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F.No.195/1014/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.....31/3/14

Order No. 98/2014-CX dated 26.03.2014 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 Act, 1944 against order-in-appeal No.M-I/RKS/140/2011 dated 13.7.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

Applicant : M/s Herbalife International India Pvt. Ltd. Bangalore

Respondent : Commissioner of Central Excise, Mumbai-I

ORDER

This revision application is filed by the applicant M/s Herbalife International India Pvt. Ltd., Bangalore against the order-in-appeal No.M-I/RKS/140/2011 dated 13.7.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to order-in-original No.16/R/2006 dated 25.1.2007 passed by the Assistant Commissioner (Rebate) Central Excise, Mumbai-I.

2. Briefly stated the facts of the case are that the applicants had filed a claim for rebate of duty of Rs.1,33,46,866/- in the office of the Deputy Commissioner of Central Excise, Taloja Division, Mumbai VII Commissionerate on 27.06.2002 for goods exported by them under ARE-1 No.1/2002 dated 22.01.02. On scrutiny of the said claim, the following discrepancies were noticed:-

- a) the goods cleared on payment of duty (under protest) and exported was Thermogelic Formula I Chocolate or Thermogelic Formula I Dutch Chocolate.
- b) Original copy of Central Excise Invoice No.37 dated 10.05.02, issued by M/s. Dominion Chemicals Ltd. was not submitted.
- c) Duplicate copy of Central Excise Invoice No.13 dated 17.04.2000, 17 dated 25.04.2000, 20 dated 02.05.2000 & 42 dated 30.05.02 issued by M/s. Dominion Pharmaceuticals Ltd. were not submitted.
- d) Original copy of Central Excise Invoice No. 52 dated 06.06.2000, 53 dated 13.06.2000 issued by M/s. Dominion Pharmaceuticals Ltd. were not submitted.
- e) Assessable value was Rs.8,34,17,917/-, but F.O.B. value was much lower at Rs.1,53,54,379/-.
- f) Whether the applicants had filed appeal against order of classification of the product.

- g) Disclaimer certificate from the manufacturer of the goods exported not submitted.
- h) Explanation for disclaimer does not appear on the body of the ARE-1.
- i) Self attested copy of mate receipt was not submitted.
- j) Copy of B.R.C. issued by concerned Bank was not submitted.
- k) Copy of Balance Sheet was not submitted.
- l) Copy of Boards resolution, authorizing the signature who had signed self-attested documents and correspondence related to the claim.

2.1 The applicants submitted the reply to the above discrepancies, wherein they inter-alia mentioned that:

- i. Both the products, Therrnojetic Formula -I chocolate and Thermojetic Formula-I Dutch chocolate are one and same.
- ii. Original Copy of the Central Excise Invoice No. 37 dated 10.05.2002; of Dominion Chemicals was not traceable. They promised to submit the affidavit for the same.
- iii. Duplicate copies of Central Excise Invoices No. 13, 17, 20, 42, 52 & 53 of Dominion Pharmaceuticals were not traceable and promised to submit the affidavit.
- iv. The assessable value of the goods exported was arrived at by deducting 35% from the M.R.P, but the export value of the subject goods was calculated at manufacturing cost plus the profit.
- v. No appeal was filed against the order of classification of the product.
- vi. Copy of the mate receipt was enclosed,
- vii. Copy of B.R.C was enclosed
- viii. Copy of audited accounts for the year ending 31.03.2001 was submitted.

2.2 The Deputy Commissioner, Central Excise, Taloja Division, Mumbai-VII Commissionerate vide letter dated 19.08.02, sent the rebate claim file with copy of correspondence letters to Maritime Commissionerate, Mumbai, as the ARE-1 was addressed to Maritime Commissioner, Central Excise; Mumbai. The Deputy Commissioner, Central Excise, Taloja Division, vide said letter dated 19.08.02, informed the discrepancies noticed during the scrutiny of claim.

2.3 It was also informed by the Deputy Commissioner, Central Excise, Taloja Division that reference were made to Custom House, Nhava Sheva, to verify the genuineness of the export documents and with respect to the huge difference in the ARE-1 value and FOB value and also to Superintendent of Central Excise, Madiwala Range II, Bangalore-I Commissionerate & Superintendent of Central Excise, Jigani Sadan, Koramanala, Bangalore to verify duty payment particulars.

2.4 The Range Superintendent, Jigani, Banaglore, vide his letter dated 13.08.2002, informed that M/s. Dominion Pharmaceuticals were not working and sealed and that records were not available. However, from Range record only RT-12 returns for the months of April to June 2000 and PLA account could be traced. Further, invoice-wise statement for the month of April to June 2000 was found in the respective RT-12 and the same could be made available. The Range Superintendent, Jigani, Bangalore, further informed that no invoices were available to verify the same with PLA and that since copies of invoice were not available verification could not be done at their end and accordingly triplicate ARE-1 was not certified by them.

