रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद– 380015. :

क फाइल संख्या : File No : **V2(30)69/Ahd-III/2016-17/Appeal-I** 15201524

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-296-16-17**

दिनाँक Date : **30.03.2017** जारी करने की तारीख Date of Issue 7/4/17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original: **10/CE/Ref/DC/2016-17**Date: **13.07.2016** Issued by: Deputy Commissioner, Central Excise, Din: Kalol, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Torrent Pharmaceuticals Ltd.

कोई व्यक्ति इस अपील 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 or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

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

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another 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 उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the 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) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products 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 Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील 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 फी के भुगतान के सबूत के साथ टीआर–6 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 each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

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.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस 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 केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केंन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) **धारा 11 डी के अंतर्गत निर्धारित रकम**

(ii) **सेनवैट जमा की ली गई गलत राशि**

(iii) **सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम**

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

M/s Torrent Pharmaceuticals Ltd. Indrad, Ahmedabad-Mehsana Highway. Taluka Kadi, District Mehsana, Gujarat (for short – "*appellant*"] has filed this appeal against OIO No. 10/CE/Ref/DC/2016-17 dated 13.7.2016 passed by the Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III Commissionerate (for short – "*adjudicating authority*").

2. Briefly, the facts of the case is that the appellant had filed four (04) rebate claims amounting to Rs. 34,70,770/- for export of their products viz. *Neblock 5mg tablet, Donepezil Hydrochloride 5mg tablets, Aripripazole tablets 2 mg* to Brazil and USA during December 2015 and February 2016, under rule 18 of the Central Excise Rules. 2002 [for short – "CER '02'] read with notification No. 19/2004-CE (NT) dated 06.09.2004. Scrutiny of the said rebate claims, revealed that the FOB value of the export product were substantially high; that the PMV declared by the appellant was substantially low than the rebate amount claimed vide the corresponding ARE-1s; that in all the four cases, the declared PMV was lower than the rebate amounts claimed by the claimant which is in clear violation of the conditions of the notification, *ibid,* as amended by notification No. 18/2016-CE(NT) dated 1.3.2016.

2.1 A show cause notice dated 19.04.2016 was therefore, issued to the appellant, proposing rejection of rebate claim The adjudicating authority vide his impugned OIO dated 13.7.2016, rejected the entire rebate claim.

3. Feeling aggrieved, the appellant has filed the present appeal against the impugned OIO, on the grounds that:

(a) that valuation of goods meant for export under claim for rebate is to be doen in the sme manner as goods for home consumption;
(b) that medicines falling under chapter heading 30 of the first schedule of Central Excise Tariff Act, 1985 are notified vide notification No. 49/2008-CE(NT) dated 24.12.2008 and are subject to MRP based assessment under section 4A of the Central Excise Act, 1944; that MRP based assessment is not applicable when such medicines are not sold for exports;
(c) that goods in question have to be assessed as per the provisions of Section 4 of the Act, 1944 read with Valuation Rules, 2000;
(d) that the goods were sold to USA and Brasil; that the relationship between the seller and the buyer though a subsidiary and holding company has not affected the price and that price was the sole consideration for sale;
(e) that it is the burden of the department to prove that the relationship between a subsidiary and holding company has affected or influenced the price to reject the transaction value determined under Section 4(1)(a) of Central Excise Act, 1944 and adopt valuation under Rule 9 of the Central Excise Valuation Rules, 2000;
(f) that if the value of the exported goods is determined in terms of 4(1)(b) of the Central Excise Act, 1944 read with Rule 9 of the Central Excise Valuation Rules, 2000, the appellants would have paid more duty and claimed rebate of an amount which would be higher than what is already claimed as rebate by the appellants;
(g) that as per the ratio decidendi laid down in the case of Dr. Reddys by the Hon'ble Delhi High Court[[2014(309) ELT 423 (Del.)], market price in para 2(e) of notification no. 19/2004 refers to the market price of the goods in the destination country to which goods are exported;

(h) that the recent amendment vide notification No. 18/2016-CE(NT) dated 1.3.2016, amending para 2(e) of notification no. 19/2004, is prospective;
(i) that in respect of Neblock tablets PMV of Rs. 10 per unit for 60 tablet was shown wrongly in shipping bill; that the actual PMV is Rs. 94/- for 10 tablets i.e. Rs. 584/- for 60 tablets;
(j) that in respect of Donepezil Hydrochloride tablets, PMV of Rs. 10 per 30 tablets shown wrongly; that actual PMV is Rs. 97 for 10 tabletsi.e. Rs. 291 for 30 tablets;
(k) that the rebate claim in respect of the above two tablets cannot be rejected on the ground that the PMV is lower than the rebate claimed;
(l) that it is the intention of the Legislature in Rule 18 of the Central Excise Rules, 2002, to incentivize exports by not subjecting goods meant for export to excise duty and allowing rebate of such duty paid;
(m) that even if it is held that the rebate has been claimed in excess the entire claim for rebate cannot be rejected and the department has to recredit the excess rebate; that they would like to refer to the order of the GOI in the case of Balkrishna Industries [2011(271) ELT 148(GOI)];

