F. No. 198/80/12 - R.A-Cx
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE)
(REVISION APPLICATION UNIT

* * * *

Subject: Revision Application filed by against the Commr. Of Central Excise, Mumbai-III against Order-- in -- Appeal No. BC/286/MUM-III/2011 -12 Dated 31-01-12 passed by the Commissioner of Central Excise (Appeals), Mumbai-I in the case of M/s. Cipla Ltd.- Regarding....

*****

The above Revision Application (RA) and other relevant documents are placed in the file. The R.A. and other related required documents have been scrutinized and found in order. The file is complete in all respects.

2. The file is put up in accordance with the seniority of pending cases of rebate claim (West Zone) for grant of Personal Hearing by JS (RA) as and when instructed by her.

Submitted, please.

18/6/15

SO(RA)

410/SSC(RA)/2015
19/6/15

~~US(RA)~~ OSD(RA)

19/6

JS(RA)

Mar 2017 at 11.15 am

19/6

SSE/JSC(RA)/2015
20/6/15

OSD(RA)

19/6

22/6/15
Sh. M.K

None attended.
Refixed on 11/8 at 11 am.

OSD(RA) 20/7/15

F. No. - 198/80/12 - RA Cell

— 2/N —

Reference: Personal hearing fixed on 11.8.2015 in the R.A Case F. No. 198/80/12- in r/o M/s Cipla Ltd. reg..

F 'A' Vide their Fax-letter Dt. 28.7.2015 Respondent party M/s Cipla Ltd. has requested for pre-ponement of personal hearing from 11.8.15 to 10.8.15 in above cited matter, as their other cases are fixed on 10.8.15.

F- B.2. The Applicant Deptt's written Submission has been received vide letter dt. 15.7.15 in the subject case.

29/7/15 Submitted for order please.

New 29/7/15
SO (R.A)

OSD (RA)

29/7

623/JS(RA)/2015
29/07

JS (RA)
Inform dept. also
29/7/15

OSD (RA)
29/7

S.O (RA)
New 29/7/15
Sh. M.K

PH held for respondent
Reserved for order on 10/9/15 at 11.30

Sh. M.K
10/8

S/o New 10/8/15 OSD (RA)

340/JS(RA)/2015
10/08

3 opportunities given
~~bld~~ Examine & put up brief facts

10/9/15

OSD(CRA)

Brief facts are put up for

final disposal

15/3

JS(CRA)
21/3/16

OSD(CRA)

Corrected copy is put up

22/3

~~OSD~~ JS(CRA) Corrections remain to be made
29/3/16

OSD(CRA)

Corrected copy is put up.

31/3

JS(CRA)

31/3/16

290

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F.No.198/80/2012-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 6/4/16

ORDER NO. 54/2016-CX DATED 31.03.2016 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 the Order-in-Appeal No.BC/286/MUM-III/11-12 dated 31.10.2011 passed by Commissioner of Central Excise (Appeals), Mumbai –III.
APPLICANT	:	Commissioner of Central Excise, Mumbai-III.
RESPONDENT	:	M/s. Cipla Ltd.

******

ORDER

This revision application is filed by Commissioner of Central Excise, Mumbai-III, (hereinafter referred to as the Department) against the Order-in-Appeal No. BC/286/MUM-III/11-12 dated 31.10.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III, with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise, Maritime Commissionerate, Mumbai-III. M/s. Cipla Ltd. Mumbai, is the respondent.

2. Brief facts of the case are that M/s Cipla Ltd Mumbai, had filed a rebate claim for the duty paid on export of their goods under Rule 18 of Central Excise Rules, 2002, which were exported by them The original authority held that rebate claim is admissible @ 4% on the goods cleared for home consumption in terms of Notification No. 4/2006-CE dated 01.03.2006, as amended, whereas for exports they have paid duty @ 10% under the Notification No. 2/2008-CE dated 01.03.2008 as amended. However, the original authority rejected the rebate in toto, on the ground that the applicant claimed simultaneous benefit of rebate and drawback which is not admissible.

3. Being aggrieved by the said Order-in-Original, the respondent filed appeal before Commissioner (Appeals) who allowed the appeal by holding that as the respondent availed only Customs portion of drawback, rebate claim is admissible to them.

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

4.1 As per para 15 of Customs Notification No. 84/2010-Cus (N.T.) dated. 17.09.2010 issued under F. No. 609/76/2010-DBK, as regards the 'expression' "when Cenvat facility has not been availed" used in the Schedule to aforesaid Notification, the exporter shall satisfy the following conditions, namely.

(i) The exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of export product;

(ii) If the goods are exported under Bond or claim of rebate of duty of central excise, a certificate from the Superintendent of Customs or Superintendent of Central Excise in charge of the factory of production, to the effect that no Cenvat facility has been availed for the goods under export is produced."

In the instant case no such certificate has been produced.

4.2 As regards payment of excise component of All Industry Rates of Drawback, a declaration of non-availment of Cenvat facility is necessary. Manufacturers and merchant-exporters with a supporting manufacturer are required to give a self declaration in the prescribed form that such manufacturers are not registered with central excise and at they do not avail/ have not availed Cenvat facility. In the case of manufacturers and supporting manufacturers who are registered with Central excise, the fact of non-availment of Cenvat facility shall continue to be confirmed from the ARE-1 filed by them.

4.3 In the instant case, the claimant has submitted details of duty payment particulars made from the manufacturer's Cenvat credit balance account along with the rebate claim. However, it is noticed that the claimant have also filed shipping bill to the Customs Department on which they have claimed drawback.

4.4 Further, as per the guidelines prescribed under Duty Drawback Procedures, Drawback is not admissible if Cenvat Credit is availed. Therefore, to claim duty drawback, the claimant has to certify that they have not availed Cenvat credit as per Cenvat Credit Rules, 2004 to comply with the provisions of Central Excise Duties Drawback Rules, 1995. Hence, party can avail only one benefit either input credit or drawback claim. Thus, simultaneous availment of two benefits is not admissible to them.

4.5 In view of above, M/s. Cipla Ltd. by claiming rebate of duty paid on the exported goods when they have also claimed duty drawback with the Customs Authorities as per Customs and Central Excise Duties Drawback Rules, 1995, the claimant have knowingly claimed both the benefits of rebate of duty as well as duty drawback with an intent to avail undue benefits, which is not legally admissible to them due to the aforesaid reasons.

5. A show cause Notice was issued to the respondent under section 35 EE of Central Excise Act, 1944 to file their counter reply. The respondents vide their written submission mainly reiterated contents of impugned Order-in-Appeal. They also relied upon Government of India's Order No. 1568-1595/2012-CX dated 14.11.2012 in favour of their contention.

6. Personal hearing scheduled in this case on 20.07.2015, 10.08.2015 and 10.09.2015. Shri Prashant Mhatre attended on behalf of the respondent who reiterated the grounds of the written submission. Nobody attended personal hearing on behalf of the department.

7. The department also filed an application dated 01.04.2015 for condonation of delay of 04 days in filing appeal beyond three months initial stipulated period on the following grounds:-

7.1 That the Commissioner (Appeals), Mumbai-III, Mumbai Zone-II decided the appeal in favour of the claimant vide Order-in-Appeal No. BC/286/M-III/2011-12 dated 31.01.2012 which was received in the office of the Commissioner, Central Excise, Mumbai-III on 10.02.2012. Hence appeal should have been filed in this case by 09.05.2012.

7.2 That as per the provisions of Section 35 EE (1A) of Central Excise Act, 1944 the Revision Application against the orders of Commissioner (Appeals), is required to be filed within three months from the date of receipt of the Commissioner (Appeals)'s Order.

7.3 That though the Order-in-Appeal was reviewed and application dispatched by their office on 04.05.2012 by speed post A.D. (within three months from the date of receipt of the impugned order), it appears that, the said Revision Application has received in their office of the Joint Secretary, GOI, New Delhi late by 4 days. That the delay of 4 days is due to postal delay even though the Revision Application was sent by speed post. That, due to large number of Order-in-Originals and Appellate Orders, the review section of the Commissionerate was highly overburdened during this period. Further, internal correspondence within the department for getting copies of documents and verification from CFS, Mulund also contributed to delay in filing the Revision Application.

8. Government has carefully gone through the relevant case records available in case files, oral &written submission and perused the impugned Order-in-Original and Order-in-Appeal.

9 Government observes that the rebate claim of the respondent was rejected by the original authority. The respondent filed appeal against the Order-in-Original and the Commissioner (Appeals) allowed the appeal. Now, the applicant department has filed this Revision Application on grounds mentioned in para (4) above.

10. Government first proceeds to decide the issue of limitation in filing of Revision Applications after the stipulated three months period under Section 35EE(2) of Central Excise Act 1944, as the applicant department has filed these revision application 04 days after initial stipulated three months period and as

such, it is an undisputed fact that the Revision Application has been filed beyond the stipulated period of three months.

10.1 The time limit of filing Revision Application has been specified in Section 35EE(2) ibid which reads as under:

"Section 35EE. Revision by Central Government:

(1) .....

(1A) .....

(2) An application under sub-Section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

***Provided** that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."*

Further Rule 10(2) of Central Excise (Appeals) Rules, 2001 provides as under:-

"The revision application sent by registered post under sub-rule (1) shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer."

From perusal of above provisions, it is clear that stipulated period of filing Revision Application is three months from date of receipt of Order-in-Appeal and is deemed to have been filed only upon receipt of Revision Application in the office of Revision Application Unit. The Revision Application have been filed beyond three months period. This period may be extended by further three months provided sufficient cause has been shown which prevented the applicant from filing Revision Applications in time.

10.2 Government finds that the applicant in their application for condonation of delay has in a general manner mentioned that the delay in filing is due to postal delay even though application was sent by speed post and over burdening of their review section as reason for delay in filing the Revision Application. The applicant has failed to give any documentary evidences in support of their claim for the delay in filing of appeal. Under such circumstances, Government is of the considered opinion that onus to show cause for not filing application is on the applicant who has failed to show sufficient cause that prevented him from filing Revision Application within stipulated period of three months. The Revision Application has been made contrary to the provisions of Section 35EE (2) and is, therefore, liable for rejection.

11. In view of above discussion, Government rejects the revision application as time barred without going into the merits of the case.

12. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

Commissioner of Central Excise Mumbai-III
4th Floor, Vardaan Trade Centre, M.I.D.C,
Wagle Industrial Estate,
Thane (West)-400604.

Attested.

2nd C

ORDER NO. 54/2016-CX DATED 31.03.2016

Copy to:

1. M/s Cipla. Ltd., L.D. Building Mehra Estate, Asha Usha Compound, LBS Marg, Vikhroli (W), Mumbai-400083.

2. Commissioner of Central Excise (Appeals), Mumbai Zone-III, Mumbai Zone-II, 5th Floor, C.G.O. Complex, C.B.D. Belapur, (Navi Mumbai)-400614.

3. The Assistant Commissioner of Central Excise, Mumbai-III, Vardaan, Third Floor, MIDC, Wagle Industrial Estate, Thane (W) 400604.

4. PA to JS(RA).

5. Guard File.

6. Spare Copy.

(B.P. Sharma)
OSD (RA)

BHAGWAT P. SHARMA
OSD (R.A. WING)

DRAFT

REGISTERED
SPEED POST

F.No.198/80/2012-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.....

ORDER NO. --------/2016-CX DATED -------- 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 the Order-in-Appeal No. BC/286/MUM-III/11-12 dated 31.10.2011 passed by Commissioner of Central Excise (Appeals) ,Mumbai –III,
APPLICANT	:	Commissioner of Central Excise, Mumbai-III
RESPONDENT	:	M/s. Cipla Ltd.

****

(a) ----------
(b) ----------
(c) ----------
(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
(e) ----------
(f) ----------
(g) ----------
(h) ----------
(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
(j) ----------
(k) ----------
(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

38. The Apex Court in the case of Om Prakash Bhatia vs. Commissioner of Customs Delhi (reported in 2003 (155) ELT 423 (SC)} has categorically held that if there is any prohibition of import or export of goods under the Customs Act, 1962 or any other law for the time being in force the goods would be considered to be prohibited goods and this prohibition would also operate on such goods the export or import of which is subject to certain prescribed condition if the conditions are not fulfilled. The relevant portion of the decision of the Apex Court is reproduced below for ready reference :-

"9. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made

Deputy/Asstt. Commissioner
Customs I.G.I. Airport,
Tr-3, New Delhi-110037

ORDER

This revision application is filed by Commissioner of Central Excise, Mumbai-III,(hereinafter referred to as the Department) against the Order-in-Appeal No. BC/286/MUM-III/11-12 dated 31.10.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III, with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise, Maritime Commissionerate, Mumbai-III. M/s. Cipla Ltd. Mumbai, is the respondent.

2. Brief facts of the case are that M/s Cipla Ltd Mumbai, had filed a rebate claim for the duty paid on export of their goods under Rule 18 of Central Excise Rules, 2002, which were exported by them The original authority held that rebate claim is admissible @ 4% on the goods cleared for home consumption in terms of Notification No. 4/2006-CE dated 01.03.2006, as amended, whereas for exports they have paid duty @ 10% under the Notification No. 2/2008-CE dated 01.03.2008 as amended. However, the original authority rejected the rebate in toto, on the ground that the applicant claimed simultaneous benefit of rebate and drawback which is not admissible.

3. Being aggrieved by the said Order-in-Original, the respondent filed appeal before Commissioner (Appeals) who allowed the appeal by holding that as the respondent availed onbly Customs portion of drawback, rebate claim is admissible to them.

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

4.1 As per para 15 of Customs Notification No. 84/2010-Cus (N.T.) dated. 17.09.2010 issued under F.No. 609/76/2010-DBK, as regards the expression" "when Cenvat facility has not been availed" used in the Schedule to aforesaid Notification, the exporter shall satisfy the following conditions, namely.

(i) The exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central

Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of export product;

(ii) If the goods are exported under Bond or claim of rebate of duty of central excise, a certificate from the Superintendent of Customs or Superintendent of Central Excise in charge of the factory of production, to the effect that no Cenvat facility has been availed for the goods under export is produced."

In the instant case no such certificate has been produced.

4.2 As regards payment of excise component of All Industry Rates of Drawback, a declaration of non-availment of Cenvat facility is necessary. Manufacturers and merchant-exporters with a supporting manufacturer are required to give a self declaration in the prescribed form that such manufacturers are not registered with central excise and at they do not avail/ have not availed Cenvat facility. In the case of manufacturers and supporting manufacturers who are registered with Central excise, the fact of non-availment of Cenvat facility shall continue to be confirmed from the ARE-1 filed by them.

4.3 In the instant case, the claimant has submitted details of duty payment particulars made from the manufacturer's Cenvat credit balance account along with the rebate claim. However, it is noticed that the claimant have also filed shipping bill to the Customs Department on which they have claimed drawback.

4.4 Further, as per the guidelines prescribed under Duty Drawback Procedures, Drawback is not admissible if Cenvat Credit is availed. Therefore, to claim duty drawback, the claimant has to certify that they have not availed Cenvat credit as per Cenvat Credit Rules, 2004 to comply with the provisions of Central Excise Duties Drawback Rules, 1995. Hence, party can avail only one benefit either input credit or drawback claim. Thus, simultaneous availment of two benefits is not admissible to them.

4.5 In view of above, M/s. Cipla. Ltd. by claiming rebate of duty paid on the exported goods when they have also claimed duty drawback with the Customs Authorities as per Customs and Central Excise Duties Drawback Rules, 1995, the claimant have knowingly claimed both the benefits of rebate of duty as well as

confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner."

31. I would also like to state here that adjudication proceedings require the evidence to be demonstrated by a degree of proof within preponderance of probability and do not require the degree of proof to be beyond doubt which rather informs the prosecution proceedings in a Court of law. In view of the foregoing, the request of the learned defense counsel for cross-examination of the witnesses and the investigating officer as also screening of the video recording which is not available with the Department, is not tenable and is hereby rejected.

32. Now, I consider the issue of redemption of the goods to the Noticee No. 1, Shri Darshan Lal and/or to any other person. I find that Shri Darshan Lal in his voluntary statement dated 06.01.2011 tendered under Section 108 of the Act ibid admitted that he was owner of only 6000 pcs of memory card and two whisky bottles. The rest 7300 pcs of memory and one ultrasound machine were given to him by some persons in HongKong to be handed over to some person who will contact him on his arrival at Delhi airport. I find, therefore, that Shri Darshan Lal is entitled for redemption of only 6000 pcs of memory cards and two bottles of whisky. The rest of the seized goods has not been claimed by any person. Therefore, it merits absolute confiscation and option of redemption cannot be given to anyone. Further, I find that the Apex Court has had an occasion to go into the gamut of absolute confiscation, in the case of Garg Woolen Mills (P) Ltd. Vs. Addl Collector {reported in 1998 (104)ELT 306 (SC)} the relevant para of which is reproduced below:-

"5. Another contention that was urged by Shri Mahabir Singh was that the Additional Collector, as also the Tribunal, have failed to take into consideration the provisions contained in Section 125 of the Act which prescribes that whenever confiscation of any goods is authorised by the Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit. We do not find any merit in this contention of Mr. Mahabir Singh. Under Section 125 a discretion has been conferred on the officer to give the option to pay fine in lieu of confiscation in cases of goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force but in respect of other goods the officer is obliged to give such an option. In the present case, having regard to the facts and circumstances in which the goods were said to be **imported and the patent fraud committed in importing the goods, the Additional Collector has found that the goods had been imported in violation of the provisions of Import (Control) Order, 1955 read with Section 3(i) of the Import and Export (Control) Act, 1947. In the circumstances he considered it appropriate to direct absolute confiscation of the goods which indicates that he did not consider it a fit case for exercise of his discretion to give an**

Deputy / Asstt. Commissioner
Customs I.G.I. Airport,
Tr.-3, New Delhi-110037

duty drawback with an intent to avail undue benefits, which is not legally admissible to them due to the aforesaid reasons.

5. A show cause Notice was issued to the respondent under section 35 EE of Central Excise Act, 1944 to file their counter reply. The respondents vide their written submission mainly reiterated contents of impugned Order-in-Appeal. They also relied upon Government of India's order no. 1568-1595/2012-CX dated 14.11.2012 in favour of their contention.

6. Personal hearing scheduled in this case on 20.07.2015, 10.08.2015 and 10.09.2015. Shri Prashant Mhatre attended on behalf of the respondent who reiterated the grounds of the written submission. Nobody attended personal hearing on behalf of the department.

7. The department also filed an application dated 01.04.2015 for condonation of delay of 04days in filing appeal beyond three months initial stipulated period on the following grounds:-

7.1 That the Commissioner (Appeals), Mumbai-III, Mumbai Zone-II decided the appeal in favour of the claimant vide Order-in-Appeal No. BC/286/M-III/2011-12 dated 31.01.2012 which was received in the office of the Commissioner, Central Excise, Mumbai-III on 10.02.2012. Hence appeal should have been filed in this case by 09.05.2012.

7.2 That as per the provisions of Section 35 EE (1A) of Central Excise Act, 1944 the Revision Application against the orders of Commissioner (Appeals), is required to be filed within three months from the date of receipt of the Commissioner (Appeals)'s Order.

7.3 That though the Order-in-Appeal was reviewed and application dispatched by their office on 04.05.2012 by speed post A.D (within three months from the date of receipt of the impugned order), it appears that, the said Revision Application has received in their office of the Joint Secretary, GOI, New Delhi late by 4 days. That the delay of 4 days is due to postal delay even though the Revision Application was sent by speed post. That, due to large number of Order-in-Originals and Appellate Orders, the review section of the Commissionerate was highly overburdened during this period. Further, internal correspondence within

the department for getting copies of documents and verification from CFS, Mulund also contributed to delay in filing the Revision Application.

8. Government has carefully gone through the relevant case records available incase files, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.

9 Government observes that the rebate claim of the respondent was rejected by the original authority. The respondent filed appeal against the Order-in-Original and the Commissioner (Appeals) allowed the appeal. Now, the applicant department has filed this Revision Application on grounds mentioned in para (4) above.

10. Government first proceeds to decide the issue of limitation in filing of Revision Applications after the stipulated three months period under Section 35 EE (2) of Central Excise Act 1944, as the applicant department has filed these revision application 04 days after initial stipulated three months period and as such, it is an undisputed fact that the Revision Application has been filed beyond the stipulated period of three months.

10.1 The time limit of filing Revision Application has been specified in Section 35EE(2) ibid which reads as under:

"Section 35EE. Revision by Central Government:

(1) .....

(1A) .....

(2) An application under sub-Section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

***Provided** that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."*

Further Rule 10(2) of Central Excise (Appeals) Rules, 2001 provides as under:-

"The revision application sent by registered post under sub-rule (1) shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer."

From perusal of above provisions, it is clear that stipulated period of filing Revision Application is three months from date of receipt of Order-in-Appeal and is deemed to have been filed only upon receipt of Revision Application in the office of Revision Application Unit. The Revision Application have been filed beyond three months period. This period may be extended by further three months provided sufficient cause has been shown which prevented the applicant from filing Revision Applications in time.

10.2 Government finds that the applicant in their application for condonation of delay has in a general manner mentioned that the delay in filing is due to postal delay even though application was sent by speed post and over burdening of their review section as reason for delay in filing the Revision Application. The applicant has failed to give any documentary evidences in support of their claim for the delay in filing of appeal. Under such circumstances, Government is of the considered opinion that onus to show cause for not filing application is on the applicant who has failed to show sufficient cause that prevented him from filing Revision Application within stipulated period of three months. The Revision Application has been made contrary to the provisions of Section 35EE (2) and is, therefore, liable for rejection.

11. In view of above discussion, Government rejects the revision application as time barred without going into the merits of the case.

12. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

Commissioner of Central Excise Mumbai-III
4th Floor, Vardaan Trade Centre, M.I.D.C,
Wagle Industrial Estate,
Thane (West)-400604

23.1 He further submitted that since noticee has neither done nor committed to do anything which would render the seized goods liable to be confiscated, he is not liable to any penalty; that with regards to seized goods, since the notice has no concern whatsoever with the seized goods, it is immaterial for him whatever way they are dealt with.

23.2 He futher requested that penal proceedings initiated against the notice may kindly be dropped and consequently notice may be discharged; that Personal hearing may be granted when all the panch witnesses, departmental witnesses and co-noticees are present for the purpose of cross examination.

23.3 No other Noticee filed any written submission.

Record of Personal Hearing :

24. Notices for Personal Hearing were issued to all the noticees for 30.08.2011, 08.09.2011, 22.09.2011, 24.10.2011 and 03.11.2011. Shri Darshan Lal appeared for personal hearing on 03.11.2011. No other noticees appeared for personal hearing on these dates.

24.1 Shri Darshan Lal, noticee appeared for Personal hearing on 03.11.11 and stated that he did not want to file any written submission. He again claimed ownership of 6,000 Pcs. of Memory cards and for rest of goods he stated that he was only a carrier and did not know the actual owner of the goods. He further requested for early adjudication of the case as he was suffering financial hardship; that he has nothing further to add.

24.2 Further notices for Personal hearing were issued to other notices for 16.11.11 and 14.12.11 but no one appeared for personal hearing.

DISCUSSION AND FINDINGS:-

25. I have gone through the facts of this case, the records available and the written submissions filed by the Noticees and the submissions made during the course of personal hearing. As such I am proceeding to decide this case on the basis of the available records and the submission of the Noticees.