2.5 The Range Superintendent, Madiwala Range-II, Bangalore-I, vide letter dated 12.08.02 confirmed the correctness of the triplicate and quadruplicate copies of ARE-1 No.1/2002 dated 22.01.02 and corresponding invoices No. 29/08.05.2000, 32/09.05.2000, 34/10.05.2000, 37/12.05.2000, 1/15.05.2000, 45/16.05.2000, 59/06.06.2000, 60/06.06.2000 and 63/13.06.2000 of M/s. Dominion Chemicals Inds. Ltd.

2.6 The claim was independently scrutinized by the Assistant Commissioner (Rebate), Central Excise, Mumbai-I and following discrepancies were noticed and accordingly explanation was called for from the applicants, vide letter dated 07.04.03:-

- (i) Goods are cleared for export during the period from April 2000 to June 2000, whereas the goods were exported on 27.01.02. i.e after 9 months from the date of clearance from the factory.
- (ii) The gross and net weight of goods exported do not tally in any of the documents such as ARE-1, Shipping Bill, Mate Receipt and Bill of Lading.
- (iii) The label of the product Thermogetic Formula I Chocolate do not show any shelf life. The applicants were, therefore requested to forward the labels of all the products exported vide aforesaid ARE-1 No.1, showing their shelf life.
- (iv) The classification list or any such declaration filed by the manufacturers showing all the products manufactured by them is required to ascertain products manufactured by the manufacturer.
- (v) The goods covered under each invoices do not match with the Annexure to ARE-1
- (vi) Letter from jurisdictional Range authorities certifying that product Thermojetic Formula I Dutch Chocolate is same as - Thermogetio Formula I Chocolate.
- (vii) The B.R.C. do not give any reference to the Shipping Bill, for which the proceeds of export are realized.
- (viii) The Duty payment certificate in respect of Invoice Nos. 26 dated 12.05.2000 for Rs.12,55,219, No.53 dated.13.06.2000 for

Rs.4,53,709/-, No.52 dated 06.06.2000 for Rs.12,55,219, No.58 dated 15.06.2000 for Rs.5,34,758/- and No.50 dated 14.06.2000 for Rs.6,41,710/-.

(ix) Declaration furnished is addressed to Assistant Commissioner, Belapur and not to Maritime Commissioner.

(x) It appeared that goods were originally cleared for home consumption and subsequently transferred to overseas buyer on hypothetical price, wherein P.M.V value was very high as compared to F.O.B value.

2.7 A Show Cause Notice vide F.No. V(15)Reb/Ch 29/2003/3987, dated 22.9.05, was therefore issued to the applicant for the aforesaid discrepancies.

2.8 The Assistant Commissioner (Rebate), Central Excise, Mumbai-I, vide Order-in-Original No.110/R/2006 dated 22.02.2006, rejected the rebate claim of Rs.1,33,46,866/-. The Assistant Commissioner (Rebate), vide Order-in-Original dated 22.02.2006, has inter alia held that the goods exported by the applicants were Thermogetic Formula I Chocolate and Thermogetic Formula I Dutch Chocolates. The date of clearance from the factory and the date of export of the said goods indicate that the said goods have been exported nearly after 21 months from the date of clearance from the factory. The actual date of manufacture was no where available and even applicants have shown inability to produce the same. This creates suspicion whether the goods exported were within expiry period or otherwise and hence they did not have the local market. In his Order dated 22.02.2006, the Assistant Commissioner (Rebate) further held that from the case records, the value of goods exported as per Central Excise invoices was Rs.8,34,17,917/- and the value shown on the goods exported was Rs.1,53,54,379/- which clearly indicates that the goods have been exported at the discarded price. The whole exercise appears to have been done to recover

the Central Excise duty paid on the goods, which were not sold in the local market.

2.9 The Assistant Commissioner (Rebate), Central Excise, Mumbai-I, further held that the details of the goods exported i.e. Annexure to ARE-1, was not signed by the Superintendent and also does not bear the concerned ARE-1 number. The details of the goods exported have not been signed by any Customs Officer.

2.10 Being aggrieved by the said Order-in-Original dated 22.02.2006, the applicants preferred an appeal before the then Commissioner (Appeals), Mumbai.

2.11 The Commissioner (Appeals), Mumbai vide Order-in-Appeal No. CPA (3172) 141/M-I/06 dated 16.10.2006, remanded the case back to the original adjudicating authority to decide it afresh.

2.12 The adjudicating authority i.e. the Assistant Commissioner, Central Excise, Mumbai-I has accordingly decided the rebate claim afresh, vide the impugned Order-in-Original dated 25.01.2007, wherein he has once again rejected the rebate claim filed by the applicants.

