

REGISTERED
SPEED POST



F.No.195/1274-1383 & 1701/12 &
195/255,256 & 580/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue. 23/7/13

Order No. **943-1056/13-Cx** dated **23.07.2013** of the Government of India, passed by Shri D. P. Singh, 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,
1944 against the Order-in-Appeal No.
passed by Commissioner of Customs and Central
Excise, (Appeals-I) & Service Tax, Hyderabad
as detailed in table of para 1 of this order.

Applicant : M/s. Dr. Reddys Laboratories Ltd., (Generics)/(FTO 3)
Sy. No. 41, Bachupally Village, Qutbullapur Mandal,
Range Reddy District, Hyderabad- 500090.

Respondent : Commissioner of Central Excise,
Hyderabad-IV.

ORDER

These revision applications are filed by the M/s. Dr. Reddys Laboratories Ltd., Hyderabad as detailed in table below against the Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals)-II, Hyderabad with respect to Orders-in Original passed by the Deputy Commissioner of Central Excise, L-Div., Hyderabad-IV.

S. No	Name of the Applicant	RA No.	Order-in-Appeal No. & Date
1	2	3	4
1	Dr. Reddys Laboratories Ltd., Hyderabad. (Generics)	195/1274-1383/12-RA-Cx	62-171/2012 (H-IV) (D) CE dtd. 18-07-2012
2	-----do-----	195/1701/12-RA-Cx	199-216/2012 (H-IV) (D) CE dtd. 14-09-2012
3	-----do-----	195/580/13-RA-Cx	07-15/2013 (H-IV) (D) CE dtd. 31-01-2013
4	Dr. Reddys Laboratories Ltd., Hyderabad (FTO 3)	195/255/13-RA-Cx	238-246/2012 (H-IV) CE
5	-----do-----	195/256/13-RA-Cx	247-256/2012 (H-IV) (D) CE dtd. 19-12-2012

2. Brief facts of the case are that applicants are manufacturer of P & P medicaments falling under chapter 3004 of Central Excise Act 1985. They have exported the goods on payment of duty under rebate claim in terms of Rule 18 of Central Excise Rules 2002 r/w Not. No. 19/04-CE (NT) dt. 06-09-2004. They filed rebate claims in r/o said exports made to their subsidiary units for subsequent sale, vide various ARE-1 on payment to duty through cenvat credit account. The adjudicating authority during scrutiny of cases found that value of goods in certain cases was declared on higher side and ARE-1 value was compared with market value of said goods to determine that condition 2 (e) of Not. No. 19/04-CE (NT) dt. 06-09-2004 is satisfied. The said condition stipulates that market price of the exported goods is not less than the rebate claimed. After following due process of law, adjudicating authority sanctioned the part rebate claims in cash and in remaining part claims which were not found admissible, the excess paid duty on excess value was allowed to be re-credited in their cenvat credit account. The adjudicating authority in his Orders-in-Original has observed as under:-

“ 6. I am satisfied with the documents produced and the exportation of the goods cleared under the said ARE-1s covered under the rebate claim. However, to decide whether the ARE-1 value is 'transaction value' for the purpose of rebate of duty, a personal hearing was held on 10-04-2012. Shri V.Satyanarayana Reddy, Associate Director and Shri B. Sivakoti Reddy, Manager (Indirect taxation) have attended to the personal hearing. They informed that they export the goods to their 'subsidiary units' outside India against the purchase orders placed by their subsidiary units apart from direct sales to foreign buyers; that the 'subsidiary units' outside India are incorporated as per the respective country statutory provisions; tht hence they are separate legal entitles; that Dr. Reddy's Laboratories Ltd., in India will consider the prices shown in ARE-1s only for the purpose of computation of income in India under the Income Tax Act and the 'subsidiary Units' outside India will account for the sale proceeds for Income Tax purpose in their respective countries; that therefore, the price is the sole consideration for sale; that the ARE-1 value is arrived at the agreed upon price in such P.Os; that therefore the sale price at 'subsidiary units' has no bearing on our incomes and so the value is the 'transaction value' as defined under section 4 of the Central Excise Act, 1944 read with Central Excise valuation (Determination of price of Excisable Goods) Rules, 2000; that they have not overvalued their product for encashment of Cenvat Credit; that in view of the above facts they requested to sanction the duty amounts as rebate and also requested to consider their deposition for all the rebate claims filed by them on or after 4th week of January, 2012 as the issue is common without issuance of any show cause notice.

