is reproduced below :

"3(b) Presentation of claim for rebate to Central Excise :-

(i) .....

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

The said provisions of this notification clearly stipulate that after examining the rebate claim, the rebate sanctioning authority will sanction the claim in whole or part as the case may be depending on facts of the case. Government notes that said notification issued under Rule 18 of Central Excise Rules, 2002, prescribes the conditions, limitations and procedure to be following for claiming as well as sanctioning rebate claims of duty paid on exported goods. The satisfaction of rebate sanctioning authority requires that rebate claim as per the relevant statutory provisions is in order. He does not have the mandate to sanction claim of obviously excess paid duty and then initiate proceeding for recovery of the erroneously paid rebate claim. Therefore, the circular of 2000 as relied upon cannot supersede the provisions of Notification No. 19/04-CE(NT).

8.9.2 Government notes that said issue of the same applicant is already decided vide Government of India Revision Order No. 1318 – 1329/13-CX dated 15.10.2013 wherein it was held that rebate claim was admissible to the extent of duty payable at effective rate of duty @ 4% or 5% as the case may be and not of duty paid at the tariff rate of duty. The ratio of said decision is squarely applicable to these cases.

9. In view of position explained in foregoing para, Government finds that there is no merit in the contentions of applicants that they are eligible to claim rebate of duty paid @10% i.e. General Tariff Rate of Duty ignoring the effective rate of duty @ 4% or 5% in terms of exemption Notification No. 4/06-CE dated 01.03.06 as amended. As such Government is of considered view that rebate is admissible only to the extent of duty paid at the effective rate of duty i.e. 4% or 5% in terms of Notification No. 4/06-CE dated 1.03.06 as amended, as applicable on the relevant date on the transaction value of exported goods determined under section 4 of Central Excise Act, 1944.

10. Government further notes that as regard to valuation issue i.e. whether rebate is admissible on CIF or FOB value, applicant placed reliance upon by GOI Order No.1568-1595/2012-CX dated 14.11.2012 in their own case wherein the said issue is not discussed. However, Government finds that in catena of its judgments,

as in Order No.271/2005-CX dated 25.07.2005, Order No.34-40/2013-CX dated 15.01.2013, Order No.97/2014-CX dated 26.03.2014, Order No.1744/2012-CX dated 10.12.2012, Order No.1152-1339/2012-CX dated 21.09.2012, Government has already examined at length and settled the issue by holding that rebate is admissible only upto duty paid/payable on transaction value; that transaction value should conform to value as decided under Section 4 of the Central Excise Act, 1944; that in no case the transaction value can be CIF value; that duty can be paid at the most on FOB value and that duty paid over and above transaction value cannot be rebated. In this case also, subject to observation made in paras above, the rebate eligibility can be allowed only upto transaction value. Government therefore, finds no cause to interfere with the Order-in-Appeals on this account.

11. Government further notes that in some cases, the applicant cleared the impugned goods for export on payment of Central Excise Duty and education cess under claim of rebate in terms of Rule 18 of Central Excise Rules, 2002 under the proper cover of invoices and ARE-1s but as per the shipping bills, the let export date is of a period beyond 6 months from the date of clearance from the factory. This fact is also not disputed by the applicant. It is therefore obvious that the said goods were actually exported after a period of six months from the date of clearance from the factory. As per clause 2(b) of Notification No.19/04-CE(NT) dated 06.09.04 the excisable goods shall be exported within 6 months from the date on which they were cleared for export from factory of manufacture. In this case, said condition is not complied with and non-compliance of the same renders the rebate claims inadmissible.

12. In this regard, Government finds that export of goods under claim for rebate is governed by Rule 18 ibid and Notification No.19/2004-CE(NT) dated 06.09.04 that provides specific condition and limitation for the purpose of granting rebate of duty paid on the exported excisable goods. The clause 2(b) of the said notification stipulates that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture. This condition having been specifically contemplated under the Notification issued under Rule 18 ibid, makes the condition statutory and mandatory. This finds support in the settled position that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by the Apex Court in the case of Collector of Central Excise Vs Parle Export Pvt. Ltd. 1998(38)ELT 741 (SC) and Orient Weaving Pvt. Ltd. Vs UOI 1978(2)ELT J311(SC) (Constitution Branch).