2.13 The adjudicating authority in his findings vide impugned Order-in-Original has observed as under:-

(i) that the permission for export was granted by the Commissioner, Bangalore on 19.11.2001, subject to the conditions that only those goods which were specified by the applicants in the annexures to their letter 01.08.2001 are exported and that the goods should be verified by the jurisdictional Range Superintendent at the premises at Taloja and procedure specified in Board's Circular No.294/10/97 dated 30.01.1997 should be followed.

- (ii) that the Range Superintendent's verification report is dated 24.10.2001, which is much before the permission granted by the Commissioner, Bangalore and there was no subsequent verification report issued in pursuance to the permission granted by the Commissioner, Bangalore. Further, the list of invoice as per Annexure to the letter dated 01.08.2001 are not on record and hence it is not possible to confirm/compare the identity of goods permitted for export by the Commissioner.
- (iii) that the Range Superintendent, Jigani Range, Bangalore, in-charge of M/s Dominion Pharma had abstained from certifying the triplicate copy of the ARE-1 dated 22.01.2002, and informed vide letter O.C.No.467/02 dated 22.08.2002, that the duty payment particulars in respect of Invoice Nos. 13, 20, 29 & 42 could not be verified.
- (iv) that the goods manufactured by M/s Li-Taka Pharma, Pune, have also been exported under the cover of ARE-1 No.1/2002 dated 22.01.2002, and the Range Superintendent, Talegoan Range has counter-signed the ARE-1. Therefore, the question arose as to how the goods manufactured by M/s Li-Taka, Pune, were included and exported vide subject ARE-1 dated 22.01.2002.
- (v) that on perusal of the description of the goods vis-a vis ARE-1 and packing list, it appeared that the goods were opened and repacked. Also that there was no record of any procedure followed for trans-shipment of duty paid goods from the original destination from 115, Koramangala Ind. Area, Bangalore to AFC Logistics, Trifed, Plot No.T-3, M.I.D.C. Taloja, for export.
- (vi) that the Annexure to ARE-1 gives details of only the goods to be exported. The goods appears to be repacked by the merchant exporter and the packages mentioned in the annexure do no co-relate with the Central Excise Invoices submitted by the applicants. In absence of the

annexure to the letter, it cannot be ascertained whether the goods in respect of which the permission was granted have indeed been exported.

2.14 The adjudicating authority has accordingly held that it cannot be conclusively said that the goods which were cleared from the factory on payment of Central Excise duty, have been exported. The adjudicating authority has therefore rejected the rebate claim filed by the applicants.

3. Being aggrieved by the said order-in-original dated 25.1.07, the applicant filed appeal before Commissioner (Appeals) who after considering all the submissions, rejected the appeal.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 At the outset, the applicant submits that they have claimed rebate of duty paid on goods which were exported out of India and when such fact is established beyond doubt, there can be no justification for denying the rebate. While reiterating the facts as enumerated in the statement of facts, the applicant once again wishes to bring to your Lordships' kind attention, that during the period April to June 2000, the applicant procured goods i.e. Thermojetic Dutch Chocolate from M/s Dominion Chemical Industries Ltd. and M/s Dominion Pharmaceutical Pvt. Ltd. on payment of duty. Out of the goods procured, the applicant exported certain quantity of goods for which rebate claim has been filed and the balance quantity was cleared in the domestic market.

4.2 Further, the fact that the above goods have in fact been exported is also not in doubt and can be established through the following documentary evidences:

- (a) Export Invoice no. HRBL/HRBL/02/01 dated 22.1.02 (duly certified by the Assistant Commissioner of Customs) amounting to USD 3,21,894.74 issued by the Applicant to Herbalife International of America Inc. for export of 1,27,386 units of goods.
- (b) Copy of duly certified Shipping Bill no. 520414 dated 24.1.2002 evidencing export of 127,386 units of goods.
- (c) Packing list accompanying the export goods mentioning the description of goods and the corresponding quantities.
- (d) ARE-I No. 1/2002 dated 22.1.2002 evidencing export of 127386 units (87.66 tons) of goods.
- (e) Mate Receipt issued by Samrat Shipping & Logistics Pvt. Ltd. evidencing delivery of goods on Board Indamex Nhava Sheva 2104.
- (f) Bill of Lading bearing No. CCXLSAMBBYE10166 dated 26.1.2002 issued by Sam rat Shipping & Logistics Pvt. Ltd. evidencing receipt of export goods.
- (g) FIRC from the ABN AMRO Bank evidencing receipt of USD 321894.74 against Applicant's Export Invoice no. HRBL/HRBL/02/01 dated 22.1.2002 and shipping bill no. 520414 dated 24.1.2002.
- (h) Declaration from the overseas entity i.e. Herbalife International of America Inc. confirming receipt of goods exported vide Invoice No. HRBL/HRBL/02/01 dated 22.1.2002 and Bill of Lading No. CCXLSAMBBYE10166 dated 26.1.2002.
- (i) Verification Report dated 24.10.2001 issued by Range Superintendent, Taloja, Mumbai certifying the fact that the total quantity of materials as per the stock position statement (i.e, 127386 units of goods) were identified with their respective invoices and were in original packed condition.