7. The rebate shall be granted in terms of the provisions of Rule 18 of Central Excise Rules, 2002 read with the conditions and limitations as specified in Not. NO. 19/2004-CE (NT) dated 06-09-2004 as amended. Clause 2 (e) of the condition and limitation of the said notification reads as:

“ that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed.”

The assessee declared that they do not have domestic market of subject goods. Therefore, the 'ARE 1 value' of the subject goods has been compared with

the market value of identical goods produced in India is taken as basis for the purpose of allowing the rebate. Thus, the value has been reworked out, for arriving at the rebate to be sectioned in cash, workings are shown in the table.

From the above, it is evident that the market price of the above excisable goods is not less than the amount of rebate of duty claimed. Therefore, the rebate claimed is allowable. "

In respect of cases of Sr. No. 1 to 3 the original authority, however, adjusted the total amount sanctioned towards recovery of rebate sanctioned erroneously vide Order-in-Original No. 462/2011 (Rebate) dtd. 30-09-2011 which was also held in admissible by Commissioner of Central Excise (Appeal-II), Hyderabad vide Order-in-Appeal No. 02/2012 (H-IV) (D) CE.

3. Being aggrieved by the said Orders-in-Original, applicant filed appeals before Commissioner (Appeals), who upheld the impugned Orders-in-Original on merit, but set aside the order of adjustment of the sanctioned rebate claims against recovery of rebate of Rs. 21,18,361117/- earlier sanctioned erroneously vide Order-in-Original No. 462/2011 (Rebate) dtd. 30-09-2011 in respect of cases mentioned in sr. No. (1) to (3).

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

4.1 Applicants submit that department was of the view that since the transaction i.e. export of products being between two related companies, the price at which such products were exported cannot be considered as "transaction value" and as Condition No. 2(e) of the notification no. 19/2004-CE (NT) dtd. 06-09-2004 stipulates that the market price of excisable goods at the time of exportation is not less than the amount of rebate of duty claim, and as there was no domestic sale of the product exported therefore resorting to the market price of the similar/identical product manufactured and sold by the Indian manufacturer is to be compared with

that of the product exported to know whether the market price of the product exported is more than the amount of rebate claimed since sanction of rebate is based on the transaction value under section 4 of the Central Excise Act, 1944 and in absence of domestic sale of the export product in India, the market price of the similar/identical goods can be made applicable to determine the condition specified in the said notification and quantum of rebate to be sanctioned. In this regard applicants submit that the subsidiary company situated in USA is a company formed under the rules and regulation prevailing in that country and the applicants company situated in India and the subsidiary company situated in USA are considered as different entities and different profit centers. Applicants further submit that like supplies to any other unrelated company, they have received a purchase order for the supply of the said products and the rate at which such products are to be supplied. The price charged by the applicants for the product exported has not been influenced by the relationship, as the transaction is at arm's length.

4.2 Applicants submit that a view is constantly being taken by the judicial forums that as long as there is no evidence to the effect that the price charged to a related company is influenced by the relationship, the price so charged can be taken as "transaction value" even in case of the transactions between the two related companies. In the said circumstances, non-acceptance of price charged to the subsidiary company as a "transaction value", keeping in view the accepted fact that is no domestic sale/clearance of the said product and that the applicants had undertaken to produce the Bank Realization Certificate confirming the receipt of sale proceeds particularly in the absence of any evidence to the effect that the price charged to the subsidiary company is influenced by the relationship, is not justified. In this connection, applicants place reliance on the decision of the Hon'ble Tribunal in the case of Vera Laboratories Ltd., Vs. Commissioner of Central Excise, Visakhapatnam-2004 (173) ELT 43 (Tri-Bang).

4.3 The sanctioning of restricted rebate amount in cash considering the market price of the product manufactured in India by companies like M/s. Sun Pharma and M/s. Unichem terming the said product as identical for the purpose of Condition No.