26. I observe, at the outset, is that it is an undisputed case of attempted smuggling by the passenger namely Shri Darshan Lal on 05.01.2011, with the active connivance of other two Noticees namely Shri Raj Kumar Sabharwal and Shri Baljeet Singh. Shri Darshan Lal was intercepted at the exit gate of the IGI Airport after he crossed the Green Channel. This fact has been duly admitted by the passenger Shri Darshan Lal in his voluntary statement tendered by him on the spot on 06.01.2011 under Section 108 of the Customs Act, 1962.

27. I find that Noticee No.1 Shri Darshan Lal in his statement dated 06.01.2011 admitted among other things; that since 2009 , he is going to Bangkok and Hong Kong and is bringing readymade garments from there and selling them in Karol Bagh; that on 5.1.2011, he came to IGI Airport from Hong Kong by Flight No AI 315; that at exit gate after walking through Green

Deputy / Asstt. Commissioner
Customs I.G.I. Airport,
Tr.-3, New Delhi-110037

ORDER NO. --------/2016-CX DATED ---------

Copy to:

1. M/sCipla. Ltd., L.D. Building Mehra Estate, Asha Usha Compound, LBS Marg, Vikhroli (W), Mumbai-400083.

2. Commissioner of Central Excise (Appeals), Mumbai Zone-III, Mumbai Zone-II, 5th Floor, C.G.O. Complex, C.B.D. Belapur, (Navi Mumbai)-400614.

3. The Assistant Commissioner of Central Excise, Mumbai-III, Vardaan, Third Floor, MIDC, Wagle Industrial Estate, Thane (W) 400604

4. PA to JS(RA)

5. Guard File.

6. Spare Copy

(B.P. Sharma)
OSD (RA)

confiscated under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962;

II. The seized memory cards 2GB 7300 and one Ultra Sound Machine valued at Rs. 16,32,890/- should not be confiscated absolutely under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 as no one has claimed the owner ship of the said goods;

III. Customs duty amounting to Rs 3,80,447/- in respect of the 6000 memory cards and two bottles of Glenmorangi Signet Single Malt Scotch whisky 70 CL (700ml) as detailed in the Annexure-A to this Show cause notice should not be demanded and recovered from them under Section 28 of the Customs Act, 1962;

IV. Interest should not be recovered from them under Section 28 AB of the Customs Act, 1962;

V. Black coloured hand bag, black coloured stroller bag and the paper box used for concealing/ keeping the aforesaid goods should not be confiscated under Section 118 read with section 119 of the Customs Act, 1962;

VI. Why penalty should not be imposed upon Sh Darshan Lal, Sh. Raj Kumar Sabharwal, Sh. Baljeet Singh and any other person who claims the owner ship of the said goods later on, under Section 112 of the Customs Act, 1962 for the various acts of omission and commission, as brought out in the body of Show Cause Notice.

REPLIES OF THE NOTICEES :

23. Written submission of Shri Raj Kumar Sabharwal (Noticee No. 2) :

Dr. Ashutosh, Advocate for Shri Raj Kumar Sabharwal in his submission dated 01.08.2011 stated that the notice has no connection whatsoever with the allegations as contained in the aforementioned Show cause notice which has been issued merely on the basis of statement of one Darshan lal ; because nothing imcriminating has been recovered from his possession nor there is any material to connect him with the said allegations; that in fact the alleged recovery is from the said Darshan lal who the noticee is made to understand, has even retracted from his statements alleged to have been made under Section 108 of the Custom Act, 1962 at the first available opportunity before the court; that the said Darshan lal has implicated the notice due to inimical relationship since he (Darshan lal) owes Rs. 1,25,000/- to him (Noticee) from whom he had taken the said amount as loan about one and half year back which he had not returned despite repeated requests in this regard by the notice; that with regards to the further allegation of the department that the said Darshan lal used to ring up the notice on his mobile No . 9711457642 it is respectfully submitted that the said telephone belongs to one Anil Raj pal friend of the said Darshan lal; that the notice vide his statement recorded under section 108 of the act has given the above mentioned explanation with regard to making of calls by the said Darshan lal on the mobile No.; that therefore even this fact does not connect the notice with the allegation as contained in the impugned show cause notice.

Deputy / Asstt. Commissioner
Customs I.G.I. Airport,
Tr.-3, New Delhi-110037

(15C)

DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
R.A. Unit

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

RECORD OF PERSONAL HEARING

1. File No. (RA) 198/80/12-RA-Cx
2. Arising Out of Order-in-Appeal No. BC/286/MUM-III/11-12 dt. 8-7-12
3. Date of Receipt of O/A by Applicant 10-2-12
4. Date of Receipt of RA by RA Unit 14.5.12
5. Date of Previous Hearing 20.7.15, 10.8.15
6. Date of Present Hearing 10-9-15 at 11.30 am
7. Applicant CCE Mumbai-III
8. Respondent M/s Cipla Ltd.

****

Present for the	Name	Designation	Signature
Applicant			
Respondent			

(14C)

Speed Post

F. No. 198/80/12-RA-Cx
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)
* * * * * * * * *

Hudco Vishala Bldg., 14, B- Wing,
6th Floor, Bhikaji Cama Place,
New Delhi-110 066.
Dated:10-08-2015

To

The Commissioner of Central Excise,
Mumbai-III,
4th Floor,Vardaan Sankul,
M.I.D.C.,Wagle Industrial Estate,
Thane (West)- 400 604.

Sub: Personal Hearing to be held on **10-09-2015 at 11.30 AM** in Revision Application No. F. No. 198/80/12-RA-Cx. filed against the Order-in-Appeal No. **BC/286/MUM-III/2011-12 dated 31-01-12** in respect of M/s. Cipla Ltd.-reg

Sir,

Please refer to this office letter of even no. dated 20-07-2015& 29-07-15 on the above subject. In this regard, it is to inform you that the personal hearing has been re-fixed for **10-09-2015 at 11.30 A.M.** in the office of the Joint Secretary (RA), Hudco Vishala Building, 14, B- Wing, 6thth Floor, Bhikaji Cama place, New Delhi-110 066.

Yours faithfully,

(Nirmala Devi)
Section Officer (RA)
011-26177 346

Copy to: -

(13C)

DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
R.A. Unit

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

RECORD OF PERSONAL HEARING

1. File No. (RA) 198/80/12-RA-C
2. Arising Out of Order-in-Appeal No. BC 286/Mum-II/2011-12 dt. 31-1-12
3. Date of Receipt of O/A by Applicant 10-2-12
4. Date of Receipt of RA by RA Unit 14-5-12
5. Date of Previous Hearing 20-7-15
6. Date of Present Hearing 18-8-15 at 11.45 AM
7. Applicant CCE Mumbai-III
8. Respondent M/s. Cipla Ltd.

****

Present for the	Name	Designation	Signature
Respondent Applicant	Rashant Malhra		18/8/2015
Applicant Respondent			

Reiterated the written submission.

18/8/2015

18/8/15

(12)

Speed Post / Fax

F. No. 198/80/12-RA-Cx
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)
* * * * * * * * *

Hudco Vishala Bldg., 14, B- Wing,
6th Floor, Bhikaji Cama Place,
New Delhi-110 066.
Dated: ~~20-07-2015~~
29-7-2015

To

The Commissioner of Central Excise,
Mumbai-III,
4th Floor,Vardaan Sankul,
M.I.D.C.,Wagle Industrial Estate,
Thane (West)- 400 604.

M/s. Cipla Ltd.,
L.D. Building, Mehra Estate, Asha Usha
Compund, LBS Marg, Vikhroli (W)
Mumbai-400 083.

Sub: Personal Hearing to be held on **10-08-2015 at 11.45 AM** in Revision Application No. F. No. 198/80/12-RA-Cx. filed against the Order-in-Appeal No. BC/367/MUM-III/2011-12 dated 13-03-12 in respect of M/s. Cipla Ltd.-reg

Sir,

Please refer to this office letter of even no. dated 20-07-2015 on the above subject. In this regard, it is to inform you that the personal hearing has been re-fixed for **10-08-2015 at 11.45 A.M.** in the office of the Joint Secretary (RA), Hudco Vishala Building, 14, B- Wing, 6th th Floor, Bhikaji Cama place, New Delhi-110 066.

Yours faithfully,

(Nirmala Devi)
Section Officer (RA)
011-26177 346

Copy to: -

HP LaserJet *3055*

Fax Call Report

HP LASERJET FAX

Aug-3-2015 2:20PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
1516	8/ 3/2015	2:19:24PM	Send	02227451847	0:59	1	OK

Speed Post

F. No. 198/80/12-RA-Cx
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)
* * * * * * * * *

Hudco Vishala Bldg., 14, B- Wing,
6th Floor, Bhikaji Cama Place,
New Delhi-110 066.
Dated: 20-07-2015

To

The Commissioner of Central Excise,
Mumbai-III,
4th Floor,Vardaan Sankul,
M.I.D.C.,Wagle Industrial Estate,
Thane (West)- 400 604.

M/s. Cipla Ltd.,
L.D. Building, Mehra Estate, Asha Usha
Compund, LBS Marg, Vikhroli (W)
Mumbai-400 083.

Sub: Personal Hearing to be held on **11-08-2015 at 11.00 AM**.. in Revision Application No. F. No. 198/80/12-RA-Cx. filed against the Order-in-Appeal No. BC/367/MUM-III/2011-12 dated 13-03-12 in respect of M/s. Cipla Ltd.-reg

Sir,

Please refer to this office letter of even no. dated 23-06-15 on the above subject. In this regard, th personal hearing has been refixed for on **11-08-2015 at 11.00 AM. in the office of the Joint Secretary (RA), Hudco Vishala Building, 14, B- Wing, 6thth Floor, Bhikaji** Cama place, New Delhi-110 066.

Yours faithfully,

24/7/2015

(A.K. Sarin)
Superintendent (RA)
011-26177 346

Copy to: -

(ac)

DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
R.A. Unit

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

RECORD OF PERSONAL HEARING

1. File No. (RA) 198/80/12-RA Cp
2. Arising Out of Order-in-Appeal No. BC/288/Mum-III/11-12 dt. 31-01-12
3. Date of Receipt of O/A by Applicant 10-2-12
4. Date of Receipt of RA by RA Unit 13.5-12
5. Date of Previous Hearing —
6. Date of Present Hearing 30-7-15 at
7. Applicant CCE Mumbai-III
8. Respondent M/s Cipla Ltd.

****

Present for the	Name	Designation	Signature
Applicant			
Respondent			

Speed Post/Fax

F. No. 198/80/12-RA-Cx
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)
* * * * * * * * *

Hudco Vishala Bldg., 14, B- Wing,
6th Floor, Bhikaji Cama Place,
New Delhi-110 066.
Dated: 23-06-2015

To

The Commissioner of Central Excise,
Mumbai-III,
4th Floor, Vardaan Sankul,
M.I.D.C., Wagle Industrial Estate,
Thane (West) - 400 604.

M/s. Cipla Ltd.,
L.D. Building, Meharqa Estate,
Asha Usha Compound, LBS Marg,
Vikhroli (W), Mumbai-400 083.

Sub: Personal Hearing to be held on **20-07-2015-at 11.15 A.M.** in Revision Application No. F. No. 198/80/12-RA-Cx. in the case of M/s. Cipla Ltd.- Reg.

Sir,

Please refer to the Revision Applications filed against the Order-in-Appeal No. BC/286/MUM-III/2011-12 dated 31-01-12 in respect of M/s. Cipla Ltd., passed by the Commissioner of Central Excise (Appeals), Mumbai-II. Personal hearing has been fixed for on **20-07-2015-at 11.15 A.M. in the office of the Joint Secretary (RA), Hudco Vishala Building, 14, B- Wing, 6thth Floor, Bhikaji Cama place, New Delhi-110 066.** You are requested to cause appearance either personally or through authorized representative/counsel along with necessary documents to defend your case. Department may depute a well conversant officer not below the rank of Assistant Commissioner to defend their case or file written submissions / counter reply.

Yours faithfully,

23/6/15

(Nirmala Devi)
Section Officer (RA)
011-26177 346

Copy to: -

(9C)

DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
R.A. Unit

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

RECORD OF PERSONAL HEARING

1. File No. (RA) 198/80/12-RA Cx
2. Arising Out of Order-in-Appeal No. BC/288/Mum-III/11-12 dt. 31-01-12
3. Date of Receipt of O/A by Applicant 10-2-12
4. Date of Receipt of RA by RA Unit 13-5-12
5. Date of Previous Hearing —
6. Date of Present Hearing 30-7-15 at
7. Applicant CCE Mumbai-III
8. Respondent M/s. Cipla Ltd.

****

Present for the	Name	Designation	Signature
Applicant			
Respondent			

Speed Post
Reminder

F.No.198/80/12-RA-Cx.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(R.A. UNIT)

Hudco Vishala Bldg.,14, B- Wing
6th Floor, Bhikaji Cama Place,
New Delhi-110 066.
Dated: 24-04-2015

To

The Commissioner of Central Excise,
Mumbai-III, 4th Floor, Vardaan Trade Centre,
M.I.D.C. Wagle Industrial Estate,
Thane- 400 604.

Subject: Central Excise – Revision Application against Order-in-Appeal No. BC/286/M-III/11-12 dated 31.01.2012 passed by the Commissioner of Central Excise (Appeals),Mumbai-III in the case of M/s. Cipla Ltd.-reg.

Sir,

Please refer to this office letter of even no. dated 13-03-2015 (copy enclosed) on the above subject cited supra.

3. In this regard, I am directed to request you again to furnish the application for condonation of delay of 04 days in filing the Revision Application at the earliest.

24-4-2015

(NIRMALA DEVI)
Section Officer (RA)

SPEED POST

REMINDER

6C

F. No. 198 / 80 / 12 – RA (CX)
Government of India
Ministry of Finance
Department of Revenue
(R.A. UNIT)

* * * *

Room No. 610, 6th Floor, 'B' Wing,
Hudco Vishala Building,
14, Bhikaji Cama Place,
New Delhi – 110 066
13th March, 2015.

To

The Commissioner of Central Excise,
Mumbai – III,
4th Floor,
Vardaan Trade Centre,
M.I.D.C.
Wagle Industrial Estate,
Thane (West) - 400 604

Subject : Central Excise Revision Application against Order – in - Appeal No. BC / 286 / M – III / 2011 – 12 dated 31.01.2012 passed by the Commissioner of Central Excise (Appeals) Mumbai - III in the case of M/s. Cipla Ltd. - Regarding...

Sir,

Kind attention is invited to Board's letter of even number dated 24.04.2012 (copy enclosed) on the subject cited supra, wherein you were requested to furnish the application for condonation of delay of 04 days in filing the Revision Application.

2. The same has not been received at this end so far.

3. I am directed to request you to provide the same on **"PRIORITY BASIS".**

issued 16/3/15

Yours faithfully,

13/3/15

(NIRMALA DEVI)
SECTION OFFICER (RA)

Encls : As Above

O/c

F.NO. 198/80/12 - RA CX
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(R.A. UNIT)

Hudco Vishala Bldg. 14-B-
Wing, 6th Floor, Bhikaji Cama Place
New Delh-110 066.

The dated 12-6-12

To,

The Commissioner of
Central Excise
Mumbai-II Commissionerate

Subject: Customs / Central Excise Revision Application against Order-in-Appeal No.
BC/288/Mum-II/11-12 dated 31-07-2012 passed by the Commissioner of Customs/Central Excise (Appeals), Mum-II in the case of M/s./Sh. Cipla Ltd., Mumbai Reg.

Sir,

I am directed to refer to your Revision Application No.
Dated against the Order-in-Appeal Number cited in the above subject. Your application has been provisionally accepted and registered vide file reference number given on the top of this letter. This reference number should invariably be quoted while corresponding in future

2. The registration can be made final only on your submitting the following documents(Ticked) within a period of 15 days of receipt of this letter, failing which the same shall be dismissed as non-maintainable without any further reference:-

1. TR-6 Challan :
2. The Order-in-Original No. dated
   Passed by the Asst./Dy./Joint/Additional Commissioner of C Ex./Cus
3. The Order-in-Appeal No. dated
   passed by the Commissioner (Appeals),C. Ex./Cus
4. Your Demand Draft No. dated
   for Rs. 200/1000 is returned herewith. Please furnish the fee under TR-6 Challan (Instructions enclosed).
5. Application for condonation of delay. RA is filed after delay of ...4.....months/days and is 'time- barred'.
6. Evidence of receipt of Order-in-Appeal No. dated
7. Proper Vakalatnama / Authorization letter.
8. Court fee stamps of Rs. 1 each to be affixed upon O/O, O/A, RA.

Your faithfully,
Kiran Lakra
(KIRAN LAKRA)
SECTION OFFICER (RA)

Speed Post

F. No. 198/80/ 2012- RA-Cx
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(R.A. UNIT)

Hudco Vishala Bldg.,
14, B- Wing, 6th Floor,
Bhikaji Cama Place,
New Delhi-110 066.
Dated : -07-2012

SHOW CAUSE NOTICE ISSUED UNDER SECTION 35EE OF THE CENTREL EXCISE ACT, 1944.

SUBJECT: - Revision Application filed by the Commissioner of Central Excise, Mumbai-III against the Order-in–Appeal No. BC / 286 / M-III / 2011-12 dated 31-01-2012 passed by the Commissioner of Central Excise (Appeals), Mumbai -III in the case of M/s. Cipla Ltd., Mumbai - Reg.

A Revision Application under Section 35EE of the Central Excise Act, 1944 in form No. EA-8 for review of the subject Order-in-Appeal has been received from the Commissioner of Central Excise, Mumnai-III. A copy of the said application is attached herewith and may be taken as part of the Show Cause Notice.

2. Now, therefore, M/s. Cipla Ltd., are hereby called upon to show cause within 15 days of receipt of this notice, to the undersigned as to why the said Order-in-Appeal should not be annuled and other orders, as deemed fit passed on the ground stipulated in the said revision application.

3. M/s. Cipla Ltd., should state in writing whether they would like to be heard in person before the case is decided. They should note that if no reply is received within the time limit stipulated above or they do not turn up for the personal hearing when fixed, the case may be decided on merits.

Sd/-
(D.P. SINGH)
JOINT SECRETARY TO THE GOVT. OF INDIA

Attested

(R.C. SHARMA)
SENIOR TECHNICAL OFFICER (RA)

Copy to: -

1. M/s Cipla Ltd., L.D. Building,. Mehara Estate, Asha Usha Compound, LBS Marg, Vikhroli (W), Mumbai -400 083.
2. The Commissioner of Central Excise, Mumabai-III, 4th Floor, Vardaan Trade Centre, M.I.D.C., Wagle Industrial Estate, Thane (West)-400 604.
3. The Addl. Commissioner Central Excise, (Review), Central Excise, Mumbai-II, Bandhup Division, Hira Moti Complex, Shivaji Nagar, Thane (West)- 400 604.
4. The Commissioner of Central Excise (Appeals), Mumbai Zone-III, Mumbai Zone-II, 5th Floor, CGO Complex, CBD- Belapur, Navi Mumbai-400 614..
5. The Asstt. Commissioner Central Excise, (Rebate), Central Excise, Mumbai-III, 3rd Floor, Vardaan Trade Centre, M.I.D.C., Wagle Industrial Estate, Thane (West)-400 604

3C

F. No. 198/80/12 - RA –Cx/Cus

GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)
****

Subject: -Revision Application filed by the Commissioner of Customs/ Central Excise, Mumbai-III against the Order-in- Appeal No. BC/288/Mum-III/11-12 dated 31-01-2012 passed by the Commissioner of Central Excise/Customs (Appeals), Mumbai-III in the case M/s Cipla Ltd, Mumbai -Reg.

A Revision Application has been filed by the Commissioner of Central Excise, Mumbai-III against the Order-in- Appeal No. as above dated passed by the Commissioner of Central Excise / Customs (Appeals), in the case of M/s. as above,

In the first instance, we may issue Show Cause Notice to the respondent, Draft SCN put up for approval please.

2/8/12

SO (RA) 12.6.12

on leave
(R.C. SHARMA)
~~SENIOR TECHNICAL OFFICER (RA)~~ SO-I

(P.K. Rameshwaran)
SO-I (R.A)

Goods cleard for home consumption @ 4% duty in terms of Notfn No. 4/2008 dtd. 1.3.2008, whereas for export the duty is paid @ 10% in terms of Notfn. 2/2008. dtd 1.3.8. Commissioner (A) allowed the cash rebate @ 4%. ie on effective rate of duty and for balance amount ordered for credit in CENVAT credit account. We can issue SCN to respondents, if approved. DFA is put up accordingly.

29/6/12

J.S.(R.A) 2.7.12

DFA. JC

F. No. 198/ 80 /12 - RA-Cx.
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(R.A. UNIT)

Hudco Vishala Bldg.,
14, B- Wing, 6th Floor,
Bhikaji Cama Place,
New Delhi-110 066.
Dated : 12-6-12

SHOW CAUSE NOTICE ISSUED UNDER SECTION 35EE OF THE CENTREL EXCISE ACT, 1944.

SUBJECT: Revision Application filed by the Commissioner of Central Excise & Customs Mumbai-II against the Order-in–Appeal No. BC/286/Mum-III/12 dated 31.01.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II in the case M/s. Cipla Ltd., Mumbai - Reg.

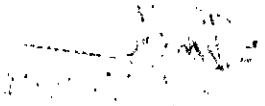
A Revision Application under Section 35EE of the Central Excise Act, 1944 in form No. EA-8 for review of the subject Order-in-Appeal has been received from the the Commissioner of Central Excise & Customs, Mumbai-II . A copy of the said application is attached herewith and may be taken as part of the Show Cause Notice.

2. Now, therefore, M/s. As above are hereby called upon to show cause within 15 days of receipt of this notice, to the undersigned as to why the said Order-in-Appeal should not be annuled and other orders, as deemed fit passed on the ground stipulated in the said revision application.

3. M/s. As above, should state in writing whether they would like to be heard in person before the case is decided. They should note that if no reply is received within the time limit stipulated above or they do not turn up for the personal hearing when fixed, the case may be decided on merits.

D.P. Singh
12.12

(SH. D.P. SINGH)
JOINT SECRETARY TO THE GOVT. OF INDIA



Subject

Advocate/Consultants:

F.No. 198/80/12-RA

DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

Subject: Customs/Central Excise-Revision Application - Check List.

A. Mfg. Opera Ltd. Mumbai

(i) Date of receipt of O/A by applicant :- 10-2-12

(ii) Whether evidence for (i) furnished: - 14.5.12

(iii) Date of receipt of R.A. by R.A. Unit :-

(iv) Delay, if any, whether Yes:- 4 days delay
Application for C O D submitted? N/A

B.

(i) Whether copy of O/O furnished ? Yes :- 4,00,553/-
Duty R.F. P.P.

(ii) Whether copy of O/A furnished? Yes
Duty R.F. P.P.
** ** **

(iii) Whether any benefit granted in O/A :- N/A

(v) Whether Commissioner's comments :-
Cross objection to be obtained?

C.

(i) Whether TR-6 Challan furnished? :- Seen & Order to respondent pay

(ii) If yes, for what amount? (care-129 :-
DD(3), 35 EE(3)

D.

(i) Whether PH requested? If yes, where :- Yes

(ii) Applicant(s) stationed at :-

(iii) Advocates/Consultants stationed at :-

E.

(i) Documents relied upon in O/O & O/A :-

(ii) Have these been enclosed with R.A.? :- Yes

F.

(i) Whether any other R.A. has been :-
filed against O/A mentioned at A(I) above.

G.

(i) R.A. filed by Applicant/Advocate/Consultant:- CCE Mumbai-III

(ii) Whether proper Vakalatnama/
Authorisation letter submitted? :-

H.