4.3 Further, the fact that the said export goods are duty paid can be substantiated through the following documents:

(a) Certificate dated 13.5.2002 issued by Superintendent of Central Excise, Madiwala II Range, Bangalore containing the particulars of payment of duty by M/s Dominion Chemical Industries Ltd, vide debit in their PLA account.

(b) Certificate dated 6.5.2002 issued by the Superintendent of Central Excise, Jigani Range, Bangalore containing the particulars of duty payment by M/s Dominion Pharmaceuticals Pvt. Ltd., vide debit in their PLA account and Modvat Credit account.

(c) Extract of PLA account of M/s Dominion Pharmaceuticals Pvt. Ltd., certified by Central Excise Officer, Jigani Range.

(d) Extracts of ledger account of M/s Dominion Pharmaceuticals Pvt. Ltd. maintained in the books of account of the applicant.

(e) Extract of bank statements acknowledging the payments made by the Applicant with respect to the excise duty deposit in favor of Dominion Pharmaceuticals Pvt. Ltd.

4.4 In this regard, it is humbly submitted that the Commissioner (Appeals) has grossly erred in passing the impugned order in as much as his observation that the goods have been opened and re-packed is merely a bald statement and wholly unsustainable and devoid of merits. The Commissioner (Appeals) has held that the goods were not in original packed condition merely due to variation in the quantity of goods received by the Applicant from the manufacturers and the quantity of goods exported vide the ARE-I no.01/2002 dated 22.1.2002. However, the Commissioner (Appeals) has not pointed out any specific discrepancy. The Applicant submits that the goods received from Bangalore were never re-opened and re-packed and there has been no discrepancy between the export

invoice, packing list and the export documentation and in this regard a correlation statement of the quantity of goods exported is enclosed herewith as Exhibit AA. Further, it is humbly submitted that the Commissioner (Appeals) has failed to take cognizance of the fact that the entire quantity received from the manufacturer under Central Excise Invoices was not exported but only part quantity was exported, which can be easily co-related. However, part quantity (i.e. the balance) was cleared by the Applicant in the domestic market and rebate has been claimed by the Applicant only on the quantity of goods exported.

4.5 Further, the Range Superintendent, Talaja, Mumbai, in his verification report dated 24.10.2004 has clearly held that the goods were clearly identified with their respective invoices and were in original factory packed condition. Therefore, the allegation by the Commissioner (Appeals) that the goods cleared from the manufacturer's premises could have been opened or repacked and hence could not be correlated with the export goods is wholly unsustainable.

4.6 It is humbly submitted that the Range Superintendent, Talaja, Mumbai, in his verification report dated 24.10.2001 while approving that the goods procured by the Applicant are in original packed condition, has referred to a stock position statement (duly signed by the Authorised Signatory of Applicant). It is the allegation of the Commissioner (Appeals) that the stock position statement submitted by the Applicant vide its letter dated 22.6.2011 are not signed by the authorised signatory and therefore its authenticity is in doubt. Accordingly, the Commissioner (Appeals) has concluded that the goods which were verified by the Range Superintendent, Talaja cannot be correlated with the goods cleared for export and hence, the rebate claim filed by the Applicant has been rejected. In this regard, the Applicant is enclosing herewith the duly signed stock position statement mentioned in the Verification Report dated 24 October.

4.7 Therefore, in light of the above, the allegation of the Commissioner (Appeals) that the export goods cannot be correlated with the goods verified by the Range Superintendent in his verification report dated 24.10.2001 is not justified when the Applicant is duly submitting the signed copies of the stock position statement. On this ground alone, we humbly request your Lordships to grant us rebate of duty paid on the export goods. Further, we would like to reiterate that when there is no doubt regarding the export of goods and payment of duty, the Commissioner (Appeals) is wholly unjustified in rejecting the rebate claim

4.8 The Commissioner (Appeals) at para 29 and 32 of impugned order has alleged that goods exported by the Applicant cannot be correlated to the goods for which extension to export goods beyond a period of six months was sought vide Letters dated 01.8.2001 as Annexure to the said letters are not signed. In this regard, it is pertinent to note that the Applicant vide its letters dated 01.8.2001 addressed to Deputy Commissioner, Central Excise, Bangalore III Division, Bangalore (in respect of goods procured from M/s Dominion Chemical Industries Ltd.) and Deputy Commissioner, Central Excise, Bangalore II Division, Bangalore (in respect of goods procure from M/s Dominion Pharmaceuticals Pvt. Ltd.) respectively had applied for seeking extension of time to export the goods beyond the period of six months from the date on which they were cleared from the manufacturer's premise. The Commissioner of Central Excise, Bangalore I Commissionerate vide its letter dated 19.11.2001 granted the permission to export the goods beyond the period of six months subject to the fulfillment of conditions prescribed therein.