2(e) of the notification no. 19/2004-CE (NT) dtd. 06-09-2004, as amended without appreciating the fact that their product manufactured for regulated like USA market cannot be compared with the similar product manufactured in India by companies like M/s. Sun Pharma and M/s. Unichem since there is a wide variance in the quality parameters, compliance of regularity requirements including FDA approval etc., to market a product in USA when compared to Indian Market. In this connection, it is further submitted that Condition No. 2(e) of the notification no. 19/2004-CE (NT) dtd. 06-09-2004, stated that the rebate amount claimed should not be more than the market price of the excisable goods only and not suggested to restrict the rebate amount to the duty worked out on that market price. Hence, the basis adopted for working out the rebate amount is contrary to the Condition No. 2(e) of the notification.

4.4 The restriction of rebate amount payable in cash on the basis of clause of Condition No. 2(e) of the notification no. 19/2004-CE (NT) dtd. 06-09-2004, as amended treating the product manufactured by M/s. Sun Pharma and M/s. Unichem terming as similar/identical to the goods exported by the applicants, without considering the submissions made by the applicants, and on the basis of market value of such product coming to the conclusion that the market value of the product is less, is not correct since, there were no acceptable reasons/findings for such conclusion. Since the crucial factor being whether the product exported by the applicants and the product manufactured by companies like M/s. Sun Pharma and M/s. Unichem are identical or not and unless it is held by the higher appellate authorities that they are identical, the question of applying clause 2(e) of the above referred notification and corresponding restriction of rebate amount payable in cash does not arise.

5. Personal hearing was scheduled in this case on 05-03-2013, 20-03-2013 and 25-06-2013. Hearing held on 05-13-2013 was attended by Shri S.Suryanaryana, Director of the applicant company on behalf of the applicant who reiterated the grounds of Revision Application. Hearing held on 25-06-2012 was attended by Shri S.Suryanaryana, Director and Shri V.S. Satyanarayan Reddy, Associate Director on

behalf of applicants. During the course of hearing, applicants stated that protective demands issued subsequently by the Commissioner of Central Excise, Hyderabad-IV has now been confirmed vide Order-in-Original No. 53/2012- Adj. (Comm.) CE dtd. 30-10-2012 and they have filed appeal against said order in CESTAT, Bangalore. They have also mentioned this fact in their written submission dtd. 24-06-2013.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal. Since the similar issue is involved in these cases, all these revision applications are taken up for decision by this single order.

7. Government notes that in these cases, the original authority sanctioned the rebate claims in cash of the duty payable on ARE-1 value or Market value, whichever was lower, and duty paid on excess value was allowed by the original authority as re-credit in cenvat account of the applicants. Commissioner (Appeals) upheld the orders of the original authority on merit, but, set aside part of order with regard to adjustment of sanction of rebate against recovery of rebate of Rs. 21,18,36,117/- sanctioned erroneously vide Order-in-Original No. 462/2011 (Rebate) dtd. 30-09-2011. Now, the applicant has filed these revision applications on grounds as mentioned in para (3) above.

8. Applicant has contested the impugned orders on the ground that the market value worked out on the basis of market price of similar/identical product manufactured by the companies in India is not correct and the value declared by them in ARE-1 form is the correct transaction value and therefore the rebate is admissible of duty paid of them.

9. Government notes that in the instant cases of rebate claims, the main issue involved relates to interpretations of condition 2 (e) of Not. No. 19/04-CE (NT) dt. 06-09-2004, the determination of market value for the purpose of said condition 2 (e) and determination of assessable value of exported goods in terms of section 4 of Central Excise Act, 1944.

9.1 As per rule 18 of Central Excise Rules 2002, when any goods are exported, Central Government may by notification, grant rebate of duty paid on such excisable goods and the rebate shall be subject to such conditions or limitation if any, and fulfilment of such procedure as may be specified in the notification. The Notification No. 19/04-CE (NT) dt. 06-09-2004 is issued under rule 18 which stipulates conditions, limitations and procedures to be complied with for being eligible for grant of rebate claim. As per said notification, rebate shall be granted subject to fulfilment of conditions, limitations and procedure specified there in.

9.2 The condition specified in para 2 (e) is as under:-

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

In order to ensure the fulfilment of said condition, the rebate sanctioning authority has to ascertain market price of exported goods. In case the market price is found less than the rebate claimed, then the rebate claim becomes inadmissible for violation of said condition 2 (e).