(i) Court fee stamp affixed on :- O/O; O/A & R/A

(ii) Court fee stamp not affixed on :- O/O' O/A & R/A

** If amount is more than Rs. 1 Lakh draw line below & above it, viz. Amount & if amount is less than Rs. 5,000/-, article it viz. amount

12/6/12
D.A.

Kiran Lakra 12.6.12
(KIRAN LAKRA)
SECTION OFFICER (RA)

198/80/12-RA

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE:MUMBAI-III
4TH FLOOR, VARDAAN TRADE SANKUL, M.I.D.C.,
WAGLE INDUSTRIAL ESTATE, THANE (WEST)-400 604

F.No. V(BC/286)/Trb.Cell-110/11/M-III
Thane, the 4th May,2012.

BY SPEED POST with A.D.

To,

The Joint Secretary,
Revision Application Unit,
Government of India, Ministry of Finance,
Department of Revenue, HUDCO Vishala Bldg.
'B' Wing,6th Floor, Bhikaji Cama Place
R. K. Puram, New Delhi 110 066.

Sir,

I, **Rakesh Goyal,** Additional Commissioner (Review), Central Excise, Mumbai III Commissionerate, duly authorized by the Commissioner of Central Excise, Mumbai III prefer an appeal against the Order No. BC/286/Mum-III/2011-12 dt. 31.01.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai-III, Mumbai Zone – II in respect of M/s. Cipla Ltd . I hereby submit an application under section 35EE (1A) of the Central Excise Act, 1944. The appeal has been made in form EA 8 (in duplicate) as required under Rule 9 of Central Excise (Appeals) Rules,2001 and is accompanied by the facts of the case indicating grounds of appeal and the letter of authorization of the Commissioner of Central Excise, Mumbai III Commissionerate.

I request the Hon'ble Central Government to bestow its due consideration on the appeal.

Encl: As above.

Yours faithfully,

(Rakesh Goyal)
ADDITIONAL COMMISSIONER (REVIEW)
CENTRAL EXCISE, MUMBAI-II

Copy for information to:

1) Assistant Commissioner(Rebate), Central Excise, Mumbai III.
2) M/s. Cipla Ltd , L.D Building, Mehra Estate, Asha Usha Compound, LBS Marg, Vikhroli (W),Mumbai-400 083.
3) The Commissioner of Central Excise (Appeals), Mumbai-III, Mumbai Zone-II

gA

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III

V/s

M/s. CIPLA LTD

INDEX

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE:MUMBAI-III

VARDAAN TRADE SANKUL, 4th FLOOR, M.I.D.C.,

THANE (WEST) – 400 406.

F.No. V(BC/286)/Trb.Cell-100/11/M-III
Thane, the May, 2012.

AUTHORISATION

(Authorisation under Sub-Section (1A) of Section 35 EE of the Central Excise Act, 1944)

Whereas, I have examined the Order-in-Appeal No. BC/286/Mum-III/2011-12 dated 31.01.2012 passed by Commissioner (Appeals), Central Excise, Mumbai-III, Mumbai Zone-II against the Order-in-Original No. 137/R/RM/AC(RC)/M-III/11-12 dated 31.10.2011 issued by Assistant Commissioner, (Rebate) Central Excise, Mumbai-III., in respect of M/s. Cipla Ltd, Mumbai.

And whereas, I have examined the Order-in-Appeal along with the case records and have found that it is not proper and legal on the grounds specified in Annexure "A".

Now, therefore, I am of the opinion that the order passed by the Commissioner (Appeals), Central Excise, Mumbai-III, Mumbai Zone-II under Section 35-A of the Central Excise Act, 1944 is not legal and proper, therefore, in exercise of the powers vested in me under Sub-Section (1A) of Section 35EE of the Central Excise Act, 1944, I hereby, authorize Additional Commissioner of Central Excise (Review), Mumbai III and direct him to file appeal on my behalf to the Central Government against the said order.

(K.L.GOYAL)
COMMISSIONER OF CENTRAL EXCISE
MUMBAI-III

198/80/12-RA-6

FORM E.A. 8

(See Rule 9)

FORM OF REVISION APPLICATION TO THE CENTRAL GOVERNMENT UNDER SECTION 35-EE (1A) OF THE CENTRAL EXCISE ACT, 1944.

Revision application No. _____of _____2012

1	Name and address of the applicant	Commissioner of Central Excise Mumbai-III, 4th Floor, Vardaan Trade Centre, MIDC, Wagle Industrial Estate, Thane (west)-400604.
2.	Address of the Commissioner (Appeals) passing the order against which the revision application is filed.	Commissioner of Central Excise (Appeals),Mumbai-III, Mumbai Zone-II, 5th Flr.,CGO Complex, CBD Belapur, Navi Mumbai- 400 614.
3.	The number and date of the order appealed against.	Order No. BC/286/Mum-III/2011-12 dt.31.01.2012
4	Date of communication of the copy of the order appealed against	10.02.2012
5	Designation and address of the adjudicating authority against which the order has been passed by the Commissioner (Appeals)	Assistant Commissioner of Central Excise, (Rebate), Mumbai-III, 3rd Floor, Vardaan Trade Center , M.I.D.C., Wagle Industrial Estate, Thane (WEST)-400 604
6	Address to which notices may be sent to the Appellant	Office of Commissioner of Central Excise, Mumbai-III, 4th floor, Vardaan Trade Center, MIDC, Thane (West) 400604.
7	Whether the appellant wishes to be heard in person	- YES
8	(i) Description and classification of goods	P or P Medicaments Goods falling under Ch Heading 30 of C E T A, 1985.

(ii)	Period of dispute	2010-11
(iii)	Amount of duty, if any demanded for the period mentioned in item (ii)	
(iv)	Amount of refund, if any claimed for the period mentioned in item (ii)	-Rebate claimed. Rs.4,00,554/-
(v)	Amount of fine imposed	---
(vi)	Amount of penalty imposed	---
(vii)	Market value of seized goods	

9 Whether duty or penalty is deposited, if not, whether any application for dispensing with such deposit has been made. (A copy of the challan under which deposit has been made be furnished.) -----

10 Relief claimed in Appeal As detailed in **Annexure 'A'.**

Signature of the Appellant

4/05/12

(RAKESH GOYAL)
ADDITIONAL COMMISSIONER (REVIEW)
CENTRAL EXCISE, MUMBAI-III.

VERIFICATION CERTIFICATE

I, RAKESH GOYAL, ADDITIONAL COMMISSIONER (REVIEW), Central Excise, Mumbai III Commissionerate, the Appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified, today the May , 2012.

Signature of the Appellant

4/05/12

(RAKESH GOYAL)
ADDITIONAL COMMISSIONER (REVIEW)
CENTRAL EXCISE, MUMBAI-III.

ANNEXURE 'A'

M/s. Cipla Ltd, situated at Mumbai Central, Mumbai – 400 008 (hereinafter referred to as "the claimant") a Merchant exporter filed rebate claims totally amounting to Rs.4,00,554/- being the duty paid on goods exported by them in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T).

Issue involved :

Whether the availment of two benefits i.e. Rebate and Drawback simultaneously is legally correct in view of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, when the manufacturer has availed Cenvat credit on the inputs?

Brief Facts of the Case:

M/s. Cipla Ltd situated at Mumbai Central, Mumbai – 400 008, a merchant exporter, filed rebate claims totally amounting to Rs.4,00,554/- being the duty paid on goods exported by them in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T). The duty was paid by the manufacturer @10% adv (Tariff Rate) under Notfn.2/2008-CE dated 01.03.2008, as amended.

Assistant Commissioner (Rebate), Central Excise, Mumbai-III vide Order-in-Original Nos. 137/R/RM/AC(RC)/M-III/11-12 dated 31.10.2011 has held that the effective rate of duty on the exported goods was 4% adv vide Notfn. No.4/2006 dated 1.03.2006, as amended. Hence claimant was eligible for rebate of duty @4%adv only. However, he rejected the entire claim on the ground that the claimant has claimed Duty Drawback as well as Rebate of duty against the Shipping Bills & ARE1s submitted along with the rebate claims.

Being aggrieved by the above said Order-in- Original the claimant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III, who vide Order-in-Appeal No. BC/286/M-III/2011-12 dt. 31.01.2012 held that the claimant is entitled for rebate of duty as claimed by them but to the extent of duty paid @4% adv. The appellate authority's decision to allow the rebate to the extent of duty paid @4% adv is correct. However, Order in Appeals allowing the rebate even though drawback is claimed simultaneously by the claimant does not appear to be legal and proper due to the following reasons:

GROUNDS OF APPEAL

I) As per para 15 of Customs Notfn. No 84/2010-Cus (N.T) dtd. 17.09.2010 issued under F.No.609/76/2010-DBK, as regards the expressions " when Cenvat facility has not been availed " used in the Schedule to aforesaid Notfn, the exporter shall satisfy the following conditions, namely,

"(i) The exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be , that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of export product;

(ii) If the goods are exported under Bond or claim of rebate of duty of central excise, a certificate from the Superintendent of Customs or Superintendent of Central Excise in charge of the factory of production, to the effect that no Cenvat facility has been availed for the goods under export is produced."

In the instant case no such certificate has been produced.

II) As regards payment of excise component of All Industry Rates of Drawback, a declaration of non-availment of Cenvat facility is necessary. Manufacturers and merchant-exporters with a supporting manufacturer are required to give a self declaration in the prescribed form that such manufacturers are not registered with central excise and that they do not avail/ have not availed Cenvat facility. In the case of Manufacturers and supporting manufacturers who are registered with Central excise, the fact of non-availment of Cenvat facility shall continue to be confirmed from the ARE-1 filed by them.

III) In the instant case, the claimant has submitted details of duty payment particulars made from the manufacturer's Cenvat credit balance account along with the rebate claim. However, it is noticed that the claimant have also filed shipping bill to the Customs Department on which they have claimed drawback.

IV) Further, as per the guidelines prescribed under Duty Drawback Procedures, Drawback is not admissible if Cenvat Credit is availed. Therefore, to claim duty drawback, the claimant has to certify that they have not availed Cenvat credit as per Cenvat Credit Rules, 2004 to

comply with the provisions of Central Excise Duties Drawback Rules, 1995. Hence, party can avail only one benefit either Input Credit or Drawback claim. Thus, simultaneous availment of two benefits is not admissible to them.

V) In view of above, M/s. Cipla Ltd by claiming rebate of duty paid on the exported goods when they have also claimed duty drawback with the Customs Authorities as per Customs and Central Excise Duties Drawback Rules, 1995, the claimant have knowingly claimed both the benefits of rebate of duty as well as duty drawback with an intent to avail undue benefits, which is not legally admissible to them due to the aforesaid reasons.

VI) As such the Order-in-Appeal No. BC/286/M-III/2011-12 dt. 31.01.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai-III, Mumbai Zone-II in respect of M/s. Cipla Ltd appears to be not proper, correct and legal.

RELIEF CLAIMED

It is, therefore, prayed that the Central Government, Joint Secretary (Revision Application) may:-

i) Set aside the Order-in-Appeal No. BC/286/M-III/2011-12 dt. 31.01.2012 and upheld the Order-in-Original Nos. 137/R/RM/AC(RC)/M-III/11-12 dated 31.10.2011.

ii) Pass any orders on merits as deemed fit.

4/05/12

(Rakesh Goyal)
ADDITIONAL COMMISSIONER (REVIEW)
CENTRAL EXCISE, MUMBAI-III.

VERIFICATION CERTIFICATE

I, **Rakesh Goyal,** Additional Commissioner (Review), Central Excise, Mumbai III Commissionerate, the Appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the, day of May, 2012.

Signature of the Appellant

4/05/12

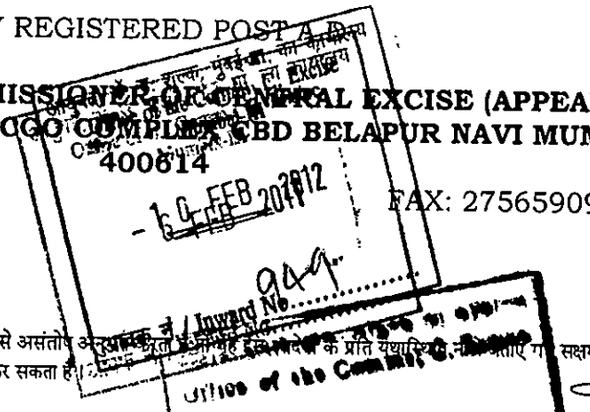
(Rakesh Goyal)
ADDITIONAL COMMISSIONER (REVIEW)
CENTRAL EXCISE, MUMBAI-III.

OIA-286/15

BY REGISTERED POST A.D.

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE (APPEALS), MUMBAI-III, 5TH FLOOR CGO COMPLEX CBD BELAPUR NAVI MUMBAI-400614

TEL: 27560150 FAX: 27565909



10.02.2012.

यदि कोई व्यक्ति इस आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति, नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal/application to the authority as the case may be:-

(I) भारत सरकार को पुनरीक्षण आवेदन

केन्द्रीय उत्पाद शुल्क अधिनियमए 1944 की धारा 35 इइ के तहत नीचे बताए गए मामलों के संबंध में धारा 35 बी की उपधारा(1) के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन, संयुक्त सचिव, भारत सरकार, वित्त मंत्रालय, पुनरीक्षण आवेदन इकाई राजस्व विभाग को किया जाना चाहिए, जो जीवन दीप बिल्डिंग, संसद भवन गली, नई दिल्ली- 1 पर स्थित है।

(1) (i) Under Section 35EE of the Central Excise Act, 1944, an appeal lies to the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, Jeevan Deep Building, Parliament Street, New Delhi-1 , if such order relates to :

(क) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भाण्डागार या अन्य कारखाने में या किसी भाण्डागार से दूसरे भाण्डागार में माल ले जाते हुए मार्ग में, या किसी भाण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भाण्डागार में हो, माल की प्रक्रिया के दौरान हुई हो।

(a) a case of loss of goods where the loss occurs in transit from a factory to a warehouse or to a warehouse or to another factory or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पाद शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) A rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(घ) अंतिम उत्पादों पर उत्पाद शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित है, वो समय/समय पर या बाद में वित्त अधिनियम(सं.2), 1998 की धारा 109 द्वारा नियुक्त किए गए हों।

(d) Credit of any duty allowed to be utilised towards payment of excise duty on final product under the provisions of this act or the rules made there under and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No.2) Act, 1998,

(2) केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए 8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश, प्रेषित दिनांक से तीन मास के भीतर मूल आदेश की दो दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्यशीर्ष के अंतर्गत धारा 35 इ में निर्धारित शुल्क के भुगतान के सबूत के साथ टी आर 6 /जी ए आर 7 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No EA-8 as specified under Rule,9 of Central Excise(Appeals) Rules, 2001, within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies of each of the Order-in-Original (O-I-O) and Order-in-Appeal (O-I-A). It should also be accompanied by a copy of TR-6/GAR7 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944 under Major Head of Account.

ATTESTED

SUPERINTENDENT (REVIEW)
CENTRAL EXCISE: MUMBAI-III

(3) पुनरीक्षण आवेदन के साथ जहाँ आवष्टित रकम एक लाख रुपए या उससे कम हो, तो रुपए 200/- का शुल्क एवं जहाँ रकम एक लाख रुपए से अधिक हो तो रु 1000/ का शुल्क साथ में भेजा जाए।

(3) The revision application shall be accompanied by a fee of Rs 200/- where the amount involved is Rupees One Lac or less and Rs 1,000/- where the amount involved is more than Rupees One Lac.

(II) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील (सेसटैट) :

Appeal to Customs, Excise,& Service Tax Appellate Tribunal (CESTAT) :

(1) केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35बी/35इ के अंतर्गत :

Under Section 35B/35 E of Central Excise Act,1944 an appeal lies to :

(क) वर्गीकरण एवं मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठीका के पश्चिम ब्लॉक सं.3, आर. के. पुरम नई दिल्ली-1 को।

(a) The Special Bench of Customs, central Excise & Service Tax Appellate Tribunal of West Block No2, R K Puram; New Delhi-1 in all matters relating to classification and valuation;

(ख) उक्त परिच्छेद 1(क) में बताए गए मामलों के अलावा अन्य अपीलों के मामले में सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सेसटैट) की पश्चिम क्षेत्रीय पीठ में तीसरी मंजिल, जय सेंटर, 34 पी. डी. मेल्लो रोड मस्जिद बंदर (पूर्व) मुंबई 400009 को।

(b) To the West Regional Bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 3rd floor, Jai Centre, P. D'mello Road, Masid(E) Mumbai - 400009, in case of appeals other than as mentioned in para 1(a) above.

(2) केन्द्रीय उत्पाद शुल्क(अपील) नियमावली, 2001 के नियम 6 के अंतर्गत निर्धारित किए अनुसार अपीलीय न्याधिकरण को अपील प्रपत्र सं.इ ए 3 में चार प्रतियाँ सहित अपील दाखिल की जाएगी तथा जहाँ उत्पाद शुल्क /जुर्माना/ माँग/प्रतिदाय की राशि रुपए 5 लाख रुपए या उससे कम हो, वहाँ क्रमश: रुपए 1000/ शुल्क, जहाँ रुपए 5 लाख से 50 लाख तक हो तो रुपए 5000/ तथा जहाँ रुपए 50 लाख से अधिक हो तो रुपए 10,000/ का शुल्क सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के तौर पर साथ में भेजना होगा। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो, जहाँ उक्त न्यायाधिकरण की पीठ स्थित है। स्थगन प्रदान करने के लिए आवेदन पत्र के साथ रुपए 500/ शुल्क भेजना होगा।

(2) The appeal to the Appellate Tribunal (CESTAT) shall be filed in quadruplicate in Form No EA 3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2004 and shall be accompanied by a fee of Rs. 1000/ Rs 5000/- and Rs 10,000/- where amount of duty/ penalty/demand/ refund is upto Rs 5 lacs to 50 lacs and above Rs 50 Lacs respectively in the form of crossed bank draft in favour of the Assistant Registrar of the Bench issued by any mominated public sector bank payable at the place where the Bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs 500/-

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो, प्रत्येक मूल आदेश के लिए शुल्क का भुगतान उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्र सरकार को एक आवेदन किया जाता है ।

(3) In case the Order covers a number of Orders- in Original (O-I-O)fee for each O-I-O should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt as the case may be, is filed to avoid scriptorial work.

(4) न्यायालय शुल्क अधिनियम, 1970 यथा संशोधित की अनुसूचित 1 मद के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 6 रु 50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or OIO as the case may be and the order of the adjudicating authority shall bear a court fee stamp of Rs 6.50 as prescribed under scheduled 1 item of as amended.

(5) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में निहित नियमों की ओर ध्यान आकर्षित किया जाता है, जो इन तथा अन्य संबंधित मामलों को नियंत्रित करते हैं।

Attention is also invited to the rules covering these and other related matters contained in the Customs, Central Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

ATTESTED

SUPERINTENDENT (REVIEW)
CENTRAL EXCISE: MUMBAI-III

13

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE (APPEALS)
MUMBAI-III 5th Floor CGO Complex, CBD Belapur
Navi Mumbai-400614
Tel: 27560150 **Fax: 27565909**

F.No.V3 (A) 227/MIII/11-12
Date: 915 31/1/2012

Appellants	:	M/s. Cipla Ltd.,
Respondents	:	Assistant Commissioner (Rebate), Central Excise, Mumbai-III
Order appealed against	:	137/R/RM/AC (RC) MIII/11-12 dated 31.10.11
Date of Personal Hearing	:	N.A.

ORDER-IN-APPEAL NO. BC/286 /MUM-III/2011-12

The appellants mentioned here-in-above have filed the appeal against the following Order-in-Original passed by Assistant Commissioner (Rebate), Central Excise, Mumbai-III, reducing as well as rejecting the rebate claim under the provisions of Section 11B of the Central Excise Act, 1944 (said Act) read with Rule 18 of the Central Excise Rules, 2002 (said Rules) and Notification issued there under . Details of the relevant Order in Original are as follows:

Sr.No	Order-in-original No and date	Rebate claimed **Rs.**	Rebate restricted and rejected item. **Rs.**
1	137/R/RM/AC(RC)/M-III/11-12 dated 31.10.11	4,00,554/-	4,00,554/-

Brief facts of the case are that the appellants have exported goods manufactured in their own factory situated at ~~Plot No. L-139 to L-146, Verna Industrial Estate~~, Goa and have filed rebate claims under Rule 18 of the said Rules read with Notification No.19/2004 CE (NT) dated 6.09.2004 for the duty paid on the goods exported. They have paid duty @4% on the goods cleared for home consumption in terms of Notification No 4 /2006 dated 1.3.2006, as amended, whereas for exports they have paid duty @ 10% under the Notification No 2/2008-CE dated 1.3.2008, as amended. The rebate sanctioning authority has held that they are eligible for rebate of duty paid @ 4% only. However, the lower adjudicating authority has rejected the rebate claim on the grounds that the claimant has availed double benefit i.e Drawback as well as Cenvat credit.

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2. Being aggrieved, the appellants have filed appeal on the following grounds:

a) When two notifications; which are mutually exclusive; coexist in the books of law, the assessee has option to choose any one of them. 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. This legal position is well settled by the Apex Court in the case of *HCL Ltd reported in 2001 (130) ELT 405(SC).*

b) Notification No 4/2006, as amended and Notification No 2/2008, as amended coexist in the books of law and the assessee has the option to avail any of the notification. The adjudicating authority has not pointed out any provision under the Central Excise Act or Rule there under, which has the effect of requiring the assessee to mandatorily avail the exemption Notification No 4/2006-CE dated 1.3.2006 only.

c) Rule 18 of Central Excise Rules, 2002 grants rebate of Excise duty paid on goods exported. The export of goods is not in dispute and the fact of payment of duty is also not in dispute. They placed reliance upon decision of *Gayatri Laboratories reported in 2006 (194) ELT 73 (T).*

d) The rebate sanctioning authority cannot question the assessment. The reliance had been placed upon the *CBEC Circular No 510/06/2000-CX dated 3.2.2000.*

e) Similar matter had been decided in their favor by Commissioner of Centre Excise (Appeals), Mumbai Zone-1 in the *O-I-A No SB(17)17/MI/2011 dated 21.3.2011 and SB(36-41)36-41/MI/2011/1387 dated 3.5.2011.*

f) they had claimed duty drawback only for Customs component and not for Excise component and the said facts had not been denied by the adjudicating authority.

g) shipping Bills indicate that the duty drawback has been claimed only for Customs components.

h) rule 18 of CER 2004 does not provide rejection of rebate claim on the ground of simultaneous availment of duty drawback benefits under Drawback Rules.

i) proviso to Sub-rule (1) of Rule 3 of Drawback Rules clearly provides for adjustment/reduction in amount sanctionable as drawback where double benefits in respect of taxes considered.

j) issue no more res integra. Relied upon the case laws of *Benny Impex Pvt Ltd (2003(154)ELT-300(G.O.I.),Munot Textiles(2007(207)ELT-298(G.O.I) & Associated Dyestuff Inds Vs. CCE,Ahemdabad(2000(117)ELT-732..*

k) there is no provision under Central Excise law for rejection of rebate on the ground of claiming duty drawback i.e. for double benefit.

3. The appellants, while filing the appeal requested to decide the matter without personal hearing as the said matter is already decided in their own cases.

4. I have gone through the impugned Order and evidence on record. The issues to be decided are:

i) whether the duty paid in excess of 4% can be rebated in cash.

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ii) whether the appellants were entitled for rebate of Excise duties paid on exported goods, when they have simultaneously claimed the drawback of Customs duties .