4.9 In context of the above, the Applicant humbly submits that even though the annexure to letter dated 01.8.2001 were not signed, there is a clear mention of the Annexure attached as well as the corresponding amounts in the letter itself which was duly signed and which is not in dispute. Therefore, when the amounts and the quantities mentioned in the letter match with the amounts and quantity as mentioned in the ARE-1 and other export documents, the allegation by the Commissioner (Appeals) that the

export goods cannot be correlated with the goods for which extension has been sought is nothing but arbitrary and propounded just to deny the benefit of rebate to the Applicant.

4.10 The Commissioner (Appeals) at para 31 and 34 of the impugned order has held that Annexure to ARE-1 was not signed by the Superintendent and also does not bear the concerned ARE-1 number. Therefore, the authenticity of the said Annexure cannot be established and hence, the Applicant have failed to prove that the goods which were cleared from the manufacturers premises were the same goods which were exported vide ARE-1 No. 01/2002 dated 22.1.2002.

4.11 In this regard it is humbly submitted that the Commissioner (Appeals) while discussing the facts of the case, has himself admitted at para 7 of the impugned order that the Range Superintendent, Madiwala Range - II, Bangalore - I, vide letter dated 12.8.2002 has duly confirmed the correctness of the triplicate and quadruplicate copies of ARE-1 no. 1/2002 dated 22.1.2002 in respect of goods procured from Dominion Chemicals. Therefore, to this extent it is not open to the Commissioner (Appeals) to question the authenticity of the ARE-1 and the relevant annexures .

4.12 Further, the Assistant Commissioner, Central Excise, Mumbai - I vide Order-in-Original dated 25.1.2007, has held that the Range Superintendent, Jigani Range, Bangalore, in-charge of M/s Dominion Pharma had abstained from certifying the triplicate copy of the ARE-1 dated 22.1.2002 and informed vide letter O.C No. 467/02 dated 2.8.2002 that the duty payment particulars in respect of invoice nos. 13, 20, 29 and 42 could not be verified (refer para 15.1 (iii) of the impugned order). Therefore, it is clear from the above observations made by the Assistant Commissioner, Central Excise, Mumbai - I in Order-in-Original dated 25.1.2007 that except for invoice nos. 13, 20, 29 and 42, the Range Superintendent Jigani Range, Bangalore, was satisfied with the correctness of the ARE-1 in respect of goods procured from Dominion Pharmaceuticals.

4.13 Further, Range Superintendent of Central Excise, Jigani Range, Bangalore vide his letter O.C.No. 250/2002 dated 06 May 2002 addressed to the Deputy Commissioner of Central Excise, (Refund Section), C.B.D., Belapur, Navi Mumbai, has given the details of the payment of duty in respect of goods manufactured and cleared by M/s Dominion Pharmaceuticals Pvt. Ltd., Bangalore to the Applicant. To this letter, an Annexure has been given showing the details of Invoice Nos. and Date; Description of goods; value and duty paid. The Superintendent has also given the total duty paid through PLA and debited through MODVAT credit. The List of invoices include Invoice nos. 13, 20, 29 and 42. In light of the above documentary evidence, it is clear that duty was paid on invoice nos. 13, 20, 29 and 42 and therefore, Range Superintendent, Jigani Range was not justified in abstaining himself from certifying the triplicate copy of the ARE-1 dated 22.1.2002 when duty had been paid on all the invoices.

4.14 Without prejudice to the above and assuming for the sake for argument, without accepting the same, that the observations made by the Ld. Commissioner (Appeals) are right and the claim is liable to be rejected it is apparent that claim filed by the Applicant is being rejected merely on procedural grounds such as non-signing of documents or annexures. The Commissioner (Appeals) has erred grossly in not considering the fact that the core aspect or fundamental requirement for rebate is the manufacture of goods, the payment of duty on the same and its subsequent export, which in the present case is beyond any doubt. The Hon'ble Courts in a plethora of judgments have held that rebate is a beneficial piece of legislation with a view to promote exports and therefore the same cannot be denied on mere technical grounds.