4. Personal hearing in the matter was held on 15.3.2017. Shri Ishan Bhatt. Advocate and Shri Sachindra Patel, AGM (Indirect Taxation) appeared for the appellant and reiterated the submission advanced in the grounds of appeal. Shri Patel, also explained how prices have been taken wrongly with reference to two products Neblock tablets and Donepezil Hydrochloride tablets in the OIO.

5. I have considered the facts of the case on records, submissions made by the appellant in the appeal memorandum and during the course of personal hearing. The issue to be decided is whether the rebate claim filed by the appellant can be sanctioned or otherwise.

6. I find that in the present case the adjudicating authority has rejected the rebate claim on the grounds that:

(a) FOB value declared in ARE-1 and Central Excise invoices is higher than the domestic market price and manufacturing cost of the identical goods sold in domestic market; that the FOB value has been overvalued in violation of the principles of valuation of export goods and also to avail more cash rebates by way of encashment of CENVAT;
(b) the PMV declared before Customs were far lower than the declared FOB value; by declaring high PMVs the exporter would have been ineligible for receiving drawback benefits;
(c) that they had violated para 2(e) of the notification No. 19/2004 in as much as the FOB value declared was considerably higher than the PMV amount;
(d) that in the present case the delivery and the place of removal is in India for exported goods and the comparative market price for similar product in the domestic market is available then the same should be transaction value for exported goods also; that goods cleared to M/s. Torrent Pharmaceutical USA & Brazil cannot be termed as transaction value in terms of provision of Section 4 when comparative price of identical goods in the domestic markets are available.

7. I have already decided a similar matter in the appellant's case vide my OIA No. AHM-EXCUS-003-APP-136-16-17 dated 27.10.2016, issued on 9.11.2016. The issue being similar, relevant extracts of the order portion is reproduced below for reference:

"6. Rule 18 of Central Excise Rules, 2002, provides that 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. Notification No.19/2004-CE (NT) dated 06.09.2004, stipulates the conditions, limitations and procedures for granting rebate of excise duty paid in respect of export goods. In the instant case, the appellant has exported *Aripripazole tablets* as per the provisions of the said rule read with the notification, *ibid* and therefore, has filed rebate claim of Rs. 15,15,37,266/- which was rejected by the adjudicating authority on the grounds :

- that the FOB value declared in ARE-1 and Central Excise invoices were higher than the domestic market price and manufacturing cost of identical goods;
- that the duty has been paid on inflated FOB prices to claim rebate of said amount;
- that in respect of goods cleared domestically they had followed a different valuation procedure to the one adopted in respect of goods cleared for export;
- that valuation under Section 4A is not applicable for medicaments exported in the present case.

7.Para 2(e) of the notification No.19/2004-CE (NT), supra, stipulates that "*the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed*". Para 4.1 of Chapter 8 of CBEC Excise Manual states that "*.....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.*" As per the provisions of Section 4(1) (a) of CEA '44, the duty of excise is chargeable on any excisable goods with reference to their value, then on each removal of the goods, such value shall - in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the Transaction Value. Valuation under section 4(1)(b) of the CEA '44, is to be resorted to in any other case, including the case where the goods are not sold.

8.The appellant has stated that they have sold the goods to M/s. Torrent Pharama Inc., USA. and their relation has not affected the price; that the price at which the gods were sold is the Transaction Value; that the duty was paid on the Transaction Value, as determined in accordance with Para 4.1 of chapter 8 of the CBEC's Excise Manual of Supplementary Instruction, 2005 read with Board's circular dated 03.02.2000.

10. M/s. Torrent Pharma Inc., USA, to whom the goods were exported, is a fully owned subsidiary of the appellant, as per their website '*www.torrentpharma.com/int-usa.php*' and hence as per Section 4(3)(b) of CEA '44, these units are related persons. Therefore, in such cases, since valuation cannot be determined under Section 4(1)(a) of CEA '44, value needs to be determined under Section 4(1)(b), *ibid*, read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

11. The adjudicating authority as is already mentioned rejected the entire rebate claim primarily on the grounds that the FOB value declared in ARE-1 and Central Excise invoices, were higher than the domestic market price and manufacturing cost of identical goods.