5. Regarding the first issue, the contention of the appellant is that the notification No. 4/2006 & 02/2008 co-exist and are not mutually exclusive. Also as per CBEC circular No 510/06/2000/CX dated 03.02.2000 the rebate sanctioning authority cannot question the assessment but has to examine only admissibility of rebate of the duty paid on the export goods.

6. In this regard I find that during the relevant period Notification No 04/2006/CE as amended provides for 4% duty while Notification No. 02/2008/CE dated 01.03.2008 as amended provides for 10% duty. Appellants chose to pay 10% duty on export goods. It is on record that in the past the appellants had paid duty @ 4% on goods exported. It is apparent they have intentionally paid duty @ 10% from Cenvat account with an intention to recover high incidence of duty paid on raw materials used in the manufacture of such exports goods. The rate of duty on inputs during the relevant period was 8 % & 10% while duty on finished product was 4%. Since the rate of duty on the finished products being less than the rate of duty on the inputs, the appellants were obviously saving credit on inputs used in the manufacture of goods and the same was getting accumulated. In order to encash the said credit through rebate route they paid duty on export goods @ 10%. Here I observe that the purpose of granting rebate under Central Excise Rule 2002 is not to grant accumulate Cenvat credit in cash. Therefore original authority has correctly granted admissible rebate in cash.

7. The facts of the instant case are identical to the decision of *Hon'ble Punjab & Haryana High court in the case of M/s Nahar Industrial Enterprices Ltd -2009(235) ELB-22(P&H).* In that case the exporter was manufacturing cotton yarn. Effective rate of duty was 4 % while tariff rate was 16 %. The said manufacturer chose to pay tariff rate instead of effective rate. It was held by the Hon'ble High Court held that rebate rebate of higher duty paid on export goods which was not payable, is not admissible. Refund of excess paid duty/amount in Cenvat credit to appropriate.

8. As discussed in forgoing para, the basic purpose of appellants in paying duty higher rate of duty is to encash the accumulated unutilized Cenvat credit. Now I would discuss the relevant provisions relating to export.

(i) Rule 18 of Central Excise Rules, 2002 provides for rebate of

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excise duty paid on the export goods as well as the duty paid on *the* materials used in the manufacture of export goods subject to the procedure, limitations and conditions specified in the notification. Notification No. 19/2004 — CE (NT) dated 6.09.2004 provides for procedures like conditions and limitations for grant of rebate in respect of goods on which duty of excise is paid. Notification No. 21/2004-CE (NT) dated 6.09.2004 discusses about grant of rebate on the inputs used in the manufacture of exempted export goods.

(ii) Rule 19 of Central Excise Rules, 2002 provides for export of goods without payment of duty subject to such conditions, safeguards and procedure as may be prescribed by notification. In this regard, Notification No. 42/2001—CE (NT) dated 26.06.2001 was issued, prescribing conditions and procedure for export of dutiable goods under bond without payment of duty.

(iii) Rule 5 of the Cenvat Credit Rules, 2004 provides that if the goods are exported under Bond or LUT, the Cenvat Credit may be refunded if the same can not be utilized for payment of duty on clearances for home consumption. This provision has been made to ensure that the duty paid on the inputs used in the manufacture of dutiable export goods is refunded through Cenvat Credit route.

9. Rule 5 of the Cenvat Credit Rules, 2004 reads as under:-

"Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported,the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service Towards payment of

(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or

(ii) service tax on output service, and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the

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Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.

10. It is evident from said rule 5 that refund of Cenvat Credit is permissible in cash only where inputs are used in the manufacture of export goods and the manufacturer is unable to use Credit towards payment of duty for home clearances. Such cash refund is allowed because the excise duty paid on the inputs are used in the manufacture of export goods is rebated under rule 18 and in tune with said provisions; the credit of duty paid on inputs used in export goods is refunded through Cenvat Credit route. There is no provision for refund of Cenvat Credit balance, if the inputs are not used in the manufacture of export goods. In this regard, I rely on following judgments of Hon'ble Tribunal:-

(i) Purvi Fabrics & Texturise (P) Ltd Vs CCE [2004(172)ELT 321 (Tri-Del)]

(ii) CCE Vs Rama Industries [2009(238)ELT 778(Tri-Del)]

(iii) Futura Fibres Vs CCE [2009(233) ELT 466(Tri-ChennaW

11. In the present case, the appellant on export goods paid duty at higher rate only to en-cash the cenvat credit which is in balance because the rate of duty on the goods cleared for home consumption is much lesser than the rate of duty on the inputs. Therefore, as per aforesaid judgments of Hon'ble Tribunal, the question of refund of such unutilized Cenvat credit does not arise. In fact, the said unutilized Cenvat credit is on account of duty paid by their input manufacturers and not by the appellant. Therefore, the appellant can not claim refund of said duty. If the appellant felt that the rebate @ 4% duty was less than the duty paid on their inputs, they could have availed refund of such duty paid on the inputs used in the manufacture of export goods under rule 18 of Central Excise Rules, 2002 in place of paying duty @ 10% from the Cenvat Credit Account. They could have also got the Brand rate of Drawback fixed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 equal to duties and Service tax paid on the inputs and taxable services but can not encash the unutilized Cenvat credit through rebate route.

12. In view of the aforesaid position of the law, I find that the appellant are eligible for cash refund of duty equal to duty payable at the effective rate of duty @ 4%.

13. Regarding the issue of simultaneous availment of duty drawback benefits as well as claiming rebate under Rule 18 of the Central Excise Rules 2002, the

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appellant has contended that they had claimed Drawback on Customs component only. In this regard, Condition No. 6 of Notification No. 84/2010-Customs (NT) dated 17.9.2010 reads as under:

> *"(6) The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not."*

14. Further, the CBEC vide Circular No 35/2010 dated 17.9.2010 has clarified the following:

> *"(d) The earlier Notification No. 103/2008-Cus. (N.T.), dated 29-8-08 as amended) provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback, on the basis of the above condition although the manufacturers had taken only the rebate of Central Excise duties in respect of their inputs/procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.*
>
> *The issue has been examined. The present Notification No. 84/2010-Cus. (N.T.), dated 17-9-2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002."*

15. The provisions of Notification No. 84/2010(NT) dated 17.9.2010 read with the circular dated 17.9.2010 would indicate that the exporters were entitled for customs duty component of AIR even if they have filed claim for rebate of Excise duties. The issue of simultaneous availment of drawback of Customs component

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and Rebate of Excise duty was also decided by Reversionary Authority, even before issue of Notification No 84/2010- Cus (NT), in the case of *Benny Impex Pvt Ltd. (supra), wherein it was held that:*

> *"8.5 The respondents have exported the impugned goods under claim of drawback under Drawback Rules in force and respondent's rebate claims were rejected on this ground only by the adjudicating authority. On this issue, Govt. would observe that the respondent claimed and received drawback of customs duty portion and this cannot be basis for denial of rebate of Central Excise Duty on the goods removed for export as clarified vide Circular No. 203/43/96-CX., dated 9.5.96 issued by CBEC. Hence, Govt. agrees with the findings and order of the impugned order-in-appeal passed by the Commissioner of Central Excise (Appeals)"*

The Revenue has not contended that the above said decision has been challenged by them. Also it is not the Department's case that the exporter has claimed higher rate of drawback than the rate admissible where Cenvat credit on inputs is availed. In view of the above discussion and case laws referred, I find that the appellant are entitled for rebate claim of Excise duty even when they have taken the drawback of Customs portion only.

16. In view of the aforesaid position of the law, I find that the appellant are eligible for cash refund of duty equal to duty payable at the effective rate of duty @ 4%. The balance amount paid is allowed by way of credit in Cenvat credit account of the appellant's manufacturing unit from where the goods were manufactured and cleared for export.

The appeal is decided on above terms.

(Bharati Chavan)
Commissioner (Appeals)

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(BY R.P.A.D.)

To
M/s. Cipla Ltd.,
L.D.Building, Mehra Estate,
Asha Usha compound,
LBS Marg, Vikhroli (W), Mumbai – 400 083.

Copy to :

1. The Chief Commissioner of Central Excise, Mumbai Zone-II
2. The Commissioner of Central Excise, Mumbai-III Commissionerate.
3. The Deputy/Assistant Commissioner (Rebate), Central Excise, Mumbai-III
4. OC/SC.

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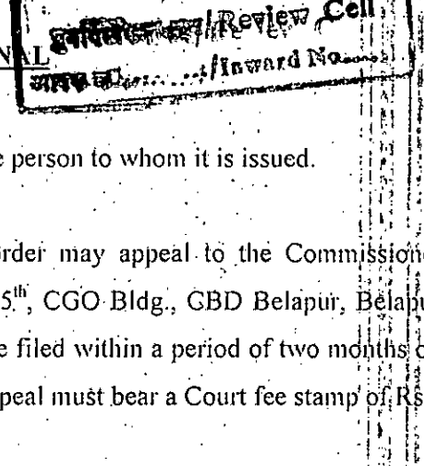
OFFICE OF THE MARITIME COMMISSIONER OF CENTRAL EXCISE,MUMBAI-III,
"VARDAAN", THIRD FLOOR , MIDC,WAGLE INDUSTRIAL ESTATE,
THANE (W) 400 604.

Order F. No. **R. C. No. 12 to 14, 16/11-12** Date of issue: 15 NOV 2011

Order No. 137 R/ RM/AC (RC)/M-III/11-12 Date of order: 31/X/11

Passed by: **RAJIV MAGOO**
Assistant Commissioner, (Rebate)
Maritime Commissionerate,
Central Excise, Mumbai-III.



ORDER IN ORIGINAL

1. This copy is granted free of Charge for the use of the person to whom it is issued.

2. Any person deeming himself aggrieved by this order may appeal to the Commissioner of Central Excise (Appeals) Mumbai having his office at 5th, CGO Bldg., CBD Belapur, Belapur, in the form EA-1. The appeal to the Commissioner must be filed within a period of two months of the date of which this order is communicated to him. The appeal must bear a Court fee stamp of Rs.2.00 and must be accompanied by :

   a. The grounds of appeal should include form of verification duly signed by the appellant in accordance with the provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001, and

   b. The form of appeal in Form EA-1 including the statement of fact and the grounds of appeal shall be filled in duplicate and shall be accompanied by a copy of this order.

3. Any person desiring appeal against this order shall pending the appeal, deposit the duty demanded or the penalty imposed by the order appealed against and must produce proof of such payment along with the appeal, failing which the appeal shall be liable to be rejected for non compliance within the provision of Section 35 (F) of the Central Excise Act, 1944.

Sub : Rebate Claims filed by M/s. Cipla Ltd.- Mumbai.

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BRIEF FACTS OF THE CASE:

M/s. CIPLA LTD., situated at Mumbai Central, Mumbai – 400 008, a manufacturer exporter have filed below mentioned rebate claim for export of goods falling under Chapter 30 of the Schedule to Central Excise Tariff Act, 1985 under claim of Rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The said goods exported were manufactured by M/s. Cipla Ltd; Plot No. L-139 to L-146, Verna Industrial Estate, Verna, GOA-403722. The details of the rebate claims are mentioned below:

Sr. No.	R.C.NO. & Date	ARE-1 No. & Date	Invoice No. & Date	Shipping Bill No. & Date	B/L. No. & Date	AMOUNT
1.	012/11-12 dt. 01.04.2011	1530/G03/ 2009 dt. 25.03.2010	E3/1925/09 dt. 25.03.2010	7166426 dt. 20.03.2010	MISCBM20000 00145A dt. 08.04.2010.	48619/-
2.	013/11-12 dt. 01.04.2011	1534/G03/ 2009 dt. 26.03.2010	E3/1932/09 dt. 26.03.2010	7167198 dt. 30.03.2010	MISCBM20000 00145 dt. 08.04.2010.	42875/-
3.	014/11-12 dt. 01.04.2011	1535/G03/ 2009 dt, 26.03.2010	E3/1933/09 dt. 26.03.2010	7167198 dt. 30.03.2010	MISCBM20000 00145 dt. 08.04.2010.	84800/-
4.	016/11-12 dt. 01.04.2011	1551/G03/ 2009 dt. 30.03.2010	E3/1962/09 dt. 30.03.2010	7166907 dt. 26.03.2010 . 7167238 & 7167243 dt. 31.03.2010	MISCBM20000 00264 dt. 14.04.2010.	224260/-
				TOTAL		**400554/-**

The claimant has furnished the following documents along with the claim.

1. Original copy of A.R.E. 1
2. Duplicate copy of A.R.E. 1 in sealed cover from the Customs Authorities.
3. Triplicate copy of A.R.E. 1 in sealed cover from the Central Excise Range office.
4. Central Excise Invoice issued under Rule 11 of the Central Excise Rules, 2002.
5. Self attested copy of Shipping Bill (Export Promotion copy)
6. Self attested copy of Bill of Lading.
7. Self attested copy of Export Invoice, Packing list and Mate's Receipt.

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As the claimant had paid duty @ 10% along with proportionate Education Cess as per Notification No. 2/2008 CE dated 01.03.2008 as amended by Notification No. 06/2010 CE dated 27.02.2010 instead of paying Central Excise duty @ 4% along with proportionate Educational Cess as per Notification No.04/2006 CE dated 01.03.2006 as amended by Notification No.10/2010 CE dated 27.02.2010 (Sr. No. 62 C), and also availed the benefit of Drawback, they were issued a show cause notice dated 30.06.2011, asking them to show cause as to why (i) their Rebate claim totally amounting to Rs.4,00,554/- should not be reduced to an amount of Rs. 1,67,221/- and the remaining amount of Rs. 2,33,333/- be sanctioned to them to take credit in Cenvat Credit Account and (ii) their rebate claim of Rs. 4,00,554/- should not be rejected as they had opted for Drawback as well as Rebate of Central Excise duty paid simultaneously. A Corrigendum to SCN was issued to read para 4,5 & 9 of the Show Cause Notice as Rs. 160221/- and Rs. 240333/- instead of Rs. 167221/- & Rs. 233333/-. They were accorded personal hearing on 04.08.2011, 18.08.2011, and 02.09.2011.

The claimant vide their letter dated 15.07.2011 submitted that, they do not wish to be heard in person and that the matter regarding claim of Drawback is already decided by Commissioner of Central Excise (Appeals), Mumbai III vide Order-in-Appeal No. PKS/518-521/BEL/2010 dated 17.02.2011 where in the Commissioner (Appeals) has allowed their appeal. As regards rebate @10% they have stated that they are confirmed to their stand to claim entire rebate of 10%.

Pursuant to the submissions the Rebate claims are taken up for finalisation.

Discussion and Findings:

I have gone through the Rebate claim Nos. 12 to 14 & 16 /11-12 filed by the claimant and the submissions made by them. I find that they have availed Drawback claim as well as Rebate of Central Excise Duty paid at the time of clearance from the factory premises. They have also claimed rebate of duty paid @10% on the pharmaceutical goods falling under CETH 3004.

I find that there are two different Notifications namely, (1) Notification No. 4/2006-CE dtd. 01.03.2006 as amended for effective rate of duty wherein the effective rate prescribed for the products falling under Chapter 3001, 3003, 3004, 3005 & 3006 (except 3006.60 & 3006.9200) is 4% Advl. and (2) Notification No. 2/2008 CE dtd. 01.03.2008 is for General rate of excise duty/ Tariff Rate, wherein the General rate has been prescribed at 10% advalorem.

Further, on going through the records of rebate claims filed with this office, I found that since 2008 to 27.02.2010, the exporter has cleared their manufactured product falling under Chapter 30 by paying duty 8%, then 4% under Notification No. 4/2006-CE dt. 01.03.2006 as amended. But, it is observed that the exporter has suddenly started paying duty @ 10% advl. under Notification No. 2/2008-CE dtd. 01.03.2008. However, it is found that the said notification was issued for enhancement in General rate of duty/Tariff rate and the same cannot be treated as general effective rate as clarified at

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Para 3.1 of the TRU's letter dated 29.02.2008. Both the Notifications were issued under Section 5A(1) and have got assent of Indian Parliament, but both notifications are having its significance as one is for General excise duty rates/Tariff rate for certain products and the other is for effective rate of duty prescribed for the clearances of certain products from the manufacturer's end.

I also find that the inherent provision made under Central Excise Act/ Rules for clearance of goods for exports either on payment of duty or on execution of Bond is to protect the Government Revenue in case the goods are not actually exported after clearances from the manufacturing unit and in such cases, the goods cleared are treated as cleared for home consumption. I also find that the effective rate of duty for the products cleared for exports attracts 4% duty under Notification No. 4/2006-CE dtd. 01.03.2006 (Sr. No. 62A to 62E) as clarified at Para 3.1 of D.O.F.No. 334/1/2008-TRU dtd. 29.02.2008 issued by Joint Secretary (TRU-I) in the Budget 2008-09.

Further the Hon'ble Supreme court in the case of MODIPON FIBRE COMPANY vs COMMISSIONER OF CENTRAL EXCISE, MEERUT (2007(218)ELT8(SC) has held that " By the amount of duty of Excise what is meant is effective duty of excise payable on such goods under the Act, hence, effective duty of excise is duty calculated on the basis of prescribed rate as reduced by exemption Notification.". Hence, the claimant is entitled for the rebate of duty amount @ 4%.

With regard to the claiming of drawback I find that as per provision (vi) on page 1.37 of Customs Law & Procedures— At a glance, regarding payment of excise component of All Industry Rates of Drawback, a declaration of non-availment of Cenvat facility is necessary. Manufacturers and merchant-exporters with a supporting manufacturer are required to give a self declaration in the prescribed form that such manufacturers are not registered with central excise and that they do not avail/ have not availed Cenvat facility . In the case of Manufacturers and supporting manufacturers who are registered with Central excise, the fact of non-availment of Cenvat facility shall continue to be confirmed from the ARE-1 filed by them at Sr. No.3 certifying that the abovementioned goods have been manufactured availing / or not availing CENVAT credit under CENVAT Credit Rules, 2004. In this case the claimant have not submitted any Cenvat non-availment declaration/certificate.

As per the guidelines given vide Duty Drawback Procedure, Drawback is not admissible if Cenvat Credit is availed. Therefore, the claimant has to certify that they have not availed cenvat credit under Rules of Central Excise Act, 1944. However in all four ARE-1's it is also certified that the goods covered are manufactured availing facility of CENVAT under Cenvat Credit Rules 2004. The claimant can avail only one benefit either Input Credit or Drawback claim. The claimant has thus simultaneously claimed two benefits which are not admissible to them.

In view of the fact that the claimant has availed double benefit i.e. claimed Drawback as well as Cenvat Credit, I find that the claimants are not entitled even for the rebate of Central Excise duty @ 4% mentioned above. I also find that the Department has filed an application with the Joint Secretary, Revision Application Unit, Govt. of India against the Order dated 17.02.2011 of the Commissioner

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(Appeals) referred to by the claimant. Hence the claimants are not entitled for the rebate of Central Excise Duty. Accordingly I pass the following order.

ORDER

I, reject the Rebate claim Nos. 12 to 14 & 16/11-12 all dated 01.04.2011 filed by M/s. Cipla Ltd; totally amounting to Rs.4,00,554/- (Rupees Four Lakhs Five hundred and Fifty Four Only) under the provisions of Section 11 B of the Central Excise Act,1944 read with Rule 18 of the Central Excise Rules, 2002, and the Notifications issued there under.

31.X.2011

(RAJIV MAGOO)
ASST. COMMISSIONER (REBATE)
CENTRAL EXCISE: MUMBAI – III

F.No. R.C. No. 12 to 14 &16/ 11-12
Thane, the October, 2011.

M/s. Cipla Ltd.
Mumbai Central,
Mumbai-40008.

Copy to :

1. D..C. (Audit), Hqrs., C.Ex., Mumbai – III, for necessary action
2. A.C. (Review), Hqrs., C.Ex., Mumbai – III
3. A.C. / D.C., Central Excise, Madgaon Division, Goa Commissionerate, in charge of M/s. Cipla Ltd. having C. Ex . Reg. Cert. No. AAACC1450BXM006 for information and necessary action.
4. Master File.

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SP-9800

198/80/12

OFFICE OF THE COMMISSIONER OF CENTRAL EXCSIE MUMBAI III, 4TH FLOOR, VARADAAN TRADE CENTER, MIDC, WIE,THANE- 400 614

BY SPEED POST A.D

198/80/12

F.No. V(BC/286) Trb. Cell-100/11/M-III/02
Thane, the March, 2015.

11 APR 2015

To,

The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R. K. Puram, New Delhi- 110 066

22 APR 2015
4418/SE/15
Dept. of Revenue

22/4/15
Sh. M.K

515/15-RA
2314

Sir,

Sub: Central Excise Revision Application against OIA No. BC/286/M-III/11-12 dt. 31.01.2012 passed by Commissioner of Central Excise (Appeals) in the case of M/s. CIPLA Ltd. Mumbai-reg.

****

Kindly refer to your office communication received under F. No 198/84/12-RA(CX) dated 13.05.2015 on the above subject.

As directed, the application for condonation of delay (in duplicate) is submitted here with in the matter for further disposal please.

Yours faithfully,

(K. C. GUPTA)
COMMISSIONER
CENTRAL EXCSIE, MUMBAI-III

Encl: As above (in duplicate)

Copy for information to:-

1) Asst. Commissioner [Rebate], Central Excise, Mumbai-III for information.
2) M/s. CIPLA Ltd. Situated at Mumbai Central, Mumbai-400 008.
3) The Commissioner of Central Excise (Appeals), Bandra-Kurla Complex, Mumbai.

SP-9800

198/80/12

OFFICE OF THE COMMISSIONER OF CENTRAL EXCSIE MUMBAI III, 4TH FLOOR, VARADAAN TRADE CENTER, MIDC, WIE,THANE- 400 614

198/80/12

BY SPEED POST A.D

F.No. V(BC/286) Trb. Cell-100/11/M-III/02
Thane, the March, 2015.

17 APR 2015

22 APR 2015
4418/SP/15
Dept. of Revenue

To,

The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R. K. Puram, New Delhi- 110 066

MRW 22/4/15
Sh. M.K

515/15-RA
234

Sir,

Sub: Central Excise Revision Application against OIA No. BC/286/M-III/11-12 dt. 31.01.2012 passed by Commissioner of Central Excise (Appeals) in the case of M/s. CIPLA Ltd. Mumbai-reg.

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Yours faithfully,

(K. C. GUPTA)
COMMISSIONER
CENTRAL EXCSIE, MUMBAI-III

Encl: As above (in duplicate)

Copy for information to:-

1) Asst. Commissioner [Rebate], Central Excise, Mumbai-III for information.
2) M/s. CIPLA Ltd. Situated at Mumbai Central, Mumbai-400 008.
3) The Commissioner of Central Excise (Appeals), Bandra-Kurla Complex, Mumbai.

BEFORE THE JOINT SECRETARY, REVISION APPLICATION UNIT, GOI, NEW DELHI.

MISCELLANEOUS APPLICATION NO._____

In Revision application filed by the department against OIA NO. BC/286 /M-III/11-12 dt. 31.01.2012 in the case of M/s. CIPLA Ltd.

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III .... APPLICANT

V/S

M/S. CIPLA Ltd. .... RESPONDENT

APPLICATION FOR CONDONATION OF DELAY IN FILING REVISION APPLICATION

1. M/s. **CIPLA Ltd.**, situated at Mumbai Central, Mumbai–400 008, a merchant exporter, filed rebate claims totally amounting to Rs. 4,00,554/- being the duty paid on goods exported by them in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T).
2. The Assistant Commissioner (Rebate), Central Excise, Mumbai-III vide Order-in-Original No. 137/R/RM/AC(RC)/M-III/11-12 dated 31.10.2011 rejected the claims on the ground that the claimant have claimed Duty Drawback as well as Rebate of duty against the Shipping Bills & ARE1s submitted along with the rebate claims.
3. Being aggrieved by the above said Order-in- Original the claimant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III, who vide Order-in-Appeal No. BC/286/M-III/2011-12 dt. 31.01.2012 held that the claimant is entitled for rebate of duty as claimed by them and allowed the appeals, which was received in the office of the Commissioner, Central Excise, Mumbai-III on 10.02.2012. Hence appeal should have been filed in this case by 09.05.2012.