The applicants rely on the following judgments:

- Barot Exports [2006 (203) E.L.T. 321 (G.O.I.)]
- Cosmonaut Chemicals Vs. UOI [2009 (233) E.L.T. 46 (Guj.)],

- Mangalore Chemicals and Fertilizers Limited Vs Deputy Commissioner of Commercial Taxes and others [(1992) Sup 1 SC 21];
- UOI Vs Suksha International & Nutan Gems & ANR [1989 (39) ELT 503 (Supreme Court)];
- Sanket Industries Ltd. [2011 (268) E.L.T. 125 (G.O.I.)];
- I.O.C. Ltd. Vs. CCE, Calcutta-II [2004 (178) E.L.T. 834 (Tri. - Kolkata)]

5. Personal hearing was scheduled in this case on 19.9.13, 8.8.13, 15.10.13 and 11.3.14. Shri Keyur Shah, Senior Manager (PWC) attended the hearing on 11.3.14 on behalf of the applicant who reiterated the grounds of revision application. The applicants also filed additional submission dated 17.3.14, wherein they mainly reiterated the contents of revision application.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the applicants exported the goods manufactured by M/s Dominion Pharmaceuticals Pvt. Ltd., Bangalore and M/s Dominion Chemicals Industries from the premises of M/s AFC, Bangalore. This factory premises fall under jurisdiction of Range XI of Talaja Division of the erstwhile Central Excise Mumbai-VII Commissionerate. On perusal of rebate claims, it has been observed that in almost all cases, there was difference in the quantity of goods cleared by the manufacturers and the goods exported. Further, on batchwise clearance of goods as per annexures to ARE-1 viz-a-viz batchwise clearance as per manufacturer's invoices, it is revealed that only part quantities of a particular batch were cleared for export, which clearly shows that the goods were not exported in original packed condition and hence the conditions of Board's Circular No.294/10/97-Cx dated 30.1.1997 are not complied with. Accordingly, the original authority rejected the rebate claims. Commissioner (Appeals) upheld impugned order-

in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the applicant exported the goods from factory falling under Talaja Range Superintendent's jurisdiction. The goods were manufactured by M/s Dominion Pharmaceuticals Pvt. Ltd., Bangalore and M/s Dominion Pharma Chemicals Industries Ltd., Bangalore. As such, the goods were not exported directly from factory of manufacturer and export of such goods are governed by provision of Board's Circular No.294/10/97-Cx dated 30.1.1997.

8.1 The procedure prescribed in para 8, 8.1 to 8.6 of said circular is as under:

"8. However, in case of future exports [including the export as shipstores], to avail the aforesaid waiver from the condition of direct exports from the factory/ warehouse, the exporters will be required to follow the the factory/ warehouse, the exporters will be required to follow the procedure prescribed in Circular No. 2/75 dated 22.1.75 [reiterated in Circular No. 18/92 dated 18.12.92], which is reiterated below with certain modifications:-

8.1 An exporter, (including a manufacturer-exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/ not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the superintendent of Central Excise incharge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sixuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information:-

- (a) Name of the exporter*
- (b) Full description of excisable goods along with marks and / or numbers.*
- (c) Name of the manufacturer of excisable goods.*

(d) *Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared. (Photo copy of invoice/ duty paying document by submitted).*

(e) *The rate of duty and the amount of duty paid on excisable goods.*

8.2 *The AR4 form should have a progressive number commencing with Sl. No. 1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/ consignments cleared from the same factory/ warehouse under different invoices or from the different factories/ warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.*

8.3 *On receipt of the above application and particulars, the particulars of the packages/ goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.*

8.4 *If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.*

8.5 *The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.*

8.6 *The disposal of different copies of AR-4 forms should be in the following manner:-*

i) *the original and duplicate copies are to be returned to the exporter for being presented by him alongwith his shipping bill, other documents and export consignment at the point of export.*

ii) *triplicate and quadruplicate copies to be sent to the Superintendent Incharge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice/ duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt, and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate & quadruplicate copies of AR-4. He will also endorse on the reverse of manufacturers' invoice "GOODS EXPORTED - AR-4 VERIFIED", (and return it to the manufacturer under proper receipt.) He will forward the triplicate copy to the Maritime Commissioner of the port from where the goods were/ are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter, Range/ Division/ Commissionerate indicating name of the exporter' godown, warehouse etc. are located and where AR-4 is prepared, AR-4 No. and date, description of items, corresponding invoice No. of the manufacturer, remarks regarding verification, date of dispatch of triplicate& quadruplicate copy.*

iii) *the quintuplicate copy is to be retained by the Superintendent Incharge of the range from where the goods have been exported for his record.*

iv) *the sextuplicate copy will be given to the exporter for his own record."*

8.2 From perusal of above, it can be implied that there are three basic conditions of said Board's circular. First, the goods should be available at the place of storage after clearance from factory in original factory packed condition and secondly such goods should be clearly identifiable and correlatable with the goods cleared from the factory on payment of duty and thirdly the said duty paid goods are exported out of India. The documents submitted and examined by lower authorities do not establish the correlation

of goods exported with the goods cleared from factory on payment of duty. So the duty paid character of exported goods cannot be established in this case.