9.3 In these cases, the applicant manufacturer, have exported said goods to their subsidiary units outside India and there are no domestic sales. In such a situation the market price of identical products manufactured by other manufacturers in India has been taken as market price of impugned goods. For the purpose of illustration the market price ascertained by DCCE in the case of his Order-in-Original No. 174/2012-RA dt. 30-04-2012 (Order-in-Appeal No. 62-171/12 dt. 18-07-2012) is as under:-

ARE-1 No.	Name of the product	Duty paid in ARE-1 (Rebate claimed)	Name of the Local Co.	Price per Tab in Rs.	No. of Tabs	Total Market Value	Amount
2058	Fexofenadine HCL 180 mg & Pseudo Ephedrine 240 mg	1977764	Sun Pharma	7.0	1368000	9576000	1977764

2059	_____do_____	1977599	Sun Pharma	7.0	1368000	9576000	1977764
2092	Tacrolimus Caps 1 mg	45,73,667	Unichem	38/-	16,87,200	6,41,13,600	45,73,667
2111	_____do_____	23,22,645	_____do_____	38/-	8,56,800	3,25,58,400	23,22,645
2119	_____do_____	23,22,669	_____do_____	38/-	8,56,800	3,25,58,400	23,22,669

9.4 The price of said product/medicament namely Fexofenudine HCL 180 mg & Pseudo Ephedrine 204 mg, Tacrolimus Cap 1 mg manufactured by M/s. Sun Pharma & M/s. Unichem was taken as market price for same product/medicament manufactured by the applicant manufacturer. The applicant has argued that value declared by them in ARE-1 which is charged to the subsidiary unit abroad is to be taken as market price. In this regard it is noted that rebate claim is admissible if the condition 2 (e) of Not. No. 19/04-CE is satisfied. So, the market price of exported goods at the time of exportation is required to be ascertained. The market price ascertained in this case is the only available market price since applicant has no domestic sales. The ARE-I value has to be a transaction value determined under section 4 of Central Excise Act 1944. In this case, the ARE-I value has not been found as correct value in terms of section 4 and therefore the same cannot be accepted as market price as contended by applicant. Therefore Commissioner (Appeals) has rightly upheld the order of lower authority to the extent of determining market price of said goods and application of condition 2 (e) of Not No. 19/04-CE (NT) dtd. 06-09-2004.

10. Government notes that the value of excisable goods to be exported is to be determined under section 4 of Central Excise Act, 1944 and this value is relevant for the purpose of rule 18 of Central Excise Rules, 2002. The adjudicating authority has sanctioned rebate claims in cash of duty payable on ARE-I value or market value whichever was lower. The principle adopted by adjudicating authority is not stipulated under statutory valuation provisions envisaged in section 4 of Central Excise Act 1944. Government observes that regarding valuation of excisable good cleared for export, CBEC had clarified in circular No. 203/37/96-Cx. (F. No. 209/11/96-Cx.-6) dtd. 26-04-1996 as under:-

" **Subject:** *Central Excise procedures for exports-Relevance of FOB vis-a-vis value declared on AR4-Regarding.*

Certain doubts have been raised in respect of "Value" of export goods for Central Excise purposes, Viz.-a) whether Free on Board (FOB) value mentioned in the shipping bill should necessarily be the same as the value mentioned on AR4 and the invoice issued under Rule 52A.

b) *It the FOB value and the AR4 Value can be different, whether FOB Value or the AR4 value has to be taken into consideration while ascertaining the value for the purpose of export under Rule 13 of for granting the rebate of duties under Rule 12. The matter has been examined by the Board.*

2. *Regarding point (a), it is observed that the AR4 value should be determined u/s 4 of the Central Excise & Salt Act and the same should be declared on the invoices issued under Rule 52A. FOB value which is contra acted price in the course of international trade should normally correspond to section 14 of the Customs Act, 1962 and this value may be more or even less than the AR4 value. Therefore, this is clarified that, it is not necessary that the AR4 value and the FOB value should be the same.*

3. *Regarding point (b), this is clarified that it is the assessable value determined under section 4 of the Central Excise and Salt Act, which is required to be mentioned on AR4 and the corresponding invoice issued under Rule 52A. This 'Value' is relevant for the purposes of Rule 12 and Rule 13 of Central Excise Rules, 1944. "FOB Value" is relevant for customs purposes and other schemes like drawback, exports under DEEC etc. However, in cases where it is found that on account of variance between FOB value and the AR4 value, the exporter is getting unusually high drawback and DEEC benefit, the matter may be referred to the agencies such as Customs, Drawback Directorate, DRI etc. for initiating necessary remedial measures to protect the revenue. "*