    1. As per the provisions of Sec 35 EE (1A) of Central Excise Act, 1944, the Revision Application against the orders of Commissioner (Appeals), is required to be filed within three months from the date of receipt of the Commissioner(Appeals)'s Order.

    2. Though the OIA was reviewed and application dispatched by this office on 04.05.2012 by Speed Post A.D (within three months from the date of receipt of the impugned order), it appears that the said Revision application has received in the office of the Joint Secretary, GOI, New Delhi late by 04, days. The delay of 04 days is due to postal delay even

(22) 3/D.

though the revision application was sent by Speed Post. Further, due to large number of OIOs and Appellate Orders, the review section of the Commissionerate was highly overburdened during this period. Further, internal correspondence within the department for getting copies of documents and verification from CFS, Mulund also contributed to delay in filing the Revision application.

It is therefore prayed that:

1. **This application for condonation of delay may be accepted and tagged together with the aforesaid revision application.**
2. **The Hon'ble Joint Secretary, Revision Application Unit, GOI, may be pleased to condone the delay of 4 days occurred in filing the Revision Application by the department in the matter.**

(K. C. GUPTA)
COMMISSIONER
CENTRAL EXCISE, MUMBAI-III

(23) 4/5

OFFICE OF THE COMMISSIONER OF CENTRAL EXCSIE MUMBAI III, 4TH FLOOR, VARADAAN TRADE CENTER, MIDC, WIE,THANE- 400 614

BY SPEED POST A.D

F.No. V(BC/286) Trb. Cell-100/11/M-III
Thane, the March, 2015.

To,

The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R. K. Puram, New Delhi- 110 066

Sir,

Sub: Central Excise Revision Application against OIA No. BC/286/M-III/11-12 dt. 31.01.2012 passed by Commissioner of Central Excise (Appeals) in the case of M/s. CIPLA Ltd. Mumbai-reg.

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COMMISSIONER
CENTRAL EXCSIE, MUMBAI-III

Encl: As above (in duplicate)

Copy for information to:-

1) Asst. Commissioner [Rebate], Central Excise, Mumbai-III for information.
2) M/s. CIPLA Ltd. Situated at Mumbai Central, Mumbai-400 008.
3) The Commissioner of Central Excise (Appeals), Bandra-Kurla Complex, Mumbai.

BEFORE THE JOINT SECRETARY, REVISION APPLICATION UNIT, GOI, NEW DELHI.

MISCELLANEOUS APPLICATION NO._____

In Revision application filed by the department against OIA NO. BC/286 /M-III/11-12 dt. 31.01.2012 in the case of M/s. CIPLA Ltd.

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III .... APPLICANT

V/S

M/S. CIPLA Ltd. .... RESPONDENT

APPLICATION FOR CONDONATION OF DELAY IN FILING REVISION APPLICATION

1. M/s. **CIPLA Ltd.**, situated at Mumbai Central, Mumbai–400 008, a merchant exporter, filed rebate claims totally amounting to Rs. 4,00,554/- being the duty paid on goods exported by them in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T).
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3. Being aggrieved by the above said Order-in- Original the claimant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III, who vide Order-in-Appeal No. BC/286/M-III/2011-12 dt. 31.01.2012 held that the claimant is entitled for rebate of duty as claimed by them and allowed the appeals, which was received in the office of the Commissioner, Central Excise, Mumbai-III on 10.02.2012. Hence appeal should have been filed in this case by 09.05.2012.

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(K. C. GUPTA)
COMMISSIONER
CENTRAL EXCISE, MUMBAI-III

OFFICE OF THE COMMISSIONER OF CENTRAL EXCSIE MUMBAI III, 4TH FLOOR, VARADAAN TRADE CENTER, MIDC, WIE,THANE- 400 614

BY SPEED POST A.D

F.No. V(BC/286) Trb. Cell-100/11/M-III
Thane, the March, 2015.

To,

The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R. K. Puram, New Delhi- 110 066

Sir,

Sub: Central Excise Revision Application against OIA No. BC/286/M-III/11-12 dt. 31.01.2012 passed by Commissioner of Central Excise (Appeals) in the case of M/s. CIPLA Ltd. Mumbai-reg.

****

Kindly refer to your office communication received under F. No 198/84/12-RA(CX) dated 13.05.2015 on the above subject.

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Yours faithfully,

(K. C. GUPTA)
COMMISSIONER
CENTRAL EXCSIE, MUMBAI-III

Encl: As above (in duplicate)

Copy for information to:-

1) Asst. Commissioner [Rebate], Central Excise, Mumbai-III for information.
2) M/s. CIPLA Ltd. Situated at Mumbai Central, Mumbai-400 008.
3) The Commissioner of Central Excise (Appeals), Bandra-Kurla Complex, Mumbai.

(22) 8/D

BEFORE THE JOINT SECRETARY, REVISION APPLICATION UNIT, GOI, NEW DELHI.

MISCELLANEOUS APPLICATION NO._____

In Revision application filed by the department against OIA NO. BC/286 /M-III/11-12 dt. 31.01.2012 in the case of M/s. CIPLA Ltd.

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III .... APPLICANT

V/S

M/S. CIPLA Ltd. .... RESPONDENT

APPLICATION FOR CONDONATION OF DELAY IN FILING REVISION APPLICATION

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It is therefore prayed that:

1. **This application for condonation of delay may be accepted and tagged together with the aforesaid revision application.**
2. **The Hon'ble Joint Secretary, Revision Application Unit, GOI, may be pleased to condone the delay of 4 days occurred in filing the Revision Application by the department in the matter.**

(K. C. GUPTA)
COMMISSIONER
CENTRAL EXCISE, MUMBAI-III

SB-9243

OFFICE OF THE COMMISSIONER OF CENTRAL EXCSIE MUMBAI III, 4TH FLOOR, VARADAAN TRADE CENTER, MIDC, WIE,THANE- 400 614

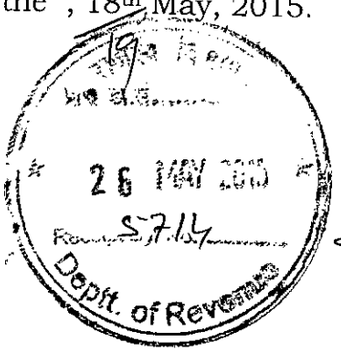
BY SPEED POST A.D

URGENT, PL.

F.No. V(BC/286) Trb. Cell-100/11/M-III/635
Thane, the , 18th May, 2015.

To,

The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R. K. Puram, New Delhi- 110 066



Sir,

Sub: Central Excise Revision Application against OIA No. BC/286/M-III/11-12 dt. 31.01.2012 passed by Commissioner of Central Excise (Appeals) in the case of M/s. CIPLA Ltd. Mumbai-reg.

****

Please refer to your letter No. 198/80/12-RA-CX dated 24.4.2015 on the above subject.

In this connection it is submitted that application for condonation of delay have already been submitted by this office vide this office letter of even No. dated 01.04.2015, against your letter No 198/84/12-RA(CX) dated 13.03.2015.

However, a copy of the same is enclosed herewith for further disposal please.

Yours faithfully,

(MD. SHAMSHAD ALAM)
JOINT COMMISSIONER
CENTRAL EXCSIE, MUMBAI-III

Encl: As above.

OFFICE OF THE COMMISSIONER OF CENTRAL EXCSIE MUMBAI III, 4TH FLOOR, VARADAAN TRADE CENTER, MIDC, WIE,THANE- 400 614

BY SPEED POST A.D

F.No. V(BC/286) Trb. Cell-100/11/M-III
Thane, the 1 APR 2015 March, 2015.

To,

The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R. K. Puram, New Delhi- 110 066

Sir,

Sub: Central Excise Revision Application against OIA No. BC/286/M-III/11-12 dt. 31.01.2012 passed by Commissioner of Central Excise (Appeals) in the case of M/s. CIPLA Ltd. Mumbai-reg.

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Kindly refer to your office communication received under F. No 198/84/12-RA(CX) dated 13.05.2015 on the above subject.

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Yours faithfully,

(K. C. GUPTA)
COMMISSIONER
O/C CENTRAL EXCSIE, MUMBAI-III

Encl: As above (in duplicate)

Copy for information to:-

1) Asst. Commissioner [Rebate], Central Excise, Mumbai-III for information.
2) M/s. CIPLA Ltd. Situated at Mumbai Central, Mumbai-400 008.
3) The Commissioner of Central Excise (Appeals), Bandra-Kurla Complex, Mumbai.

Recd 06/04/15

Dispatch Clerk
Central Excise, Mumbai-III

OFFICE OF THE COMMISSIONER OF CENTRAL EXCSIE MUMBAI III, 4TH FLOOR, VARADAAN TRADE CENTER, MIDC, WIE,THANE- 400 614

BY SPEED POST A.D

F.No. V(BC/286) Trb. Cell-100/11/M-III
Thane, the 1 APR 2015 March, 2015.

To,

The Joint Secretary,
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Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R. K. Puram, New Delhi- 110 066

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3) The Commissioner of Central Excise (Appeals), Bandra-Kurla Complex, Mumbai.

Recd
06/04/15

Dispatch Clerk
Central Excise, Mumbai-III

BEFORE THE JOINT SECRETARY, REVISION APPLICATION UNIT, GOI, NEW DELHI.

MISCELLANEOUS APPLICATION NO._____

In Revision application filed by the department against OIA NO. BC/286 /M-III/11-12 dt. 31.01.2012 in the case of M/s. CIPLA Ltd.

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III .... APPLICANT

V/S

M/S. CIPLA Ltd. .... RESPONDENT

APPLICATION FOR CONDONATION OF DELAY IN FILING REVISION APPLICATION

1. M/s. **CIPLA Ltd.**, situated at Mumbai Central, Mumbai–400 008, a merchant exporter, filed rebate claims totally amounting to Rs. 4,00,554/- being the duty paid on goods exported by them in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T).
2. The Assistant Commissioner (Rebate), Central Excise, Mumbai-III vide Order-in-Original No. 137/R/RM/AC(RC)/M-III/11-12 dated 31.10.2011 rejected the claims on the ground that the claimant have claimed Duty Drawback as well as Rebate of duty against the Shipping Bills & ARE1s submitted along with the rebate claims.
3. Being aggrieved by the above said Order-in- Original the claimant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III, who vide Order-in-Appeal No. BC/286/M-III/2011-12 dt. 31.01.2012 held that the claimant is entitled for rebate of duty as claimed by them and allowed the appeals, which was received in the office of the Commissioner, Central Excise, Mumbai-III on 10.02.2012. Hence appeal should have been filed in this case by 09.05.2012.

    1. As per the provisions of Sec 35 EE (1A) of Central Excise Act, 1944, the Revision Application against the orders of Commissioner (Appeals), is required to be filed within three months from the date of receipt of the Commissioner(Appeals)'s Order.

    2. Though the OIA was reviewed and application dispatched by this office on 04.05.2012 by Speed Post A.D (within three months from the date of receipt of the impugned order), it appears that the said Revision application has received in the office of the Joint Secretary, GOI, New Delhi late by 04, days. The delay of 04 days is due to postal delay even

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It is therefore prayed that:

1. **This application for condonation of delay may be accepted and tagged together with the aforesaid revision application.**
2. **The Hon'ble Joint Secretary, Revision Application Unit, GOI, may be pleased to condone the delay of 4 days occurred in filing the Revision Application by the department in the matter.**

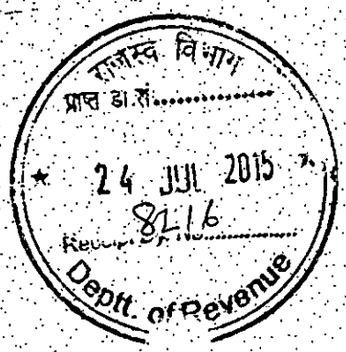
(K. C. GUPTA)
COMMISSIONER
CENTRAL EXCISE, MUMBAI-III

By Speed Post

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,MUMBAI-III,
4th FLOOR, VARDAAN TRADE COMPLEX, MIDC, WAGLE INDUSTRIAL ESTATE,
THANE – 400 604.

F.No.V(15)Reb/RA-Corrs/01/2015-16
Thane, the 15th July, 2015

To,
The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R.K. Puram, New Delhi 110 066



Sub.: Personal Hearing to be held on 20.07.2015 at 11.15 a.m. in Revision Application No.F.No.198/80/12-RA-Cx. in the case of M/s. Cipla Ltd. – reg.

Sir,

I, Dr. Mukesh Srivastava, Assistant Commissioner (Hqrs), Central Excise, Mumbai-III Commissionerate, duly authorized by the Principal Commissioner of Central Excise, Mumbai-III Commissionerate to represent in respect of Revision Application F.No. 198/80/2012-RA(CX) dt. 23.06.2015, I, beg to submit as under:-

1. M/s. Cipla Ltd, situated at Mumbai Central, Mumbai – 400 008 (hereinafter referred to as "the claimant") a Merchant exporter filed rebate claims totally amounting to Rs.4,00,554/- being the duty paid on goods exported by them in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T).

2. Assistant Commissioner (Rebate), Central Excise, Mumbai-III vide Order-in-Original Nos. 137/R/RM/AC(RC)/M-III/11-12 dated 31.10.2011 has held that the effective rate of duty on the exported goods was 4% adv vide Notfn. No.4/2006 dated 1.03.2006, as amended. Hence claimant was eligible for rebate of duty @4%adv only. However, he rejected the entire claim on the ground that the claimant has claimed Duty Drawback as well as Rebate of duty against the Shipping Bills & AREIs submitted along with the rebate claims.

3. Being aggrieved by the above said Order-in- Original the claimant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III, who vide Order-in-Appeal No. BC/286/M-III/2011-12 dt. 31.01.2012 held that the claimant is entitled for rebate of duty as claimed by them but to the extent of duty paid @4% adv. The appellate authority's decision to allow the rebate to the extent of duty paid @4% adv is correct. However, Order in Appeals allowing the rebate even though drawback is claimed simultaneously by the claimant does not appear to be legal and proper.

4. A gist of major observation of Commissioner (Appeals) in the subject order is as follows:

As per para 15 of Customs Notfn. No 84/2010-Cus (N.T) dtd. 17.09.2010 issued under F.No.609/76/2010-DBK, as regards the expressions " when Cenvat facility has not been availed " used in the Schedule to aforesaid Notfn, the exporter shall satisfy the following conditions, namely,

"(i) The exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise;

as the case may be , that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of export product;

(ii) If the goods are exported under Bond or claim of rebate of duty of central excise, a certificate from the Superintendent of Customs or Superintendent of Central Excise in charge of the factory of production, to the effect that no Cenvat facility has been availed for the goods under export is produced."

In the instant case no such certificate has been produced.

I) As regards payment of excise component of All Industry Rates of Drawback, a declaration of non-availment of Cenvat facility is necessary. Manufacturers and merchant-exporters with a supporting manufacturer are required to give a self declaration in the prescribed form that such manufacturers are not registered with central excise and that they do not avail/ have not availed Cenvat facility. In the case of Manufacturers and supporting manufacturers who are registered with Central excise, the fact of non-availment of Cenvat facility shall continue to be confirmed from the ARE-1 filed by them.

II) In the instant case, the claimant has submitted details of duty payment particulars made from the manufacturer's Cenvat credit balance account along with the rebate claim. However, it is noticed that the claimant have also filed shipping bill to the Customs Department on which they have claimed drawback.

III) Further, as per the guidelines prescribed under Duty Drawback Procedures, Drawback is not admissible if Cenvat Credit is availed. Therefore, to claim duty drawback, the claimant has to certify that they have not availed Cenvat credit as per Cenvat Credit Rules, 2004 to comply with the provisions of Central Excise Duties Drawback Rules, 1995. Hence, party can avail only one benefit either Input Credit or Drawback claim. Thus, simultaneous availment of two benefits is not admissible to them.

IV) In view of above, M/s. Cipla Ltd by claiming rebate of duty paid on the exported goods when they have also claimed duty drawback with the Customs Authorities as per Customs and Central Excise Duties Drawback Rules, 1995, the claimant have knowingly claimed both the benefits of rebate of duty as well as duty drawback with an intent to avail undue benefits, which is not legally admissible to them due to the aforesaid reasons.

V) As such the Order-in-Appeal No. BC/286/M-III/2011-12 dt. 31.01.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai-III, Mumbai Zone-II in respect of M/s. Cipla Ltd appears to be not proper, correct and legal.

5. In view of the above Commissioner (Appeals) vide O-in-A No. BC/286/M-III/2011-12 dt. 31.01.2012 rejected the appeal filed by the claimant and upholding the Order in Originals.

6. Against the above O-in-A party preferred an RA.

It is therefore, prayed that the Central Government, Joint Secretary (Revision Application) may reject the orders passed by the Commissioner (Appeals) aforesaid order and restore the orders passed by Asstt.Comm.(Rebate).

Yours faithfully,

17/07/2015

(Dr. Mukesh Srivastava)
Assistant Commissioner (Hqrs.)
Central Excise, Mumbai-III

Sh. Bhau
Sh. Mukesh mobile
24/7/2015

Ay held
M 10.9.15

SP-3736 198/80/12

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,MUMBAI-III,
4th FLOOR, VARDAAN TRADE COMPLEX, MIDC, WAGLE INDUSTRIAL ESTATE,
THANE – 400 604.

F.No.V(15)Reb/RA-Corrs/01/2015-16
Thane, the 31.08.2015

1991

To,
The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R.K. Puram, New Delhi 110 066

09 SEP 15
10113

9/9/15
Sh. M.K

Sub.: Personal Hearing to be held on 10.09.2015 at 11.30 a.m. in Revision Application No.F.No.198/80/2012-RA-Cx. in the case of M/s. Cipla Ltd. – reg.

123P/15-RA
9/P

Sir,

Please refer to leter F.No. 198/80/2012-RA-Cx dt. 10.08.2015 wherein it has been communicated that a personal hearing has been re-fixed for 10.09.2015 at 11.30 a.m. in the office of the Joint Secretary (RA).

In this regard, it is hereby informed that the write-up for your kind consideration alongwith the brief facts of the case is forwarded vide this office of even no. dated 10.08.2015.(copy enclosed).

Yours faithfully,

31/08/15

(S.M. Patel)
Assistant Commissioner (Rebate)
Central Excise, Mumbai-III

Copy to : D.C.(Review) w.r.t. letter F.No.(BC/286)Trb.Cell-100/11/M-III dt. 26.08.2015 for information.

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,MUMBAI-III,
4th FLOOR, VARDAAN TRADE COMPLEX, MIDC, WAGLE INDUSTRIAL ESTATE,
THANE – 400 604.

F.No.V(15)Reb/RA-Corrs/01/2015-16
Thane, the 10.08. 2015

1800

To,
The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R.K. Puram, New Delhi 110 066

Sub.: Personal Hearing to be held on 11.08.2015 at 11.00 a.m. in Revision Application No.F.No.195/80/12-RA-Cx. in the case of M/s. Cipla Ltd. – reg.

Sir,

I, Sh. S.M.Patel, Assistant Commissioner (Hqrs), Central Excise, Mumbai-III Commissionerate, duly authorized by the Principal Commissioner of Central Excise, Mumbai-III Commissionerate to represent in respect of Revision Application F.No. 195/80/12-RA(CX) dt. 20.07.2015. I, beg to submit as under:-

1. M/s. Cipla Ltd, situated at Mumbai Central, Mumbai – 400 008 (hereinafter referred to as "the claimant") are merchant exporters and had filed rebate claim under Rule 18 of the said rules with Notfn. No. 19/2004 CE(NT) dt. 06.09.2004, being the duty paid Pharmaceutical goods (hereinafter referred to as "the said goods") exported, which were manufactured and cleared from their manufacturers premises before the Asstt. Comm(Rebate), Central Excise, Mumbai-III as the exports were done through Mulund CFS.
2. The brief facts of the case are as follows :-
   The appellants are merchant exporters and have filed rebate claims under Rule 18 of the said rules read with Notfn. No. 19/2004 CE(NT) dt. 06.09.2004 for the duty paid on goods exported, which were manufactured by M/s. Mediorals Labs P. Ltd. and Others. The duty was paid @ 10% under the Notification No. 2/2008-CE dated 1.3.2008, as amended. However, the rebate sanctioning authority, has held that the effective rate of duty on the export goods was 4% vide Notfn No. 4/2006- CE dtd 01.03.2006 as amended. Hence the claimant was eligible for rebate of duty @4% vide Notfn. No.4/2006-CE dt. 1.3.2008, as amended. However the rebate claim was rejected on the grounds that in ARE-1 No. 04/10-11 dtd 29.05.2010 the ch_apter_heading mentioned on the C.Ex Invoice, ARE-1 and shipping bill was different.

3. Being aggrieved, the appellants have filed appeal on the following grounds:
   (a) Notification No 4/2006 as amended and Notification No 2/2008, as amended coexist in the books of law and are not mutually exclusive. Both the Notifications under consideration are in existence simultaneously and do not have any provisions excluding the other. Thus both the Notifications co-exist simultaneously in the books of law. The adjudicating authority has not pointed out any provision under the Central Excise Act or Rule there under, which has

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,MUMBAI-III,
4th FLOOR, VARDAAN TRADE COMPLEX, MIDC, WAGLE INDUSTRIAL ESTATE,
THANE – 400 604.

F.No.V(15)Reb/RA-Corrs/01/2015-16
Thane, the 10.08. 2015

To,
The Joint Secretary,
Revision Application Unit,
Government of India,
Ministry of Finance,
Department of Revenue,
HUDCO Vishala Bldg., 'B' Wing,
6th Floor, Bhikaji Cama Place,
R.K. Puram, New Delhi 110 066

Sub.: Personal Hearing to be held on 11.08.2015 at 11.00 a.m. in Revision Application No.F.No.195/80/12-RA-Cx. in the case of M/s. Cipla Ltd. – reg.

Sir,

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   The appellants are merchant exporters and have filed rebate claims under Rule 18 of the said rules read with Notfn. No. 19/2004 CE(NT) dt. 06.09.2004 for the duty paid on goods exported, which were manufactured by M/s. Medorals Labs P. Ltd. and Others. The duty was paid @ 10% under the Notification No. 2/2008-CE dated 1.3.2008, as amended. However, the rebate sanctioning authority, has held that the effective rate of duty on the export goods was 4% vide Notfn No. 4/2006- CE dtd 01.03.2006 as amended. Hence the claimant was eligible for rebate of duty @4% vide Notfn. No.4/2006-CE dt. 1.3.2008, as amended. However the rebate claim was rejected on the grounds that in ARE-1 No. 04/10-11 dtd 29.05.2010 the ch_apter_heading mentioned on the C.Ex Invoice, ARE-1 and shipping bill was different.

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   (a) Notification No 4/2006 as amended and Notification No 2/2008, as amended coexist in the books of law and are not mutually exclusive. Both the Notifications under consideration are in existence simultaneously and do not have any provisions excluding the other. Thus both the Notifications co-exist simultaneously in the books of law. The adjudicating authority has not pointed out any provision under the Central Excise Act or Rule there under, which has

the effect of requiring the assessee to mandatorily avail the exemption Notification No 4/2006-CE dated 1.3.2006 only.