8.3 Government finds that the non-compliance of above said substantial conditions of Board's circular dated 30.1.1997 has been discussed in detail by Commissioner (Appeals). The Commissioner (Appeals) has observed as under:

"However, on perusal of the comparative figures of the goods cleared from the premises of manufacturer(s) and the corresponding goods exported by the appellants, vide subject ARE-I, it is evident that there is a discrepancy in the figures and hence it cannot be ruled out that the goods cleared from the manufacturer's premises have been subsequently opened and repacked, as only part quantity of the goods cleared, has in fact been exported. Further, the goods exported cannot be co-related with the goods cleared by the manufacturer as the Annexure to the letter dated 01.08.2001, of the appellants, as submitted by them before the Commissioner, Central Excise, Bangalore, is not forthcoming on records.

The Deputy Commissioner, Central Excise, Talaja Division, Belapur, Commissionerate, from where the impugned goods were exported, vide this office letter F.No.25/MI/2007 dated 24.03.2011, was requested to submit the copy of Annexure to the letter F.No.CEX/RTVI/Verification/2001-2002 dated 24.10.2001, of Range Superintendent, who has carried out the verification of the stock at the premises of the appellants. The Deputy Commissioner, Central Excise vide this office letter dated 14.06.2011, was requested to furnish the copy of the said Annexure to the letter dated 24.10.2001. The said Deputy Commissioner, Central Excise, vide his letter F.No.V.Gen(30/Permission/Arch/2011-12 dated 23.06.2011, has informed that since the case records are old, the required documents could not be submitted.

The appellants vide this office letter F.No.25/MI/2007 dated 07.04.2011, were also requested to submit the copy of the two letters both dated 01.08.2001,

along with the Annexures, under which they had approached the Commissioner, Central Excise, Bangalore-I Commissionerate, seeking extension of the time limit for export of goods from Talaja. The appellants vide their letter 18.05.2011, have submitted the copies of their letters dated 01.08.2001, addressed to Deputy Commissioner, Central Excise, Bangalore III Division, Bangalore, and Deputy Commissioner, Central Excise, Bangalore-II Division, Bangalore seeking extension of time limit for extension for export of goods. In both the letters the appellants, at para 2, have mentioned that the products, as mentioned in the Annexure to the letters, were lying in original packed condition as consigned by the manufacturer. The appellants have however, failed to submit the copies of the Annexures to the letters dated 01.08.2001. The appellants vide their letter dated 18-05-2011 have submitted the copy of letter F.No.V.Gen(30) 36/ Herbal life/2001 dated 24.07.2001 of Deputy Commissioner, Central Excise, Talaja, Belapur Commissionerate, vide which the application seeking extension of time limit of export was returned by the said Deputy Commissioner. The letter apparently mentions enclosures, and on perusal of the enclosure it appears that the same are not signed by the appellants or its authorized signatory, therefore it cannot be confirmed that the said Annexure(s) are the same that the Range Superintendent, Central Excise, Range VI, Talaja Division, the then Mumbai-VII Commissionerate has mentioned in his verification letter dated 24.10.2001, and therefore the genuineness of the Annexures could not be verified.

Further, on perusal of the copy of letter dated 24-10-2001 of the jurisdictional Range Superintendent which has now been submitted by the appellants, vide their letter dated 22-06-2011, it is seen that in the said letter dated 24-10-2001, It has been mentioned that the goods as mentioned in the stock position statement were identified with their respective invoices. However, on perusal of the copy of Annexure to the letter dated 24-10-2001, now submitted by the appellants vide their letter dated 22-06-2011, it is seen that the same do not bear the signature of the appellants or the signature of authorized signatory, whereas in the letter dated 24-10-2001 of Range Superintendent, there is clear reference that the stock position statement is duly signed by the authorized signatory of the assessee. Therefore, it is clear that the copies of the Stock Verification Report submitted by the appellants

along with their letter dated 22-06-2011, are not the same which are referred to/mentioned by the Range Superintendent in his letter dated 24-10-2001. Thus the contention of the appellants that verification report has been submitted by them along with appeal memorandum and their letter dated 22-06-2011 is not correct and the fact remains that the appellants have failed to submit verification Report of jurisdictional Range Superintendent in respect of the goods exported in Question.