It has been clearly laid down in the said circular that AR4 value should be determined u/s 4 of Central Excise Act 1944 and this value is relevant for the purpose of erstwhile of Rule 12 and Rule 13 of Central Excise rules, 1944. The AR4 form is now replaced by ARE-I form and the relevant rule for grant of rebate is rule 18 of Central Excise Rule 2002. The said instructions on valuation of excisable goods cleared for export are reiterated in CBEC circular No. 510/6/2000-Cx. dtd. 03-02-2000 (F. No. 209/29/99-Cx. 6) dtd. 03-02-2000. So, it is quite clear that duty is to be paid on the value of excisable goods determined under section 4 of Central Excise Act, 1944. The said value is required to be mentioned on ARE-I/C.E. Invoice. The adjudicating authority has not determined the value of exported goods in terms of section 4 of Central Excise Act, 1944. Rather he has compared ARE-I value and market value and this principle is not stipulated in section 4. A reasoned order is required to be passed taking into account the relevant statutory valuation provisions.

10.1 In this case goods are exported by applicant to subsidiary unit of the applicant company. Similar issue of valuation was involved in another rebate claim cases of applicant which were held inadmissible by Commissioner (Appeals) vide Order-in-Appeal No. 2/12 dt. 20-03-2012 and 3/12 dt. 28-08-2012. In these cases the medicament Olanzapine, was exported by applicant to their subsidiary unit abroad.

10.2 In that case, the rebate claims of amount of Rs. 21,18,36,117/- and Rs. 64,89,532/- was initially sanctioned by the original authority vide impugned Orders-in-Original No. 462/11 dt. 30-09-2011 and 3/12-R dt. 13-01-2012. The department filed appeals before Commissioner (Appeals) against the said Orders-in-Original on the ground that the declared value of the impugned goods was much higher than transaction value and also the market value of the goods was less than amount of rebate claims and hence, such rebate claim becomes inadmissible in terms of proviso 2 (e) of the notification No. 19/2004-CE (NT) dt. 06-09-2004. Commissioner (Appeals) allowed the appeal of the department vide Order-in-Appeal Nos. 02/12/H-IV (D) CE dt. 20-03-2012 and 3/12 dt. 28-03-2012. The CCE Hyderabad-IV issued show cause notice vide O.R No. 136/2012- Adjn. (Comm.) CE dt. 03-05-2012 and O.R. No. 150/2012-Adjn. (Comm.) CE dt. 05-06-2012 to the applicants for recovery of erroneously sanctioned rebate claims vide Order-in-Original No. 462/2011 dt. 30-09-2011 and 03/2012-rebate dtd. 13-01-2012. Commissioner, Central Excise, Hyderabad-IV vide Order-in-Original No. 53/2012-Adj. (Comm.) CE dt. 30-10-2012, determined the value of exported goods under section 4 of Central Excise Act, 1944 decided the rebate claims and also confirmed the demands. Relevant paras of the said order dt. 30-10-2012 reproduced as under:-

" 19. Sanction of rebate claim of the duty paid on export goods is subject to the provisions of Notification No,19/2004 CE(NT) dated 06.09.2004, Condition 2(e) of the said notification requires that the market price of excisable goods at the time of exportation is not less than the amount of rebate of duty claimed, In the instant case, on verification of the prices of the identical goods through internet, it is noticed that the goods exported by Dr. Reddy's Laboratories were priced higher than the market price of a manufacturer of similar goods, M/s. Sun Pharmaceuticals Ltd, especially when the goods are

exported to their subsidiary company. Since the relationship influences the transaction value, the export price on which duty of excise has been paid cannot be considered as transaction value, Verification of the export prices with reference to cost of production and the prices of identical goods clearly leads to conclusion that it is a clear case that the export goods are overpriced so as to get undue benefit of rebate of duty of excise in cash, In the instant case, condition 2(e) of Notification No,19/2004 CE(NT) has not been satisfied as the market value of similar goods manufactured by M/s. Sun Pharmaceuticals is much less as compared to the export value of the assessee.....