12. However, it is felt that the rejection of the entire claim on the grounds that there was a violation, as mentioned in para supra, is not legally tenable. The two facts not disputed are:

[a]that the goods were exported under payment of duty; and
[b] that the appellant has claimed rebate in respect of duty paid on the said export.

Therefore, ideally the adjudicating authority should have re-determined the assessable value if he felt that the Transaction Value was not correctly determined and thereafter, granted cash rebate in respect of duty leviable on the re-determined assessable value and re-credited the amount paid in excess, if any, in the CENVAT account of the appellant. The adjudicating authority, it appears, ignored the fundamental principle that the intention of the Government is not to export taxes, but to only export the goods.

13. The above view, is supported by the order of Joint Secretary (Review), Government of India, in the case of M/s Cadila Healthcare Ltd [2013(289) ELT 133 (GOI)], wherein it was held as follows:

"In view of above discussion, Government observes that original authority and appellate authority have rightly restricted the rebate claim to the extent of duty paid @ 4% in terms of Notification No. 4/2006-C.E., dated 1-3-2006, on the FOB value which is determined in these cases as transaction value in terms of Section 4 of Central Excise Act, 1944. The amount of duty paid in excess of duty payable at effective rate of 4% as per Notification No. 4/2006-C.E. on the transaction value of exported goods, is to be treated as voluntary deposit made by applicant with the Government. In such cases where duty is paid in excess of duty actually payable as held by Hon'ble Apex Court in the case discussed in para 9.7.2 and also held by Hon'ble High Court of Punjab and Haryana as discussed in para 9.7.3 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, the lower authorities have rightly allowed the recredit of said excess paid amount of duty in their Cenvat credit account."

14. The appellant has relied on various case laws in the matter including the judgement of the Hon'ble High Court of Delhi in the case of Dr. Reddy's Laboratories Ltd [2014 (309) ELT 423]. The orders cited/relied upon, differ in facts with the present dispute and hence their ratio is not applicable.

15. The appellant, has contended that they have correctly paid the duty on the Transaction Value, determined in accordance with Para 4.1 of chapter 8 of the CBEC's Excise Mannual of Supplementary Instruction, 2005 read with circulars dated 26.04.1996 and 03.02.2000; that once the assessable value is determined in accordance with the Board's circular, such assessable value under scheme for rebate cannot be questioned. Para 4.1 of Supplementary Instruction is reproduced below for ease of understanding:

"4.1. The exporter is required to prepare five copies of the form ARE-1, as ..... The value shall the "transaction value" and should be conform to Section 4 or 4 A, 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."

In the instant case, since the value.determined by the appellant is in dispute, the reliance on Board's circular for justifying their claim is neither tenable nor relevant. As far as their reliance on CBEC's circular is concerned, the procedure for claim of rebate of duty paid on exported goods is prescribed in Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 issued under Rule 18 of Central Excise Rules, 2002. The provisions contained in para 3(b)(ii), clearly stipulate that the rebate sanctioning authority, if satisfied after scrutinizing the rebate claim - that said claim is in order, shall sanction the rebate, either in whole or in part. Thus, the provisions of Notification authorizes the authority to sanction the rebate claim only to the extent it is admissible. CBEC's circular dated 3-2-2000, was issued prior to the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and therefore, the provision of the Notification, will prevail."

8. Following the stand taken in my earlier OIA, I set aside the impugned order dated 13.7.2016 and remand the case to the adjudicating authority to decide the rebate claim adhering to the directions given in the para 12, of my earlier OIA dated 27.10.2016, *reproduced above*. Further, while deciding the issue afresh, the adjudicating authority is also directed to consider the merit in the submission of the appellant that in respect of Neblock tablets, the actual PMV was Rs. 94/- for 10 tablets [i.e. Rs. 584/- for 60 tablets] the PMV of which was wrongly shown as Rs. 10 per unit for 60 tablet and that in respect of Donepezil Hydrochloride tablets, the actual PMV was Rs. 97 for 10 tablets [i.e. Rs. 291 for 30 tablets] the PMV of which was wrongly shown as Rs. 10 per 30 tablets.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)

Date :30.03.2017

Attested

(Vinod Lukose)
Superintendent (Appeals-I)
Central Excise, Ahmedabad

R.P.A.D

To

M/s Torrent Pharmaceuticals Ltd,
Indrad,
Ahmedabad-Mehsana Highway,
Taluka Kadi,
District Mehsana,
Gujarat.

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Kalol, Ahmedabad-III
5. Guard file.
6. P.A.