(b) Rule 18 of Central Excise Rules, 2002 grants rebate of excise duty paid on goods exported. The export of goods is not in dispute and the fact of payment of duty is also not in dispute. Placed reliance upon decision of Gayatri Laboratories reported in 2006 (194) ELT 73 (T).

(c.) The rebate sanctioning authority cannot question the assessment since the method of assessment of Excise duty on the finished goods has not been challenged. Reliance had been placed upon the CBEC Circular No 510/ 06/ 2000-CX dated 3.2.2000.

(d) Similar matter had been decided in their favor by Commissioner of Centre Excise (Appeals), Mumbai Zone-I in the O-I-A No SB(17)17/ MI/ 2011 dated 21.3. 2011 and SB(36-41)36-41/ MI/ 2011/ 1387 dated 3.5.2011.

4. Personal hearing in the matter was fixed on 29.02.12 Shri Nitin Dube and Shri Prashant Mhatre employees of the company appeared on behalf of the appellants and reiterated their submissions and grounds of appeal . They contended that difference in details of classification mentioned in ARE-1 and Shipping bills is technical and clerical mistakes. In similar cases the Commissioner (Appeal), Mumbai-I and Pune have accepted this contention. They submitted further written submissions which are as under :-

(a)The matter is a classification dispute. The said product is food product classified under chapter heading 21069099 of Central Excise Tariff Act, 1985. However while preparing bill at custom by mistake said goods were classified as plaumaceutical goods under classification as 30031000, which was wrong. They have also made an application for the amendment in shipping bill to change from pharmaceutical to food product.

(b)The appellants have been granted necessary license by concerned authority under Prevention of Food Adulteration Act, 1954. All the other details like batch No., gross weight, net weight and quantity of product is tallying with the ARE-1 and concerned shipping bill. The goods cleared from the factory has been exported vide the concerned shipping bill.

(c.) The rebate sanctioning authority has neither issued any show cause notice or given any personal hearing and without following principles of natural justice have rejected the appellants rebate claim.

5. Being aggrieved, the appellants filed an appeal before Commissioner (Appeals) on the following grounds:-

a. The two consignments were exported through two different ports. Therefore a part rebate claim along-with original documents i.e ARE-1 & Excise Invoice are submitted wit concerned office of the port of shipment viz Air Cargo Complex, Sahar and JNFYF an for the part exported through CFS, Mulund they have submitted claim on photocopies c ARE-1 And Excise Invoice duly attested by Superintendent.

b. Similar matter had been decided in their favor by Maritime Commissioner, Mumbai vide O-I-O No KII/683-R/2011 (MTC) dated 14.12.2011, where claim is submitted o photocopies duly attested by the Superintendent.

c. The rebate sanctioning authority need to understand the practical difficulty of submittin single original document at two different authorities.

6. A gist of major observation of Commissioner (Appeals) in the subject order is as follows:

(i) During the relevant period, Notfn. No.4/2006-CE as amended provides for 4% duty while Notfn. 2/2008 CE dt. 01.03.08 as amended provides for 10% adv. Duty. Appellants chose to pay 10% duty on export goods. It is on record that in the past the appellants had paid duty @4% adv on goods exported. It is apparent they have intentionally paid duty @10% adv from cenvat account with an intention to recover high incidence of duty paid on raw materials used in the manufacture of such export goods.

(ii) The rate of duty on inputs during the relevant period was 8%, 10% while duty on finished goods was 10%. Since the rebate of duty on the finished product is less than the rate of duty on inputs the appellants were obviously saving credit on inputs used in the manufacture of goods and the same was getting accumulated. In order to encash the said credit through rebate route they paid duty on export goods @10%. It was observed that the purpose of granting rebate under C.Ex. Rules, 2002 is not to grant accumulated cenvat credit credit in cash.

(iii) As regards the issue of discrepancy in description and chapter heading in ARE-1 & shipping Bill, it is observed that the impugned goods have not been exported by the assessee, hence the claimant is not entitled to claim rebate of excise duties.

5. In view of the above Commissioner (Appeals) vide O-in-A No. BC/367/M-III/2011-12 dt. 13.03.2012 rejected the appeal filed by the claimant and upholding the Order in Originals.

6. Against the above O-in-A party preferred an RA.

It is therefore, prayed that the Central Government, Joint Secretary (Revision Application) may accept the aforesaid order passed by the Commissioner (Appeals) aforesaid order and reject the Review Application filed by the party.

Yours faithfully,

10/07/15

(S.M. Patel)
Assistant Commissioner (Rebate)
Central Excise, Mumbai-III

Dispatch Clerk
Central Excise, Mumbai-III

Ph 11.8.15

(1A)

WRITTEN SUBMISION BEFORE THE HON'BLE JOINT SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, HUDKO VISHALA BUILDING, B-WING, BHIKAJI KAMA PALACE, R.K.PURAM, NEW DELHI-110 066

REVISION APPLICATION NO. 198/80/12-RA-CX

THE COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III	APPLICANTS
VS	
M/S. CIPLA LTD	RESPONDENT

MOST RESPECTFULLY SHEWETH:-

1. The abovementioned Revision Application is filed by the Hon'ble Commissioner of Central Excise, Mumbai-III against Order-In-Appeal No. BC/286/MUM-III/2011-12 dated 31.01.2012 passed by Commissioner (Appeals) of Central Excise, Mumbai-III, in respect to Order-In-Original No.137R/RM/AC (RC)/M-III/11-12 dated 31.10.2011. We humbly submit that, this submission may also be taken on record for the purpose of deciding the above Revision Application.

Brief Facts & Issue:-

1. We M/s. Cipla Ltd is manufacturer as well as merchant exporter. We procured goods on loan license basis from various manufacturer situated across the country (hereinafter called as "Supporting manufacturer"). Further, as we are principal manufacturer, the raw material and packing material are supplied by us to the supporting manufacturer

2. In this case, we have we have cleared the consignment from our own manufacturing unit situated at L-139 to L-146, Varna Industrial Estate, Goa on payment of excise duty @10% as per Notification No. 2/2008-CE dated 1.3.2008 instead of 4% as per Notification No. 4/2006-CE dated 1.3.2006 and same has been exported through CFS Mulund port.

3. Accordingly, we claimed rebate with Maritime Commissioner of Central Excise, Mumbai-III, as the CFS mulund port comes under their Jurisdictional (hereinafter called as "Rebate Sanctioning Authority")

4. Further on scrutiny of said rebate claims, the rebate sanctioning authority by passing **Order-In-Original No. 137R/RM/AC (RC)/M-III/11-12 dated**

997/15-RA 22/7/15

Shubham

Mr. Mukesh
to file pl.
22/7/2015

31.10.2011 has rejected our entire rebate claim on below grounds. Copy enclosed as **Annexure-A**

(20)

4.1 That manufacturer have cleared goods on payment of duty @ 10% as per Notification No. 2/2008-CE dated 1.3.2008 instead of Notification No. 4/2006-CE dated 1.3.2006.

4.2 The claimant have availed double benefit i.e. claimed drawback as well as Cenvat Credit therefore, the claimant are not entitled for the rebate of Central Excise Duty.

5. Being aggrieved by the Order-In-Original No. 137R/RM/AC (RC)/M-III/11-12 dated 31.10.2011, we have preferred appeal before Hon'ble Commissioner (Appeals) of Central Excise, Mumbai –III.

6. However, the Commissioner (Appeals) of Central Excise, Mumbai III by passing **Order-In-Appeal No. BC/286/MUM-III/2011-12 dated 31.01.2012** has decide mater related to drawback in our favor with direction to sanction our rebate claim to the extent of 4% and remaining 6% amount by way of Cenvat credit. Copy of Order-In-Appeal dated 31.01.2012 enclosed as **Annexure-B.**

7. Being aggrieved by the portion of said Order-In-Appeal dated 31.01.2012, we have filled revision application with your office for sanctioning the balance 6% rebate claim by way of cash.

8. Also, being aggrieved by the said Order-In-Appeal dated 31.01.2012 the revenue also filled the revision application in matter of drawback with your office.

9. Further your office also by passing **G.O.I Order No.1568-1595/2012-CX dated 14.11.2012** has upheld the decision given in Order-In-Appeal dated 31.01.2012 to sanction our rebate claim to the extent of 4% and remaining 6% amount by way of Cenvat credit. Copy of G.O.I order dated 14.11.2012 enclosed as **Annexure-C**. As we want entire rebate claim to be sanction by way of cash, thus we have filled the writ petition before Hon'ble Bombay High Court and has been pending till date.

10. As per the directions of G.O.I Order dated 14.11.2012, we have requested to the rebate sanctioning authority to sanction our rebate claim to the extent of 4% initially rejected in drawback matter.

Submission

In this matter, the revision application filled by us has already been decided by your office vide **G.O.I Order No.1568-1595/2012-CX dated 14.11.2012**. Also, the department has accepted the same and by passing Order-In-Original No.219R/SKM/DC (RC)/M-III/13-14 dated 13.12.2013, said rebate claim we have been sanctioned to the extent of 4% by restricting over and above . Copy of Order-In-Original dated 13.12.2013 enclosed as **Annexure-D**. Therefore, we request you to take this submission at your records. As the said matter has already been decided and settled, hence we are not attending the personal hearing.

PRAYER

In view of the above, it is respectfully prayed that the Hon'ble Joint Secretary (RA), Ministry of Finance may be pleased to:

(a) Drop the proceeding initiated against us;

(b) Upheld decision given by your office vide G.O.I. Order No.1568-1595/2012-CX dated 14.11.2012;

For. Cipla Ltd

CIPLA LTD. MUMBAI 400 013 INDIA PERMIT ROOM PAREL

Authorized Signatory
Respondent

Annexure-A

(13)

(44)

OFFICE OF THE MARITIME COMMISSIONER OF CENTRAL EXCISE,MUMBAI-III,
"VARDAAN", THIRD FLOOR , MIDC,WAGLE INDUSTRIAL ESTATE,
THANE (W) 400 604.

Order F. No. R. C. No. 12 to 14, 16/11-12/8495 Date of issue: 15.11.2011

Order No. 137 R/ RM/AC (RC)/M-III/11-12 Date of order: 31/X/11

Passed by: RAJIV MAGOO
Assistant Commissioner, (Rebate)
Maritime Commissionerate,
Central Excise, Mumbai-III.

ORDER IN ORIGINAL

1. This copy is granted free of Charge for the use of the person to whom it is issued.

2. Any person deeming himself aggrieved by this order may appeal to the Commissioner of Central Excise (Appeals) Mumbai having his office at 5th, CGO Bldg., CBD Belapur, Belapur, in the form EA-1. The appeal to the Commissioner must be filed within a period of two months of the date of which this order is communicated to him. The appeal must bear a Court fee stamp of Rs.2.00 and must be accompanied by :

a. The grounds of appeal should include form of verification duly signed by the appellant in accordance with the provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001, and

b. The form of appeal in Form EA-1 including the statement of fact and the grounds of appeal shall be filled in duplicate and shall be accompanied by a copy of this order.

3. Any person desiring appeal against this order shall pending the appeal, deposit the duty demanded or the penalty imposed by the order appealed against and must produce proof of such payment along with the appeal, failing which the appeal shall be liable to be rejected for non compliance within the provision of Section 35 (F) of the Central Excise Act, 1944.

Sub : Rebate Claims filed by M/s. Cipla Ltd.- Mumbai.

(14) (5A)

BRIEF FACTS OF THE CASE:

M/s. CIPLA LTD., situated at Mumbai Central, Mumbai – 400 008, a manufacturer exporter have filed below mentioned rebate claim for export of goods falling under Chapter 30 of the Schedule to Central Excise Tariff Act, 1985 under claim of Rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The said goods exported were manufactured by M/s. Cipla Ltd, Plot No. L-139 to L-146, Verna Industrial Estate, Verna, GOA-403722. The details of the rebate claims are mentioned below:

Sr. No.	R.C.NO. & Date	ARE-1 No. & Date	Invoice No. & Date	Shipping Bill No. & Date	B/L No. & Date	AMOUNT
1.	012/11-12 dt. 01.04.2011	1530/G03/ 2009 dt. 25.03.2010	E3/1925/09 dt. 25.03.2010	7166426 dt. 20.03.2010	MISCBM20000 00145A dt. 08.04.2010	48619/-
2.	013/11-12 dt. 01.04.2011	1534/G03/ 2009 dt. 26.03.2010	E3/1932/09 dt. 26.03.2010	7167198 dt. 30.03.2010	MISCBM20000 00145 dt. 08.04.2010	42875/-
3.	014/11-12 dt. 01.04.2011	1535/G03/ 2009 dt. 26.03.2010	E3/1933/09 dt. 26.03.2010	7167198 dt. 30.03.2010	MISCBM20000 00145 dt. 08.04.2010	84800/-
4.	016/11-12 dt. 01.04.2011	1551/G03/ 2009 dt. 30.03.2010	E3/1962/09 dt. 30.03.2010	7166907 dt. 26.03.2010 7167298 & 7167243 dt. 31.03.2010	MISCBM20000 00264 dt. 14.04.2010	224260/-
				TOTAL		400554/-

The claimant has furnished the following documents along with the claim:

1. Original copy of A.R.E. 1.
2. Duplicate copy of A.R.E. 1 in sealed cover from the Customs Authorities.
3. Triplicate copy of A.R.E. 1 in sealed cover from the Central Excise Range office.
4. Central Excise Invoice issued under Rule 11 of the Central Excise Rules, 2002.
5. Self attested copy of Shipping Bill (Export Promotion copy).
6. Self attested copy of Bill of Lading.
7. Self attested copy of Export Invoice, Packing list and Mate's Receipt.

As the claimant had paid duty @ 10% along with proportionate Education Cess as per Notification No. 2/2008 CE dated 01.03.2008 as amended by Notification No. 06/2010 CE dated 27.02.2010 instead of paying Central Excise duty @ 4% along with proportionate Educational Cess as per Notification No.04/2006 CE dated 01.03.2006 as amended by Notification No.10/2010 CE dated 27.02.2010 (Sr. No. 62 C), and also availed the benefit of Drawback, they were issued a show cause notice dated 30.06.2011, asking them to show cause as to why (i) their Rebate claim totally amounting to Rs.4,00,554/- should not be reduced to an amount of Rs. 1,67,221/- and the remaining amount of Rs. 2,33,333/- be sanctioned to them to take credit in Cenvat Credit Account and (ii) their rebate claim of Rs. 4,00,554/- should not be rejected as they had opted for Drawback as well as Rebate of Central Excise duty paid simultaneously. A Corrigendum to SCN was issued to read para 4,5 & 9 of the Show Cause Notice as Rs. 160221/- and Rs. 240333/- instead of Rs. 167221/- & Rs. 233333/-. They were accorded personal hearing on 04.08.2011, 18.08.2011, and 02.09.2011.

The claimant vide their letter dated 15.07.2011 submitted that they do not wish to be heard in person and that the matter regarding claim of Drawback is already decided by Commissioner of Central Excise (Appeals), Mumbai III vide Order-in-Appeal No. PKS/518-521/BEL/2010 dated 17.02.2011 where in the Commissioner (Appeals) has allowed their appeal. As regards rebate @10% they have stated that they are confirmed to their stand to claim entire rebate of 10%.

Pursuant to the submissions the Rebate claims are taken up for finalisation.

Discussion and Findings:

I have gone through the Rebate claim Nos. 12 to 14 & 16/11-12 filed by the claimant and the submissions made by them. I find that they have availed Drawback claim as well as Rebate of Central Excise Duty paid at the time of clearance from the factory premises. They have also claimed rebate of duty paid @10% on the pharmaceutical goods falling under CETH 3004.

I find that there are two different Notifications namely, (1) Notification No. 4/2006-CE dtd. 01.03.2006 as amended for effective rate of duty wherein the effective rate prescribed for the products falling under Chapter 3001, 3003, 3004, 3005 & 3006 (except 3006.60 & 3006.9200) is 4% Advl. and (2) Notification No. 2/2008 CE dtd. 01.03.2008 is for General rate of excise duty/ Tariff Rate, wherein the General rate has been prescribed at 10% advalorem.

Further, on going through the records of rebate claims filed with this office, I found that since 2008 to 27.02.2010, the exporter has cleared their manufactured product falling under Chapter 30 by paying duty 8%, then 4% under Notification No. 4/2006-CE dt. 01.03.2006 as amended. But, it is observed that the exporter has suddenly started paying duty @ 10% advl. under Notification No. 2/2008-CE dtd. 01.03.2008. However, it is found that the said notification was issued for enhancement in General rate of duty/Tariff rate and the same cannot be treated as general effective rate as clarified at

Para 3.1 of the TRU's letter dated 29.02.2008. Both the Notifications were issued under Section 5A(1) and have got assent of Indian Parliament, but both notifications are having its significance as one is for General excise duty rates/Tariff rate for certain products and the other is for effective rate of duty prescribed for the clearances of certain products from the manufacturer's end.

I also find that the inherent provision made under Central Excise Act/ Rules for clearance of goods for exports either on payment of duty or on execution of Bond is to protect the Government Revenue in case the goods are not actually exported after clearances from the manufacturing unit and in such cases, the goods cleared are treated as cleared for home consumption. I also find that the effective rate of duty for the products cleared for exports attracts 4% duty under Notification No. 4/2006-CE dtd. 01.03.2006 (Sr. No. 62A to 62E) as clarified at Para 3.1 of D.O.F.No. 334/1/2008-TRU dtd. 29.02.2008 issued by Joint Secretary (TRU-I) in the Budget 2008-09.

Further the Hon'ble Supreme court in the case of MODIPON FIBRE COMPANY vs COMMISSIONER OF CENTRAL EXCISE, MEERUT (2007(218)ELT8(SC) has held that " By the amount of duty of Excise what is meant is effective duty of excise payable on such goods under the Act, hence, effective duty of excise is duty calculated on the basis of prescribed rate as reduced by exemption Notification." Hence, the claimant is entitled for the rebate of duty amount @ 4%.

With regard to the claiming of drawback I find that as per provision (vi) on page 1.37 of Customs Law & Procedures— At a glance, regarding payment of excise component of All Industry Rates of Drawback, a declaration of non-availment of Cenvat facility is necessary. Manufacturers and merchant-exporters with a supporting manufacturer are required to give a self declaration in the prescribed form that such manufacturers are not registered with central excise and that they do not avail/ have not availed Cenvat facility . In the case of Manufacturers and supporting manufacturers who are registered with Central excise, the fact of non-availment of Cenvat facility shall continue to be confirmed from the ARE-1 filed by them at Sr. No.3 certifying that the abovementioned goods have been manufactured availing / or not availing CENVAT credit under CENVAT Credit Rules, 2004. In this case the claimant have not submitted any Cenvat non-availment declaration/certificate.

As per the guidelines given vide Duty Drawback Procedure, Drawback is not admissible if Cenvat Credit is availed. Therefore, the claimant has to certify that they have not availed cenvat credit under Rules of Central Excise Act, 1944. However in all four ARE-1's it is also certified that the goods covered are manufactured availing facility of CENVAT under Cenvat Credit Rules 2004. The claimant can avail only one benefit either Input Credit or Drawback claim. The claimant has thus simultaneously claimed two benefits which are not admissible to them.

In view of the fact that the claimant has availed double benefit i.e. claimed Drawback as well as Cenvat Credit, I find that the claimants are not entitled even for the rebate of Central Excise duty @ 4% mentioned above. I also find that the Department has filed an application with the Joint Secretary Revision Application Unit, Govt. of India against the Order dated 17.02.2011 of the Commissioner

(Appeals) referred to by the claimant. Hence the claimants are not entitled for the rebate of Central Excise Duty. Accordingly, I pass the following order.

ORDER

I, reject the Rebate claim Nos. 12 to 14 & 16/11-12 all dated 01.04.2011 filed by M/s. Cipla Ltd, totally amounting to Rs.4,00,554/- (Rupees Four Lakhs Five hundred and Fifty Four Only) under the provisions of Section 11 B of the Central Excise Act,1944 read with Rule 18 of the Central Excise Rules, 2002, and the Notifications issued there under.

(RAJIV MAGOO)
ASST. COMMISSIONER (REBATE)
CENTRAL EXCISE, MUMBAI – III

F.No. R.C. No. 12 to 14 &16/ 11-12
Thane, the October, 2011.

M/s. Cipla Ltd.
Mumbai Central,
Mumbai-40008.

Copy to :-
1. D.C. (Audit), Hqrs., C.Ex., Mumbai – III, for necessary action.
2. A.C. (Review), Hqrs., C.Ex., Mumbai – III.
3. A.C. / D.C., Central Excise, Madgaon Division, Goa Commissionerate, in charge of M/s. Cipla Ltd, having C. Ex. Reg. Cert. No. AAACC1450BXM006 for information and necessary action.
4. Master File.

Annexure-B

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BY REGISTERED POST A.D

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE (APPEALS), MUMBAI-III, 5TH FLOOR CGO COMPLEX CBD BELAPUR NAVI MUMBAI-400614

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यदि कोई व्यक्ति इस आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal/ application to the authority as the case may be:-

(I) भारत सरकार को पुनरीक्षण आवेदन

केन्द्रीय उत्पाद शुल्क अधिनियमए 1944 की धारा 35 इइ के तहत नीचे बताए गए मामलों के बारे में धारा 35 बी की उपधारा(1) के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन, संयुक्त सचिव, भारत सरकार, वित्त मंत्रालय, पुनरीक्षण आवेदन इकाई राजस्व विभाग को किया जाना चाहिए, जो जीवन दीप बिल्डिंग, संसद भवन गली, नई दिल्ली- 1 पर स्थित है।

(1) (i) Under Section 35EE of the Central Excise Act, 1944, an appeal lies to the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, Jeevan Deep Building, Parliament Street, New Delhi-1 , if such order relates to :

(क) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भाण्डागार या अन्य कारखाने में या किसी भाण्डागार से दूसरे भाण्डागार में माल ले जाते हुए मार्ग में, या किसी भाण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भाण्डागार में हो, माल की प्रक्रिया के दौरान हुई हो।

(a) a case of loss of goods where the loss occurs in transit from a factory to a warehouse or to a warehouse or to another factory or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पाद शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) A rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(घ) अंतिम उत्पादों पर उत्पाद शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित है, वो समय/समय पर या बाद में वित्त अधिनियम(सं.2), 1998 की धारा 109 द्वारा नियुक्त किए गए हों।

(d) Credit of any duty allowed to be utilised towards payment of excise duty on final product under the provisions of this act or the rules made there under and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No.2) Act, 1998,

(2) केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए 8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश, प्रेषित दिनांक से तीन मास के भीतर मूल आदेश की दो दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्यशीर्ष के अंतर्गत धारा 35 इ में निर्धारित शुल्क के भुगतान के सबूत के साथ टी आर 6 /जी ए आर 7 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No EA-8 as specified under Rule,9 of Central Excise(Appeals) Rules, 2001, within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies of each of the Order-in-Original (O-I-O) and Order-in-Appeal (O-I-A). It should also be accompanied by a copy of TR-6/GAR7 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944 under Major Head of Account.

(3) पुनरीक्षण आवेदन के साथ जहाँ आवश्चित रकम एक लाख रुपए या उससे कम हो, तो रुपए 200/- का शुल्क एवं जहाँ रकम एक लाख रुपए से अधिक हो तो रु 1000/ का शुल्क साथ में भेजा जाए ।

(3) The revision application shall be accompanied by a fee of Rs 200/- where the amount involved is Rupees One Lac or less and Rs 1,000/- where the amount involved is more than Rupees One Lac.