22. The sanctioning authority sanctioned an amount of Rs. 21,11,04,089/- in cash vide Order-in-Original No. 462/11-rebate dated 30-09-2011. In respect of the other rebate claim sanctioned vide Order-in-Original No. 03/2-12-Rebate dt. 13-01-2012, even though the notice proposes to recover Rs. 1,75,57,537/- from the assessee, I find that the dispute relates to sanctioned of Rebate of Rs. 64,89,532/- relating to Olanzapine ODT tablets of 10mg and 5mg exported vide ARE-1 No. 1930/11-12 dt. 25-10-2011 only and not others. Accordingly, out of Rs. 1,75,57,537/- sanctioned as rebate in the impugned order, I restrict myself to the rebate amount of Rs. 64,89,532/- sanctioned erroneously in cash.

23. The assessee have requested that the rebate may be restricted to the extent of present market value. Condition 2(e) of Notification No.19/2004 CE(NT), reads as under:

"that the market price of the excisable goods at {he lime of exportation is not less than the amount of rebate of duty claimed."

The Notification provides for granting of rebate of duty of the whole of the duty paid on all excisable goods exported to any country other than Bhutan with certain conditions and limitations. Therefore, the rebate claims shall be sanctioned within the parameters laid down by the said Notification. In the instant case, it is clearly seen in condition 2(e) that the market price of the excisable goods at the time of exportation shall not be less than the amount of rebate of duty claimed. The assessee exported the generic product whereas the branded goods of Olanzapine 20mg i.e., "OLEANZ RAPI" manufactured by M/s Sun Pharmaceuticals Ltd are sold at Rs.104.50 for 10 tablets in the market. Since the generic product and the branded goods are not comparable, I am not inclined to accept the request of the assessee. The assessee themselves have stated that there are no sales of these generic products manufactured by them in the Indian market. They have also provided the cost of their product as under:

Cost of one lakh 'Olanzapine-20 mg' tablets	30s-	Rs.1,28,267/-
Cost of one lakh 'Olanzapine-20 mg' tablets	100s-	Rs.86,467/-
Cost of one lakh 'Olanzapine-20 mg' tablets	50 Os-	Rs.75,199/-

Sr. No.	ARE-1 No.	Date	Description of goods	Nature of pack	Quantity
1	748/11-12	27-06-2011	Olazapine 20 mg	30's Pack	10923840 Nos. (364128 Packs)
2	748/11-12	27-06-2011	Olazapine 20 mg	100's Pack	744000 Nos. (7440 Packs)
3	748/11-12	27-06-2011	Olazapine 20 mg	500's Pack	1434000 Nos. (2868 Packs)
4	1930/11-12	25-10-2011	Olazapine 10 mg	80's Pack	358560 Nos. (11952 Packs)
5	1930/11-12	25-10-2011	Olazapine 5 mg	30'S Pack	576000 Nos. (19200 Packs)

Since, the assessees have exported the impugned goods only to their subsidiary company the transaction value cannot be treated as fair transaction value as already discussed above. Further, in view of the condition 2(e) of Notification No.19/2004-CE(NT) and by following the principles of Rule 11 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Rule 8 of the said Rules, I am of the considered opinion that the rebate amount shall not exceed the duty amount calculated on the one hundred ten percent of cost price of the generic products exported by them. Since the assessees have not furnished the cost of one lakh tablets of Olanzapine 10mg and 5mg of 30's pack exported by them under the cover of AREI No. 1930/2011-12, I have proceeded to work out the cost price of the said goods on pro-rata basing on the Olanzapine 20mg of 30's pack.

S. No.	ARE-1 No.	Date	Description of goods	Qty. Exported (Nos.)	Cost Price and cost price on pro-rate basis (Rs.)	Assessable Value (110% of cost price) Rs.	Eligible rebate amount @ 5.15% Rs.
1	748/11-12	27-06-2011	Olazapine 20 mg	10923840	14011682	15412850	793762
2	748/11-12	27-06-2011	Olazapine 20 mg	744000	643314	707645	36444
3	748/11-12	27-06-2011	Olazapine 20 mg	1434000	1078354	1186190	61089
4	1930/11-12	25-10-2011	Olazapine 10 mg	358560	229958	252955	13027
5	1930/11-12	25-10-2011	Olazapine 5 mg	576000	184704	203175	10464
				Total	1614812	17762815	914786

From the above statement, it is very clear that the assessee are entitled for rebate in cash amounting to Rs.9,14,786/- relating to the goods exported under ARE1 Nos.748/2011-12 dated 27.06.2011 and 1930/2011-12 dated 25.10.2011 as against the rebate amount of Rs.21,75,93,621/- (Rs.21,11,04,089/- + Rs.64,89,532/-) sanctioned in cash vide Orders-in-Original Nos.462/2011 -Rebate dated 30.09.2011 and 03/2012-Rebate dated 13.01.2012.