From the foregoing discussions, I find that in absence of verification report of physical stock of goods exported, by the then Jurisdictional Range Superintendent of Central Excise, Talaja Division, Mumbai-VII Commissionerate, it cannot be ascertained/verified, as to whether the goods cleared on payment of duty from the manufacturers premises were the same which have been exported by subject ARE-1. Even the Annexures submitted by the appellants vide their letter dated 18.05.2011/22.06.2011 cannot be accepted, as the Annexures do not bear signature of the appellants or its authorized signatory. However, it is seen that the jurisdictional Range Superintendent, Range VI, Talaja Division, of the then Mumbai-VII Commissionerate, in his letter dated 24.10.2001, had submitted the verification of the material as per stock statement given by the appellants & in his report he has specifically mentioned that, the Stock Position statement was duly signed by the authorized signatory of the appellants. Therefore, the authenticity of the Annexure to the letter dated 24-10-2001 which has been now submitted by the appellants, vide their letter 22-06-2011, is in doubt and the same cannot be accepted as the same Annexures that were submitted by the appellants before the jurisdictional Range Superintendent at the time of verification of the goods before the same were exported.

I find that the adjudicating authority in his findings has clearly observed that the details of the goods exported i.e. Annexure to ARE-I, was not signed by the Superintendent and also does not bear the concerned ARE-I number. Therefore, the authenticity of the said Annexure cannot be established.

He has further observed that the goods appear to be repacked by the merchant exporter and the packages mentioned in the annexure do not co-

relate with the Central Excise Invoices submitted by the appellants. Further, in absence of the annexure to the letters dated 01-08-2001, it cannot be ascertained whether the goods in respect of which the permission was granted have indeed been exported. The adjudicating authority has thus held that it cannot be conclusively said that the goods which were cleared from the factory on payment of Central Excise duty have been exported.

I fully agree with the aforesaid findings of the adjudicating authority as there is a huge variation in the quantity of the goods received by the appellants from the manufacturer(s) and the quantity of goods exported vide ARE-I No.01/2001-2002 dated 22.01.2002, and therefore it is evident that the goods were not in original packed condition, at the time of export and hence, further processing of the goods in any manner after the same have been cleared from the premises of manufacturer(s), cannot be ruled out. The appellants have therefore failed to fulfill the two, basic conditions prescribed by the Board, vide above mentioned Circular dated 30.01.1997, that the goods should be in original packed condition/not processed in any manner after being cleared from the factory stored outside the place of manufacturer and that the goods should be clearly identifiable and co-relatable with the goods cleared from the factory; and which were the conditions prescribed by the Commissioner, Central Excise, Bangalore I, while granting the permission for export.

I therefore hold that appellants have failed to prove that the goods which were cleared from the manufacturers premises were the same goods, which were verified by the jurisdictional Range Superintendent and which were subsequently exported vide ARE-I No.01/2001-2002 dated 22.01.2002."

9. The Commissioner (Appeals) has given above said detailed finding and held that exported goods cannot be correlated with the duty paid goods cleared from factory of manufacture. The applicant contended that they have cleared certain quantity of goods for home clearances and remaining quantity for exports. However, the applicant failed to submit a detailed co-relation chart duly supported by documentary evidences showing that quantity of goods cleared for home consumption and export. They have also failed to

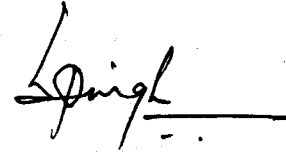
submit the legible copies of ARE-1, shipping bill, bill of lading, CB Invoice, commercial invoice application filed by CCE, Bangalore seeking extension of time to export goods, and permission granted by CCE, Bangalore though they had promised to furnish the same in a week's time. Further, the enclosure of verification report of Range Superintendent of Taloja Range is not properly signed by authorized signatory. The stock verification report enclosure having detail of stock is also not signed by Central Excise Superintendent. Under such circumstances, Government finds that the applicant has failed to establish that the duty paid goods cleared from factory of manufacturer were have actually been exported in impugned case. In view of above, Government concurs with detailed findings of Commissioner (Appeals) and hence, finds no reason to interfere with the same.

10. Government finds that rebate of central excise duty is a beneficial legislation and the same is subjected to fulfillment of certain condition. Government finds support from the observations of Hon'ble Supreme Court in the case of M/s ITC Ltd. Vs CCE reported as 2004 (171) ELT-433 (SC), and M/s Paper Products Vs CCE reported as 1999 (112) ELT -765 (SC) that the simple and plain meaning of the wordings of statute are to be strictly adhered to.

11. In view of above discussions, Government finds no infirmity in order of Commissioner (Appeals) and hence, upholds the same.

12. Revision application is thus rejected being devoid of merits.

13. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

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Bangalore-560025

GOI Order No. 98/14-CX dated 26.03.2014

Copy to:

1. Commissioner of Central Excise, Mumbai-I, Meher Building, Bombay Garage, Dadishet Lane, Chowpatty, Mumbai-400007.
2. Commissioner (Appeals), Central Excise Mumbai-I, Meher Building, Bombay Garage, Dadishet Lane, Chowpatty, Mumbai-400007
3. The Assistant Commissioner of Central Excise (Rebate), Mumbai-1 Commissionerate
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED



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