13. The above said condition has been undisputedly violated by the applicant. Moreover, they have not made any application for extension of time limit before proper authority nor they have produced any permission granting extension of time limit from competent authority till date. It is a settled issue that benefit under a conditional notification cannot be extended in case of non fulfilment of conditions

and/or non-compliance of procedure prescribed therein as held by the Apex Court in case of Government of India Vs Indian Tobacco Association 2005(187)ELT 162 (SC); Union of India Vs Dharmendra Textiles Processors 2008 (231)ELT 3 (SC). The non-compliance of a substantive condition of Notification cannot be treated as a procedural lapse to be condoned. Government is further guided by the principle laid down by the Apex Court in the cases of M/s ITC Ltd. vs. CCE 2004 (171) ELT 433 (SC) and M/s Paper Products Ltd. vs CCE 1999 (12) ELT 765 (SC) that strict and plain reading of wording of the statute are to be strictly adhered to and at the same time statute as clarified in circulars is to be followed religiously. The ruling of Hon'ble Supreme Court in the case of CCE Chandigarh vs. Doaba Cooperative Sugar Mills 1998 (37) ELT 478 (SC) has further held that in making claims for refund before the departmental authority an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to.

14. Government has gone through the case laws cited by the assessee. The case cited of Harison Chemicals 2006 (200) ELT 171 (GOI) is not applicable to the instant case because there was genuine reason for not exporting of the goods within six months from the date of clearance from the factory due to non-receipt of NOC from the Ministry of Environment and necessary permission from DGFT, New Delhi. But in this instant case neither the assessee has prayed for any extension of time to the proper authority nor could submit any genuine and proper reasons for non-exportation of the said goods within stipulated period of six months. The facts of the case as cited in 2006 (205) ELT 1093 (GOI) are also different from the present case. Further in the case of the applicant itself, Government held rebate as inadmissible on this count vide Revision Order No. 40/2012-CX dated 16.01.2012.

15. In view of above discussions, Government finds no infirmity in the impugned orders holding rebate claims as rightly inadmissible on the goods which were exported beyond six months from date of clearance from the factory.

16. Government further observes that in some cases, the rebate claims were rejected for non-submission of triplicate copies of ARE-1. As held above in paras 13 & 14, filing of triplicate copy of ARE1 is also a mandatory and statutory requirement to claim benefit of rebate under Rule 18 ibid read with Notification no. 19/2004-CE(NT) dated 06.09.2004.

17. Further with regard to non-submission of triplicate copies of ARE-1, para 8.4 of Part of Chapter 8 of CBEC Excise Manual prescribed the following guidelines:

> "8.4 After satisfying himself that the goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident from the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are 'duty-paid' character as certified in the triplicate copy of ARE-1 received

from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, in part or full. In case of any rejection or reduction of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

From the above it is clear that triplicate copy of ARE-1 is required to verify duty paid nature of the goods. Commissioner (Appeals) has observed that the applicant did not adduce any evidence to prove that triplicate copy of ARE-1 have been submitted by them to the rebate sanctioning authority even though the same have been handed over to them by representative of the exporter. In cases, where triplicate copy could not be submitted before original authority, the rebate claims were rightly held inadmissible by the original authority as it is a mandatory requirement for verification of duty paid nature of the goods.

18. In view of above, Government finds no infirmity in the impugned Orders-in-Appeal upholding rejection of rebate claim for non-furnishing of triplicate copy of ARE1 to the rebate sanctioning authority.

19. As regards short-payment pertaining to rebate claim No.4523 dated 5.9.12 due to wrongly showing assessable value as Rs.31564/- instead of Rs.91564/- in ARE1, Government finds no merit in the plea of the applicant as it is an admitted fact that assessable value is shown as Rs.31564/- and applicant has not produced any evidence to the contrary. As such Government finds no infirmity in the impugned Orders-in-Appeal in this aspect.

20. As regard short-sanction of rebate claim in case of certain goods claimed to be food products by the applicant, Government on perusal of impugned Orders-in-Appeal notes that this issue was not agitated before the appellate authority. Hence, the issue has achieved finality cannot be raised before revisionary authority. As such, contentions on these aspects by the applicant are not tenable.

21. In view of the above discussions, Government finds no legal infirmity in the impugned Orders-in-Appeal and hence upholds the same.

22. The revision applications are thus rejected being devoid of merits.

23. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

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Attested

GOI Order No. 87-102/2015-CX dated 29.09.2015

Copy to:

1. Commissioner of Central Excise, Custom & Service Tax, Raigad, Plot No.1, Sector 17, Khandeshwar, Navi Mumbai-410206.

2. Commissioner of Central Excise, Mumbai-III, 3rd & 4th Floor, Vardaan Trade Centre, MIDC Wagle Industrial Estate, Than (West)-400604.

3. The Commissioner of Central Excise (Appeals-III), Mumbai-III Zone, 5th floor, CGO Complex, CBD Belapur, Navi Mumbai – 400 614.

4. The Deputy Commissioner of Central Excise (Rebate), Mumbai-III.

5. The Deputy Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Plot No.1, Sector 17, Khandeshwar, Navi Mumbai-410206.

6. Guard File.

7. PA to JS (RA)

8. Spare Copy

ATTESTED

(B.P.Sharma)
OSD (Revision Application)