24. In view of the foregoing discussions, I hold that DRL are entitled for cash rebate of Rs.8,91,295/- (Rupees Eight Lakhs Ninety One Thousand Two Hundred Ninety Five only) in respect of the goods exported under ARE1 No. 748/2011-2012 dated 27.06.2011 as against the amount of Rs.21,11,04,089/- sanctioned in cash vide Order-in-Original No.462/2011-Rebate dated 30.09.2011. Similarly, I hold that DRL are entitled for rebate in cash amounting to Rs.23,491/- (Rupees Twenty Three Thousand Four Hundred Ninety One only) relating to the goods exported under ARE-I No.1930/2011-12 dated 25.10.2011 as against the amount of Rs.64,89,532/- sanctioned as rebate in cash vide Order-in-Original No. 03/2012-Rebate Dated 13.01.2012. Accordingly, I hold that an amount of Rs.21,02,12,794/- (Rupees Twenty One Crores Two Lakhs Twelve Thousand Seven Hundred Ninety Four only) sanctioned erroneously in cash in excess of the eligible amount vide Order-in-Original No.462/2011-Rebate dated 30.09.2011 is liable to be recovered from M/s. DRL. Similarly, I hold that an amount of Rs.64,66,041/- (Rupees Sixty Four Lakhs Sixty Six Thousand Forty One only) sanctioned erroneously in cash in excess of the eligible amount vide Order-in-Original NO.03/2012-Rebate dated 13.01.2012 is liable to be recovered from M/s. DRL. Having concluded that the amounts are recoverable from M/s. DRL, the provisions relating interest under section 11AA of Central Excise Act, 1944 automatically arises. "

10.3 From above, Government notes that, Commissioner of Central Excise has already decided the valuation issue and the rebate claims of the applicant in another case. However, the applicant has filed the appeal against said Order-in-Original No. 53/12 dt. 30-10-2012 passed by Commissioner of Central Excise & Customs before Hon'ble CESTAT. Further, the ACCE has not passed a well reasoned order as stated above and erred in not determining the value of exported in terms of section 4 of Central Excise Act, 1944. The rebate of duty paid on the value of said excisable goods, determined under section 4 is admissible under rule 18 of Central Excise Rules, 2002 read with Not. No. 19/04-CE(NT) dated 6.9.2004. The Order-in-Original No. 53/12 dt. 30-01-2012 passed by CCE, Hyderabad-IV is also to be kept in mind

determination of value. Therefore matter is required to be remanded back for fresh consideration of said rebate claims taking into account above observations.

11. In view of above position, Government sets aside these impugned Orders and remands the cases back to original authority for fresh consideration in accordance with law by taking into account the above observations. A reasonable opportunity of hearing will be afforded to the parties.

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

13. So, Ordered.

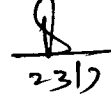


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Dr. Reddys Laboratories Ltd., (Generics)/(FTO 3)
Sy. No. 41, Bachupally Village,
Qutbullapur Mandal, Range Reddy District,
Hyderabad- 500090.

ATTESTED




(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. ⁹⁴³⁻¹⁰⁵⁶ /13-Cx dated 23-7 -2013

Copy to:

1. The Commissioner of Central Excise & Service Tax, Hyderabad-I, Opp. L.B. Stadium Road, Basheer Bagh, Hyderabad-500004.
2. The Commissioner (Appeals-III), Central Excise & Service Tax, L.B. Stadium Road, Basheer Bagh, Hyderabad-500004.
3. The Deputy Commissioner of Central Excise, Hyderabad-L Division, CLS Buil., Nampally station Road, Hyderabad-500004.
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED


23/7
(B.P.Sharma)

OSD (REVISION APPLICATION)