(II) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील (सेसटैट) :

Appeal to Customs, Excise,& Service Tax Appellate Tribunal (CESTAT) :

(1) केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35बी/35इ के अंतर्गत :

Under Section 35B/35 E of Central Excise Act,1944 an appeal lies to :

(क) वर्गीकरण एवं मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठीका के पश्चिम ब्लॉक सं.3, आर. के. पुरम नई दिल्ली-1 को।

(a) The Special Bench of Customs, central Excise & Service Tax Appellate Tribunal of West Block No2, R K Puram; New Delhi-1 in all matters relating to classification and valuation;

(ख) उक्त परिच्छेद 1(क) में बताए गए मामलों के अलावा अन्य अपीलों के मामले में सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सेसटैट) की पश्चिम क्षेत्रीय पीठ में तीसरी मंजिल, जय सेंटर, 34 पी. डी. मेल्लो रोड मस्जिद बंदर (पूर्व) मुंबई. 400009 को।

(b) To the West Regional Bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 3rd floor, Jai Centre, P. D'mello Road, Masid(E) Mumbai - 400009, in case of appeals other than as mentioned in para 1(a) above.

(2) केन्द्रीय उत्पाद शुल्क(अपील) नियमावली, 2001 के नियम 6 के अंतर्गत निर्धारित किए अनुसार अपीलीय न्याधिकरण को अपील प्रपत्र सं.इ ए 3 में चार प्रतियाँ सहित अपील दाखिल की जाएगी तथा जहाँ उत्पाद शुल्क /जुर्माना/ माँग/प्रतिदाय की राशि रुपए 5 लाख रुपए या उससे कम हो, वहाँ क्रमश: रुपए 1000/ शुल्क, जहाँ रुपए 5 लाख से 50 लाख तक हो तो रुपए 5000/ तथा जहाँ रुपए 50 लाख से अधिक हो तो रुपए 10,000/ का शुल्क सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के तौर पर साथ में भेजना होगा। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो, जहाँ उक्त न्यायाधिकरण की पीठ स्थित है। स्थगन प्रदान करने के लिए आवेदन पत्र के साथ रुपए 500/ शुल्क भेजना होगा।

(2) The appeal to the Appellate Tribunal (CESTAT) shall be filed in quadruplicate in Form No EA 3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2004 and shall be accompanied by a fee of Rs. 1000/ Rs 5000/- and Rs 10,000/- where amount of duty/ penalty/demand/ refund is upto Rs 5 lacs to 50 lacs and above Rs 50 Lacs respectively in the form of crossed bank draft in favour of the Assistant Registrar of the Bench issued by any nominated public sector bank payable at the place where the Bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs 500/-

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो, प्रत्येक मूल आदेश के लिए शुल्क का भुगतान उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्र सरकार को एक आवेदन किया जाता है ।

(3) In case the Order covers a number of Orders- in Original (O-I-O)fee for each O-I-O should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt as the case may be, is filed to avoid scriptorial work.

(4) न्यायालय शुल्क अधिनियम, 1970 यथा संशोधित की अनुसूचित 1 मद के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 6 रु 50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or OIO as the case may be and the order of the adjudicating authority shall bear a court fee stamp of Rs 6.50 as prescribed under scheduled 1 item of as amended.

(5) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में निहित नियमों की ओर ध्यान आकर्षित किया जाता है, जो इन तथा अन्य संबंधित मामलों को नियंत्रित करते हैं।

Attention is also invited to the rules covering these and other related matters contained in the Customs, Central Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

L/A (37)

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Tel: 27560150 **Fax: 27565909**

F.No.V3 (A) 227/MIII/11-12
Date: 9/15 31/11/2012

Appellants	:	M/s. Cipla Ltd.,
Respondents	:	Assistant Commissioner (Rebate), Central Excise, Mumbai-III
Order appealed against	:	137/R/RM/AC (RC) MIII/11-12 dated 31.10.11
Date of Personal Hearing	:	N.A.

ORDER-IN-APPEAL NO. BC/286 /MUM-III/2011-12

The appellants mentioned here-in-above have filed the appeal against the following Order-in-Original passed by Assistant Commissioner (Rebate), Central Excise, Mumbai-III, reducing as well as rejecting the rebate claim under the provisions of Section 11B of the Central Excise Act, 1944 (said Act) read with Rule 18 of the Central Excise Rules, 2002 (said Rules) and Notification issued there under . Details of the relevant Order in Original are as follows:

Sr.No	Order-in-original No and date	Rebate claimed **Rs.**	Rebate restricted and rejected item. **Rs.**
1	137/R/RM/AC(RC)/M-III/11-12 dated 31.10.11	4,00,554/-	4,00,554/-

Brief facts of the case are that the appellants have exported goods manufactured in their own factory situated at Plot No. L-139 to L-146, Verna Industrial Estate, Goa and have filed rebate claims under Rule 18 of the said Rules read with Notification No.19/2004 CE (NT) dated 6.09.2004 for the duty paid on the goods exported. They have paid duty @4% on the goods cleared for home consumption in terms of Notification No 4 /2006 dated 1.3.2006, as amended, whereas for exports they have paid duty @ 10% under the Notification No 2/2008-CE dated 1.3.2008, as amended. The rebate sanctioning authority has held that they are eligible for rebate of duty paid @ 4% only. However, the lower adjudicating authority has rejected the rebate claim on the grounds that the claimant has availed double benefit i.e Drawback as well as Cenvat credit.

2. Being aggrieved, the appellants have filed appeal on the following grounds:

a) When two notifications; which are mutually exclusive; coexist in the books of law, the assessee has option to choose any one of them. 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. This legal position is well settled by the Apex Court in the case of *HCL Ltd reported in 2001 (130) ELT 405(SC).*

b) Notification No 4/2006, as amended and Notification No 2/2008, as amended coexist in the books of law and the assessee has the option to avail any of the notification. The adjudicating authority has not pointed out any provision under the Central Excise Act or Rule there under, which has the effect of requiring the assessee to mandatorily avail the exemption Notification No 4/2006-CE dated 1.3.2006 only.

c) Rule 18 of Central Excise Rules, 2002 grants rebate of Excise duty paid on goods exported. The export of goods is not in dispute and the fact of payment of duty is also not in dispute. They placed reliance upon decision of *Gayatri Laboratories reported in 2006 (194) ELT 73 (T).*

d) The rebate sanctioning authority cannot question the assessment. The reliance had been placed upon the *CBEC Circular No 510/06/2000-CX dated 3.2.2000.*

e) Similar matter had been decided in their favor by Commissioner of Centre Excise (Appeals), Mumbai Zone-1 in the *O-I-A No SB(17)17/MI/2011 dated 21.3.2011 and SB(36-41)36-41/MI/2011/ 1387 dated 3.5.2011.*

f) they had claimed duty drawback only for Customs component and not for Excise component and the said facts had not been denied by the adjudicating authority.

g) shipping Bills indicate that the duty drawback has been claimed only for Customs components.

h) rule 18 of CER 2004 does not provide rejection of rebate claim on the ground of simultaneous availment of duty drawback benefits under Drawback Rules.

i) proviso to Sub-rule (1) of Rule 3 of Drawback Rules clearly provides for adjustment/reduction in amount sanctionable as drawback where double benefits in respect of taxes considered.

j) issue no more res integra. Relied upon the case laws of *Benny Impex Pvt Ltd (2003(154)ELT-300(G.O.I.),Munot Textiles(2007(207)ELT-298(G.O.I) & Associated Dyestuff Inds Vs. CCE,Ahemdabad(2000(117)ELT-732.*

k) there is no provision under Central Excise law for rejection of rebate on the ground of claiming duty drawback i.e. for double benefit.

3. The appellants, while filing the appeal requested to decide the matter without personal hearing as the said matter is already decided in their own cases.

4. I have gone through the impugned Order and evidence on record. The issues to be decided are:

i) whether the duty paid in excess of 4% can be rebated in cash.

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ii) whether the appellants were entitled for rebate of Excise duties paid on exported goods, when they have simultaneously claimed the drawback of Customs duties .

5. Regarding the first issue, the contention of the appellant is that the notification No. 4/2006 & 02/2008 co-exist and are not mutually exclusive. Also as per CBEC circular No 510/06/2000/CX dated 03.02.2000 the rebate sanctioning authority cannot question the assessment but has to examine only admissibility of rebate of the duty paid on the export goods.

6. In this regard I find that during the relevant period Notification No 04/2006/CE as amended provides for 4% duty while Notification No. 02/2008/CE dated 01.03.2008 as amended provides for 10% duty. Appellants chose to pay 10% duty on export goods. It is on record that in the past the appellants had paid duty @ 4% on goods exported. It is apparent they have intentionally paid duty @ 10% from Cenvat account with an intention to recover high incidence of duty paid on raw materials used in the manufacture of such exports goods. The rate of duty on inputs during the relevant period was 8 % & 10% while duty on finished product was 4%. Since the rate of duty on the finished products being less than the rate of duty on the inputs, the appellants were obviously saving credit on inputs used in the manufacture of goods and the same was getting accumulated. In order to encash the said credit through rebate route they paid duty on export goods @ 10%. Here I observe that the purpose of granting rebate under Central Excise Rule 2002 is not to grant accumulate Cenvat credit in cash. Therefore original authority has correctly granted admissible rebate in cash.

7. The facts of the instant case are identical to the decision of *Hon'ble Punjab & Haryana High court in the case of M/s Nahar Industrial Enterprices Ltd -2009(235) ELB-22(P&H).* In that case the exporter was manufacturing cotton yarn. Effective rate of duty was 4 % while tariff rate was 16 %. The said manufacturer chose to pay tariff rate instead of effective rate. It was held by the Hon'ble High Court held that rebate rebate of higher duty paid on export goods which was not payable, is not admissible. Refund of excess paid duty/amount in Cenvat credit to appropriate.

8. As discussed in forgoing para, the basic purpose of appellants in paying duty higher rate of duty is to encash the accumulated unutilized Cenvat credit. Now I would discuss the relevant provisions relating to export.

(i) Rule 18 of Central Excise Rules, 2002 provides for rebate of

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excise duty paid on the export goods as well as the duty paid on *the* materials used in the manufacture of export goods subject to the procedure, limitations and conditions specified in the notification. Notification No. 19/2004 — CE (NT) dated 6.09.2004 provides for procedures like conditions and limitations for grant of rebate in respect of goods on which duty of excise is paid. Notification No. 21/2004-CE (NT) dated 6.09,2004 discusses about grant of rebate on the inputs used in the manufacture of exempted export goods.

(ii) Rule 19 of Central Excise Rules, 2002 provides for export of goods without payment of duty subject to such conditions, safeguards and procedure as may be prescribed by notification. In this regard, Notification No. 42/2001—CE (NT) dated 26.06.2001 was issued, prescribing conditions and procedure for export of dutiable goods under bond without payment of duty.

(iii) Rule 5 of the Cenvat Credit Rules, 2004 provides that if the goods are exported under Bond or LUT, the Cenvat Credit may be refunded if the same can not be utilized for payment of duty on clearances for home consumption. This provision has been made to ensure that the duty paid on the inputs used in the manufacture of dutiable export goods is refunded through Cenvat Credit route.

9. Rule 5 of the Cenvat Credit Rules, 2004 reads as under:-

"Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported,the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service Towards payment of

(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or

(ii) service tax on output service, and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the

Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.

10. It is evident from said rule 5 that refund of Cenvat Credit is permissible in cash only where inputs are used in the manufacture of export goods and the manufacturer is unable to use Credit towards payment of duty for home clearances. Such cash refund is allowed because the excise duty paid on the inputs are used in the manufacture of export goods is rebated under rule 18 and in tune with said provisions; the credit of duty paid on inputs used in export goods is refunded through Cenvat Credit route. There is no provision for refund of Cenvat Credit balance, if the inputs are not used in the manufacture of export goods. In this regard, I rely on following judgments of Hon'ble Tribunal:-

(i) Purvi Fabrics & Texturise (P) Ltd Vs CCE [2004(172)ELT 321 (Tri-Del)]

(ii) CCE Vs Rama Industries [2009(238)ELT 778(Tri-Del)]

(iii) Futura Fibres Vs CCE [2009(233) ELT 466(Tri-ChennaW

11. In the present case, the appellant on export goods paid duty at higher rate only to en-cash the cenvat credit which is in balance because the rate of duty on the goods cleared for home consumption is much lesser than the rate of duty on the inputs. Therefore, as per aforesaid judgments of Hon'ble Tribunal, the question of refund of such unutilized Cenvat credit does not arise. In fact, the said unutilized Cenvat credit is on account of duty paid by their input manufacturers and not by the appellant. Therefore, the appellant can not claim refund of said duty. If the appellant felt that the rebate @ 4% duty was less than the duty paid on their inputs, they could have availed refund of such duty paid on the inputs used in the manufacture of export goods under rule 18 of Central Excise Rules, 2002 in place of paying duty @ 10% from the Cenvat Credit Account. They could have also got the Brand rate of Drawback fixed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 equal to duties and Service tax paid on the inputs and taxable services but can not encash the unutilized Cenvat credit through rebate route.

12. In view of the aforesaid position of the law, I find that the appellant are eligible for cash refund of duty equal to duty payable at the effective rate of duty @ 4%.

13. Regarding the issue of simultaneous availment of duty drawback benefits as well as claiming rebate under Rule 18 of the Central Excise Rules 2002, the

appellant has contended that they had claimed Drawback on Customs component only. In this regard, Condition No. 6 of Notification No. 84/2010-Customs (NT) dated 17.9.2010 reads as under:

> *"(6) The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not."*

14. Further, the CBEC vide Circular No 35/2010 dated 17.9.2010 has clarified the following:

> *"(d) The earlier Notification No. 103/2008-Cus. (N.T.), dated 29-8-08 as amended) provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback, on the basis of the above condition although the manufacturers had taken only the rebate of Central Excise duties in respect of their inputs/procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.*
>
> *The issue has been examined. The present Notification No. 84/2010-Cus. (N.T.), dated 17-9-2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002."*

15. The provisions of Notification No. 84/2010(NT) dated 17.9.2010 read with the circular dated 17.9.2010 would indicate that the exporters were entitled for customs duty component of AIR even if they have filed claim for rebate of Excise duties. The issue of simultaneous availment of drawback of Customs component

and Rebate of Excise duty was also decided by Reversionary Authority, even before issue of Notification No 84/2010- Cus (NT), in the case of *Benny Impex Pvt Ltd. (supra), wherein it was held that:*

> *"8.5 The respondents have exported the impugned goods under claim of drawback under Drawback Rules in force and respondent's rebate claims were rejected on this ground only by the adjudicating authority. On this issue, Govt. would observe that the respondent claimed and received drawback of customs duty portion and this cannot be basis for denial of rebate of Central Excise Duty on the goods removed for export as clarified vide Circular No. 203/43/96-CX., dated 9.5.96 issued by CBEC. Hence, Govt. agrees with the findings and order of the impugned order-in-appeal passed by the Commissioner of Central Excise (Appeals)"*

The Revenue has not contended that the above said decision has been challenged by them. Also it is not the Department's case that the exporter has claimed higher rate of drawback than the rate admissible where Cenvat credit on inputs is availed. In view of the above discussion and case laws referred, I find that the appellant are entitled for rebate claim of Excise duty even when they have taken the drawback of Customs portion only.

16. In view of the aforesaid position of the law, I find that the appellant are eligible for cash refund of duty equal to duty payable at the effective rate of duty @ 4%. The balance amount paid is allowed by way of credit in Cenvat credit account of the appellant's manufacturing unit from where the goods were manufactured and cleared for export.

The appeal is decided on above terms.

(Bharati Chavan)
Commissioner (Appeals)

(BY R.P.A.D.)

To
M/s. Cipla Ltd.,
L.D.Building, Mehra Estate,
Asha Usha compound,
LBS Marg, Vikhroli (W),Mumbai – 400 083

Copy to :

1. The Chief Commissioner of Central Excise, Mumbai Zone-II
2. The Commissioner of Central Excise, Mumbai-III Commissionerate.
3. The Deputy/Assistant Commissioner (Rebate), Central Excise, Mumbai-III
4. OC/SC.

Annexure- C

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REGISTERED
SPEED POST

F.No.195/188,199 to 210, 381 to 384; 597, 598, 599 600-601, 603, 605, 729, 730, 732-733/12-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 16/11/12

Order No. 1568-1595 /2012-CX dated 14.11.12 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 orders-in-appeal No. as reflected in the given table of this order passed by Commissioner of Central Excise (Appeals-I), Ahmedabad
Applicant	:	M/s Cipla Ltd., Mumbai
Respondent	:	Commissioner of Central Excise, Mumbai-III

****

ORDER

These revision applications are filed by applicant M/s Cipla Ltd., Mumbai against the orders-in-appeal passed by Commissioner of Central Excise (Appeals),. Mumbai-III, CGO Complex, CBD, Belapur, Navi Mumbai as detailed below in the Table A and Table B:-

Table 'A'

Sr. No.	Revision Application No.	Revision Application filed against order-in-appeal No. & Date	Total No. of RAs
1	195/188/12	BC/358/Mum-III/11-12 29.02.12	1
2	195/199/12	BC/286/Mum-III/11-12 31.01.12	1
3	195/200-201/12	BC/287-288/Mum-III/11-12 14.03.12	2
4	195/202-208/12	BC/349-355/Mum-III/11-12 29.02.12	7
5	195/209-210/12	BC/359-360/Mum-III/11-12 29.02.12	2
6	195/599/12	BC/14/Mum-III/11-12 20.04.12	1
7	195/729/12	BC/388/Mum-III/11-12 29.03.12	1
8	195/733/12	BC/396/Mum-III/11-12 29.03.12	1
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Table 'B'

Sr. No.	Revision Application No.	Revision Application filed against order-in-appeal No. & Date	Total No. of RAs
1	195/381/12	BC/276/Mum-III/11-12 30.01.12	1
2	195/382-383/12	BC/277-278/Mum-III/11-12 30.01.12	2
3	195/384/12	BC/357/Mum-III/11-12 29.02.12	1
4	195/597/12	BC/12/Mum-III/2012-13 20.04.12	1
5	195/598/12	BC/13/Mum-III/11-12 20.04.12	1
6	195/600/12	BC/22/Mum-III/2012-13 27.04.12	1
7	195/601/12	BC/26/Mum-III/2012-13 30.04.12	1
8	195/603/12	BC/07/Mum-III/11-12 20.04.12	1
9	195/605/12	BC/09/Mum-III/2012-13 20.04.12	1
10	195/730/12	BC/389/Mum-III/11-12 29.03.12	1
11	195/732/12	BC/391/Mum-III/11-12 29.03.12	1
			12

2. Briefly stated the facts of these cases are that M/s Cipla Ltd., Mumbai are a merchant exporter, exported the goods manufactured by M/s Cipla Ltd., Goa and some other manufacturing Units and filed rebate under Notification No. 19/2004-CE(NT) dated 6.09.04, issued under Rule 18 of Central Excise Rules, 2002, read with Section 11B of Central Excise Act, 1944. The manufacturer paid duty on said exported P&P Medicaments falling under Chapter 30 @10% in pursuance of Notification No. 2/2008-CE dated 1.03.08, as amended. whereas the effective rate prescribed under another Notification No. 4/2006 dated 1.03.06, as amended was @4% or 5%. The manufacturer was paying duty @4% or 5% on home consumption clearances in terms of Notification No. 4/2006-CE dated 1.03.06, as amended and @10% on goods cleared for export as per Notification No. 2/2008-CE dated 1.03.08, as amended. Exporter also claimed drawback on exported goods in respect of cases mentioned in Table 'A' of para 1. In all cases of Table 'A' and 'B', the duty was required to be paid at effective rate of duty @ 4% or 5% at the relevant time and they paid the excess duty @ 10%. Therefore, show cause notices were issued to the manufacturer for rejecting the rebate claims.

2.1 After due process of law, the original authority decided as under :-

2.1.1 In case at Sr. No. 4 of Table A, rebate claim of duty paid @ 4% was allowed and balance claim was rejected. The drawback claim of custom portion at AIR rate was held in order.

2.1.2 In all other cases of Table A, the rebate claims were rejected since the duty drawback at AIR was availed.

2.1.3 In cases of Table B, the rebate claims of duty paid at effective rate of duty @ 4% or 5% was allowed and balance claims were rejected.

3. Being aggrieved with these orders-in-original, appeals were filed before Commissioner (Appeals) as under :-

3.1 In case at Sr. No. 4 of Table A, department filed appeal on the ground that rebate cannot be allowed when duty drawback is already claimed. Commissioner (Appeals) allowed the appeal of department.

3.2 In other cases of Table A, applicants filed appeals on the grounds that they are eligible for rebate claim of duty paid at 10%. Commissioner (Appeals) rejected the appeals on the ground that applicants did not produce documents like shipping bills, ARE-I for verification.

3.3 In all cases of Table B, applicants filed appeals claiming rebate of duty paid at 10%. Commissioner (Appeals) allowed the rebate claims of duty paid at 4% or 5% and balance claim were allowed as recredit in the Cenvat Credit account of the concerned manufacturer.

4. Being aggrieved by the impugned orders-in-appeal, the applicants have filed these revision applications under Section 35EE of the Central Excise Act, 1944 before Central Government on the following common / identical grounds :

4.1 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.

4.2 The tariff has not been amended by any Act of Parliament. 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*

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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.

4.3 Notification No. 4/2006 & Notification No. 2/2008 co-exist in the books of law and are not mutually exclusive.

(i) 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 1.3.2008 and similarly, vice-versa. Both the Notifications have been issued under Section 5A of the Central excise act, 1944.

(ii) 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

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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 as 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 1.03.06 (Sr. No. 62C) only.

4.4 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 6.09.04 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.

4.5 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. 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.

4.6 Further, we would like to state that the method of assessment of excise duty payment on finished goods opted by us have not yet been challenged at any Commissionerate and therefore reassessment of excise duty payment while sanctioning rebate claim by the office of Maritime Commissioner is beyond the scope. The said issue have been already clarified by the circular of Government of India, Ministry of Finance (Circular No. 510/06/2000-CX dated 3 Feb., 2000), which is self-explanatory about such issues vide this circular board has resolve that – "There is no question of re-quantifying the amount of rebate by the rebate sanctioning authority by reassessment, it is also clarifies that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim".

4.7 In the matter, Ministry of Finance have clarified vide their letter dated (DOF No. 334/1/2008-TRU) dated 29th February 2008, where at para 2.2 as since the reduction in the general rate has been carried out by notification, the possibility of same product / item being covered by more than one notification cannot be ruled out. In such situation the rate beneficial to the assesse would have to be extended if he fulfills the attendant condition of the exemption.

4.8 Also we would like to bring your attention on Finance Bill 2012 presented in Parliament, where by Notification No. 17/2012-Ce dated 17.03.12 disputed notifications viz. 2/2008, have rescinded and by Notification No. 12/2012-CE dated 17.03.12 disputed notifications no. 4/2006, have supersede, therefore, there are no parallel notification in existence, this act of Parliament has itself proved that the existence of two different notifications for same tariff classification without any overriding effect on each other. Therefore in the view of principle of natural justice, we

hereby request you to give direction to rebate sanctioning authority to sanction or entire rebate claim.

4.9 As evident from the copies of shipping bills submitted along with rebate claims, we have claimed duty drawback only for customs component and not for excise and Customs both. This factual position has not been denied by the Assistant Commissioner in his impugned order.

4.9.1 Table attached to the Notifications issued under drawback Rules has two columns to indicate All Industry Rates of duty drawback declared by Central Government under Rule 3 of the Drawback Rules, namely column 'A' which specifies rate of duty drawback with excise as well as customs component, and column 'B' which specifies rate of duty draw back with only Customs component.

4.9.2 The scheme of rebate of Central Excise duty paid on goods manufactured and exported as devised under provisions of Rule 18 of excise rules, can be availed simultaneously with the Customs component of All Industry Rate of duty drawback ("AIR-DBK-Cus" for short) under provisions of Drawback Rules, since both these schemes relate to different types of duties charged on different goods and at different stage.

4.9.3 Thus claiming rebate (of excise duty paid on finished goods) and availing customs component of duty drawback simultaneously on the same goos does not amount to double benefits. The declaration given by us along with rebate claims to the effect that "no separate claim for duty drawback of duty has bene made or will be made" is also in line with this submission, which has clearly been misconstrued by Assistant Commissioner.

4.9.4 It is respectfully submitted that the issue is no more res integra in as much as it stands decided in following cases :-

"RE : Munot Textiles" as reported 2007 (207) ELT 298 (GOI)

"Re: Benny Impex Pvt. Ltd." as reported in 2003 (154) ELT 300 (GOI)

Associated Dye Stuff Industries v. Comm. Of C. Ex., Ahmedabad as reported in 2000 (117) ELT 732.

4.9.5 The department has filed revision application against said order-in-appeal before Revision Authority. However, the Revision Authority has decided matter in our favour vide order No. 55-569/12-Cx dated 11.05.2012. In view of this we hereby request you to set aside order-in-appeal and allow out application.

5. The applicant in his letter dated 14.9.2012 requested that in these applications issue of rebate claimed at 10% as per Not. No. 2/08-CE dated 1.3.2008 is involved. They had attended hearing on 27.8.2012 in the revision application Nos. 198/444, 469-472/11 filed by department and requested to decide the matter in the light of submissions made during hearing on 27.8.12 and written submissions made in these cases. The issue of simultaneous availment of rebate claim and duty drawback of Customs portion is decided by Government in various cases including the GOI Order No. 551-569/12-Cx dated 11.5.12 in their favour. So such cases may be decided taking into said GOI order. Since the issue involved in all these cases is same, all these revision applications are taken up together for decision by this common order.

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

7. On perusal of records, it is observed that manufacturer has cleared export goods on payment of duty @10% in terms of Notification No. 2/08-CE dated 1.03.08 as amended, whereas they were clearing goods for home consumption on payment of duty @4% or 5% in terms of Notification No. 4/06-CE dated 1.03.06 as amended. Prior to the Budget, 2010, the respondents were also clearing the export goods on payment of duty @4% in terms of Notification No. 4/06-CE dated 1.03.06 as amended, but after budget 2010, they started paying duty on export clearances at 10% under Notification 2/08-CE dated 1.03.08 as amended and filed rebate claims under Rule 18 of Central

Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 6.09.04. In some cases drawback of duty was also availed on exported goods. Now applicants have filed these revision applications on the grounds as detailed in para 4 above.

8. Applicants have contended that both the 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. They were availing notification No. 4/06-CE as amended till Feb. 2010 in respect of all clearances made both for home consumption as well as for exports by paying duty @4% only. All the rebate claims were being sanctioned accordingly. From March/April 2010 onwards they started paying duty @10% in terms of Notification No. 2/08-CE as amended on export goods and claimed rebates of duty paid at higher rate. They apparently opted to pay duty on export clearances at higher rate so as to encash the accumulated cenvat credit through the said rebate claims.

8.1 It is observed that Central Government issued Notification No. 2/08-CE dated 1.03.08 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 7.12.08 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 1.03.08 as amended, attracted general tariff rate of duty @10%. At the same time the Notification No. 4/06-CE dated 1.03.06 providing for effective Nil rate of duty was amended vide Notification No. 4/08-CE dated 1.03.08 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% 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.

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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. 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. .....

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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 noted that intention of legislature behind said two notifications is best revealed in the above said budget speeches of Hon'ble Finance Minister. 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. These 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% and finally to 4% 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% 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 1.03.06 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 held that when two notifications co-exit simultaneously, then assessee has the option to choose any one of the notifications beneficial to him. Hon'ble Apex Court has categorically held that in such a situation assessee has option to choose any one notification. 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. 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. For applicability of the cited precedents "Government is of the opinion which is guided by the observations of Hon'ble Supreme Court in para 10 of the judgement in case of Escorts Ltd. vs. CCE Delhi-II 2004 (173) ELT 113 (SC) observed, which inter alia stipulates precedent – 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 - In para 11 of said judgment following observations are made :-

"11. 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, there cannot be any strict statutory relied upon citation which can be taken as guiding precedents because each one of above citation have different background of factual merits pertaining to manufacturers 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 arise of different question of law.

8.8 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.

8.8.1 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.

8.8.2 Hon'ble Supreme Court has also held in the case of M/s Belapur Sugar and Allied Industries Ltd. vs. CCE 1999 (108) ELT 9 (SC) that even if duty paid under ignorance of law or otherwise, the rebate cannot be refused since party has paid the

duty. Further, Hon'ble Apex Court has held that if the duty paid shown to be not leviable or entitled for rebate, the revenue has to refund, adjust, credit such amount to the assessee as the case may be.

8.8.3 Government also notes that Hon'ble High Court of Punjab & Haryana has examined the identical issue in the case of M/s Nahar Industrial Enterprises Ltd. vs. UOI 2009 (235) ELT 22 (P & H) where in assessee had paid duty on export goods at tariff rate of 16% ignoring the exemption notification No. 29/04-CE and 30/04-CE both dated 9.07.04 prescribing duty @4% and nil respectively. Hon'ble High Court has upheld the Government of India Revision Order upholding the order of original authority. In this case, original authority had allowed rebate of duty paid at effective rate of 4% and allowed re-credit of balance amount in the cenvat credit account of assessee. A specific submission regarding non-applicability of this judgement are on the ground that this decision in Nahar Industrial Enterprises case is per in curium and hence not applicable. It has been argued that the Apex Court judgement cited here for the proposition that assesse is at liberty to avail benefit of notification which is more beneficial to him, were not considered by Hon'ble High Court of Punjab & Haryana. In this regard, Government observes that applicability of said judgements of Hon'ble Supreme Court are already discussed in foregoing paras and therefore there is no merit in the pleading that said decision is per in curium. So as discussed above, this judgement of Hon'ble High Court is squarely applicable to the instant cases.

8.9 Applicants have relied upon CBEC Circular No. 795/28/2004-CX dated 28.07.04 and 937/27/2010-CX dated 26.11.10 in support of their claim that they can avail both the notifications.

In this regard, Government observes that subsequent to Budget, 2004 number of changes were made in the excise duty structure on Textiles and Textiles Articles. Regarding issue No. 1, CBEC clarified in Circular No. 795/28/2004-CX dated 28.07.04 as under :

"*Issue No. 1;*

Can a manufacture of Textiles or Textiles articles avail full exemption under No. 30/04-CE dated 9.07.04 as well as clear similar or dissimilar goods on payment of duty under Notification No. 29/04-CE dated 9.07.04 simultaneously?

Clarification:

Notification No. 29/04-CE (prescribing optional duty at the rates of 4% for pure cotton goods and 8% for other goods) and Notification No. 30/04-CE(prescribing full exemption) are independent notifications and there is no restriction on availing both simultaneously. However, the manufacturer should maintain separate books of account for goods availing Notification No. 29/04-CE and for goods availing Notification No. 30/04-CE"

In this case, both the Notifications prescribed effective rates of duty. Notification No. 30/04-CE prescribed nil rate of duty provided manufacturer does not avail cenvat credit on inputs. This clarification does not say that duty can be paid at tariff rate when the exemption notification is existing. Simultaneously availment of these notifications is allowed in the said circular as they pertain to different situation like whether he is availing cenvat credit or not. This circular is of no help to the applicant as in their case there are no two conditional notifications prescribing two effective rates. Moreover, there is no such circular issued in case of pharmaceutical products pertaining to Notification in question allowing their simultaneous availment. The other Circular No. 937/27/2010-CX dated 26.11.10 is not applicable as in the instant case there is no applicability of provisions of Section 5A(1A) of Central Excise Act, 1944.

8.10 Applicant has relied upon this authority's GOI Order No. 208/10-CX dated 3.02.10 in the case of Auro Spinning Mills 2012 (276) ELT 134 (GOI) during hearing of case held on 9.08.12. Government notes that in the cited case, there were two exemption notifications which were availed simultaneously in terms of CBEC Circular dated 28.07.04. In case of home consumption clearance, no cenvat credit was availed and clearances were made at nil rate. Assessee was also maintaining separate accounts for both types of clearance as required in the CBEC Circular. Government did not allow rebate of duty paid at tariff rate @16% but rebate claim was allowed of the duty paid at the effective rate of4% in terms of Notification No. 29/04-CE.

8.11 Government observes that the respondent in their counter reply 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 by applicant cannot supersede the provisions of Notification No. 19/04-CE(NT). 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 to be in order. There is no mandate to sanction rebate 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 by applicant cannot supersede the provisions of Notification No. 19/04-CE(NT). Adjudicating authority has rightly passed the order-in-original in accordance with law. The amount paid in excess of duty payable on one's own volition cannot be retained by Government and it has to be returned to manufacturer/applicant in the manner in which it was paid. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.9.2008 in CWP Nos.2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. Vs. UOI reported as 2009 (235) ELT-22 (P&H) has decided as under:-

"Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat Credit is appropriate. As such the excess paid amount/duty is required to be returned to the respondent in the cenvat credit account of the concerned manufacturer.

8.12 Regarding simultaneous availment of Custom portion, drawback of duty at AIR and rebate claim, the issue is already decided in the case of applicant party in GOI order No. 551-569/12-CX dated 11.5.12. In the said GOI order, it was held that rebate of duty paid on exported goods is admissible when duty drawback of only customs poriotn was availed. Therefore in the instant cases also rebate of duty will be admissible if duty drawback of only Custom portion (AIR) is availed.

9. In view of position explained in foregoing para, Government finds that there is no merit in the contentions of applicant 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 1.03.06 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, on the transaction value of exported goods determined under section 4 of Central Excise Act, 1944.

10. In view of above discussion, Government observes that in the instant cases rebate claims are admissible of the duty paid at effective rate of duty @4% or 5% in terms of Notification No. 4/06-CE dated 1.03.06 as amended on the transaction value of exported goods determined under section 4 of Central Excise Act 1944.. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per Notification No. 4/06-CE is to be treated as voluntary deposit with the Government. In such cases where duty is paid in excess of duty actually payable as held by Hon'ble Apex in the case discussed in para 8.8.2 and also held by Hon'ble High Court of Punjab and Haryana as discussed in para 8.8.3 above, the excess paid amount is to be returned / adjusted in cenvat credit account of assessee. Moreover Government cannot retain the said amount paid without any authority of law. Therefore, Government allows the said amount to be re-credited in the Cenvat Credit account of the concerned manufacturer. The impugned orders stand modified to this extent.

11. These revision applications are thus partially allowed in terms of above.

12. So ordered.

(D P Singh)
Joint Secretary(Revision Application)

M/s Cipla Ltd.,
Mumbai Central,
Mumbai-400 008.

Attested

(R. C SHARMA)
उपायुक्त/Dy Commissioner
C.B.E.C -O S D to Jt. Secy (R.A.)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

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F.No.195/188,199 to 210, 381 to 384; 597, 598, 599, 600-601, 603, 605, 729, 730, 732-733/12-RA

GOI Order No. 1568-1595/12-CX dated 14.11.2012

Copy to:

1. The Commissioner of Central Excise, Mumbai-III, 3rd & 4th Floor, 115, Vardaan Trade Centre, MIDC, Wagle Industrial Estate, Thane(W)-400 604.
2. The Commissioner of Central Excise (Appeals), Mumbai-III, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai – 400614.
3. The Assistant Commissioner of Central Excise, 3rd Floor, 115, Vardaan Trade Centre, MIDC, Wagle Industrial Estate, Thane(W)-400 604.
4. Guard File.
5. PS to JS (RA)
6. Spare Copy

ATTESTED

(R C Sharma)
OSD(Revision Application)

Annexure-D

(41)

OFFICE OF THE MARITIME COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III, "VARDAAN", 4TH FL., MIDC, WAGLE INDUSTRIAL ESTATE, THANE (W) 400 604.

F. No. : R.C. No. 12 to 14 & 16-11-12 | 7253 Date of Issue: 3 DEC 2013

Order No. : 219 R/SKM/DC(RC)/M-III/13-14 Date of Order : 23.12.13

Passed by :- **S. K. MOHANTY**
Deputy Commissioner, (Rebate)
Central Excise,
Mumbai-III Commissionerate.

ORDER IN ORIGINAL

1. This copy is granted free of Charge for the use of the person to whom it is issued.

2. Any person deeming himself aggrieved by this order may appeal to the Commissioner of Central Excise (Appeals) Mumbai having his office at 5th Floor, C.G.O. Complex, C.B.D. Belapur, Navi - Mumbai in the form EA-1. The appeal to the Commissioner must be filed within a period of two months of the date of which this order is communicated to him. The appeal must bear a Court fee stamp of Rs.2.00 and must be accompanied by :

   a. The grounds of appeal should include form of verification duly signed by the appellant in accordance with the provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001, and

   b. The form of appeal in Form EA-1 including the statement of fact and the grounds of appeal shall be filled in duplicate and shall be accompanied by a copy of this order.

3. Any person desiring appeal against this order shall pending the appeal, deposit the duty demanded or the penalty imposed by the order appealed against and must produce proof of such payment along with the appeal, failing which the appeal shall be liable to be rejected for non compliance within the provision of Section 35 (F) of the Central Excise Act, 1944.

SUBJECT : Rebate Claims filed by **M/s. Cipla Ltd.,**

BRIEF FACTS OF THE CASE

M/s. Cipla Ltd., Mumbai Central, Mumbai- 400 008 a manufacturer exporter (hereinafter referred to as "the Claimant") who have filed the below mentioned rebate claims, under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004,on the duty paid goods exported by them which was manufactured & cleared from M/s. Cipla Ltd, Plot No. L-139 to L146, Verna Industrial Estate, Goa- 403 722. The details of the rebate claims filed by the claimant are as under :

Sr. No.	Rebate Claim No. & Date	ARE-1 No. & Date	Invoice No. & Date	Shipping Bill No. & Date	B/L. No. & Date	Amount claimed
1.	12/11-12/ 01.04.11	1530/G03/ 25.03.10	E3/1925/ 25.03.10	7166426/ 20.03.10	MISCBM2000000145A/ 08.04.10	48619/-
2.	013/11-12/ 01.04.11	1534/G03/ 26.03.10	E3/1932/ 26.03.10	7167198/ 30.03.10	MISCBM2000000145/ 08.04.10	42875/-
3.	014/11-12/ 01.04.11	1535/G03/ 26.03.10	E3/1933/ 26.03.10	7167198/ 30.03.10	MISCBM2000000145/ 08.04.10	84800/-
4.	016/11-12/ 01.04.11	1551/G03/ 30.03.10	E3/1962/ 30.03.10	7166907/ 26.03.10, 7167238/ &7167243/ 31.03.10	MISCBM2000000264/ 14.04.10	224260/-
				TOTAL		**400554/-**

The claimant/exporter has filed the following documents along with the said rebate claim:

1) Original & Duplicate copy A.R.E. 1.

2) Triplicate copy of A.R.E. 1s in sealed cover from Central Excise Range Office.

3) Central Excise Invoices issued under Rule 11 of the Central Excise Rules, 2002.

4) Self attested copy of Shipping Bills(Export Promotion copy)

5) Self attested copy of Bill of lading.

6) Self attested copy of Export Invoice, Packing list and Mate"s Receipt

During scrutiny of the claim, it was noticed that on export goods, duty was paid @ 10% along with proportionate Education cess as per Notification No. 2/2008 CE dated 1.03.2008 as amended by Notification No 06/2010 CE dated 27.02.2010 instead of paying Central Excise duty @4% along with proportionate Educational Cess as per Notification No.04/2006CE dated 01.03.2006 as amended by Notification No. 10/2010 CE dated 27.02.10 and also the claimant has claimed the benefit of Drawback. A Show Cause Cum Demand Notice R.C. No. 12 to 14 & 16/11-12 dated. 30.08.11 was issued to the claimant on the grounds that the duty paid @10% was in excess of the effective rate of duty payable @4%Adv under Notification No.4/2006 and the appellant have claimed double benefit i.e. rebate of duty paid under Central Excise Rules and duty drawback under Customs Act.

The Maritime Commissioner (Rebate), Central Excise, Mumbai – III vide **OIO No. 137R/RM/AC(RC)/M-III/11-12 DATED 15.11.11** held that the effective rate of duty on the export goods was 4% vide Notification No.4/2006-CE dtd 01.03.2006 as amended and hence the claimant was eligible for rebate of duty @4% Adv. paid on export goods. However, the total rebate claim was rejected on the grounds that the assessee is not entitled to avail benefits of both the drawback and rebate simultaneously.

Being aggrieved by the impugned order in original; the claimant preferred an appeal with Commissioner (A). The Commissioner (Appeals) vide O-in-A No. BC/286/MUM-III/2011-12 dated 31.01.12, held that the appellant are eligible for cash refund of duty equal to duty payable at the effective rate of duty @4%. The balance amount paid is allowed by way of credit in Cenvat account of the appellant manufacturing unit from where goods were manufactured and cleared for export.

Being aggrieved by the impugned Order-In-Appeal, the Department preferred an appeal with the Joint Secretary, Revision Application Unit, Government of India, Ministry of Finance, Department of Revenue, New Delhi, on the ground that the claimant has claimed both the benefit of rebate of duty as well as duty drawback with an intent to avail undue benefit, which is not legally admissible to them.

The Revisionary Authority, vide GOI Order No.1568-1595/2012-CX dated 14.11.2012,

held that the issue regarding simultaneous availment of custom portion, drawback of duty at AIR and rebate claim, has already been decided in the case of applicant party in GOI order No. 551-569/12-CX dated 11.5.12.,wherein, it was held that rebate of duty paid on exported goods is admissible when duty drawback of only customs portion was availed. Therefore in the instant cases also rebate of duty will be admissible if duty drawback of only customs portion (AIR) is availed. Further, it held that rebate claim are admissible of the duty paid at effective rate of duty @4% or 5% in terms of Notification No. 4/06-CE dated 01.03.06 as amended on transaction value of exported goods determined under Section 4 Central Excise Act, 1944. The amount of duty paid in excess of duty payable at effective rate of 4% or 5% as per Notification No. 4/06-CE is to be treated as voluntary deposit with the Government. Moreover Government cannot retain the said amount paid without any authority of law and hence allowed the said amount to be re-credited in the Cenvat Credit account of concerned manufacturer.

The claimant vide their letters dated 11.03.2013 and 14.06.2013 has requested to sanction their rebate claims with reference to order No, 1568-1595 –CX dated 14.11.2012 passed by Revision Authority

In pursuance to the above, the said Rebate claims are taken up for finalization.

DISCUSSION & FINDING

I have gone through the entire case records including the above said four Rebate claims filed by the claimant. I find that the claimant has availed drawback only in respect of customs portion in all the above said claims.

I find that the Revision Authority vide GOI Order No.551-569/2012-CX dated 11.05.2012 held that the Department's argument that allowing rebate of duty when drawback of customs portions is availed will amount to double benefit, does not hold good & is not sustainable. The said order has been accepted by the Commissioner of Central Excise Mumbai-III On 1.06.12. Further I also find that in respect of GOI order No. 1568-1595 –CX dated 14.11.2013 the Commissioner of Central Excise, Mumbai-III has filed a Writ petition only on the ground that excess amount re-credited to the manufacturer will confer unjust benefit to the manufacturer. Since, the issue of simultaneous availment of drawback (Customs portion) and rebate has been settled. I find that the claimant is eligible for rebate of duty paid at the effective rate i.e. 4% as per Notification No.10/2010 dated 27.02.10, as amended under Section 4 of Central Excise Act, 1944, which amount to Rs. 1,60,222/-, the details of which are as under:-

44A

ARE-1 No. & Date	Assessable value	Duty Claimed (Rs.)				Duty admissible (Rs.)			
		Basic (10%)	E.Cess(2%)	HE.Cess (1%)	Total	Basic (4%)	E.Cess(2%)	HE.Cess (1%)	Total
1530/ 25.03.10	472026.00	47203	944	472	48619	18881	378	189	19448
1534/ 26.03.10	416256.00	41626	833	416	42875	16650	333	167	17150
1535/26.03.10	823296.00	82330	1647	823	84800	32932	659	329	33920
1551/30.03.10	2177280.00	217728	4355	2177	224260	87091	1742	871	89704
	Total				400554				160222

Hence, I pass the following order.

ORDER

I sanction the rebate claim for an amount of **Rs.** 1,60,222/- (Rupees one lakh sixty thousand two hundred twenty two only) to M/s. Cipla Ltd, in respect of goods cleared under the above mentioned rebate claims under the provisions of rule 18 of Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 and the Notification issued there under.

12/12

(S.K. MOHANTY)
MARITIME COMMISSIONER (REBATE)
CENTRAL EXCISE, MUMBAI – III.

F. No.:- R. C. No. 110 to 115 & 134/11-12
Thane, the
To,
M/s Cipla Ltd.,
Mumbai Central,
Mumbai- 400 008.

Copy to :

1. A.C. (Audit), Hqrs., C.Ex., Mumbai – III, for necessary action
2. A.C. (Review), Hqrs., C.Ex., Mumbai – III
3. A.C. / D.C., C.Ex., Madgaon Division, Goa Commissionerate in charge of Cipla Ltd.
4. Master File.

Received on 16/12/2013
Jythare

46A

Cipla

July 28, 2015

To

The Joint Secretary,
Ministry of Finance,
Department of Revenue,
Hudco Vishala Building,
B-Wing, Bhikaji Kama Palace,
R.K.Puram,
Delhi- 110 066

Dear Sir,

Sub.: Request to Preponement of the personal hearing

Ref.:-F.No.195/80/12-RA-Cx dated 27.07.2015 & F.No.195/458,508 & 509-513/12-RA-Cx dated 14.07.2015

In caption subject matter, we are in receipt of aforesaid reference letters of personal hearing fixed on 10.08.2015 and 11.08.2015 respectively. We are thankful your honor for granting the same.

However, it is convenient for us to attend the personal hearing for both matters on 10.08.2015. Therefore, we hereby request you to kindly fix the personal hearing for both matter on same day. Also, if it is possible kindly fixed the personal hearing for all our pending matter on 10.08.2015 as per your convince

This is for your information and perusal

Thanking you,

Yours Faithfully

For CIPLA LTD

Authorized Signatory

Encl.: As above.

July 28, 2015

To

The Joint Secretary,
Ministry of Finance,
Department of Revenue,
Hudco Vishala Building,
B-Wing, Bhikaji Kama Palace,
R.K.Puram,
Delhi- 110 066

Dear Sir,

Sub.: Request to Preponement of the personal hearing

Ref.:-F.No.195/80/12-RA-Cx dated 27.07.2015 & F.No.195/458,508 & 509-513/12-RA-Cx dated 14.07.2015

In caption subject matter, we are in receipt of aforesaid reference letters of personal hearing fixed on 10.08.2015 and 11.08.2015 respectively. We are thankful your honor for granting the same.

However, it is convenient for us to attend the personal hearing for both matters on 10.08.2015. Therefore, we hereby request you to kindly fix the personal hearing for both matter on same day. Also, if it is possible kindly fixed the personal hearing for all our pending matter on 10.08.2015 as per your convince

This is for your information and perusal

Thanking you,

Yours Faithfully

For CIPLA LTD

Authorized Signatory

Encl.: As above.

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