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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005.**

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F NO. 195/1463/12 / 282

Date of Issue: 27.11.2017

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ORDER NO. 06/2017/CX(WZ)/ASRA/MUMBAI DATED 24.11.2017, OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

**Applicant** : M/s. Heni Drugs Pvt. Ltd., C-572, TTC Indl. Area, Village-Pawne, Navi, Mumbai-400507.

**Respondent** : Commissioner, Central Excise, (Appeals) -II, 3<sup>rd</sup> Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.

**Subject:** Revision Applications filed, / under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal No. US/453/RGD/2012 dated 13.07.2012 passed by the Commissioner, Commissioner, Central Excise, (Appeals) -II, 3<sup>rd</sup> Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.

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## : ORDER:

This revision application is filed by M/s. Heni Drugs Pvt. Ltd., C-572, TTC Indl. Area, Village-Pawne, Navi, Mumbai -400 507 against the order-in-appeal No. US/453/RGD/2012, dated 13-07-2012 passed by the Commissioner of Central Excise (Appeals)-II, Mumbai with regard to order-in-original No. 507/11-12/DC(Rebate) Raigad dated 30.06.2011 passed by the Deputy Commissioner, Central Excise, Rebate, Raigad.

2. The brief facts of the case are that the applicants have filed rebate claim under Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004 and said rebate claim for Rs.7,53,138.00 was sanctioned.

3. Being aggrieved by Impugned order-in-original, the Department filed appeal before Commissioner (Appeals) on the following grounds, who allowed the department appeal and in the impugned order the rebate claims to the extent of Rs. 2, 81,699.00 were rejected.

3.1 Rebate Claim for Rs. 71,707.00 in respect of ARE-1 No. 27/10-11 dated 19.08.10

3.1.1 The vessel name 'RACHA BHUM' container No. FSCU-333827-0 and Seal No. 001651(Agent seal) / 209253 (Customs seal) mentioned in Bill of lading No. ASK/BOM/9708/2010 dated 02.09.2010 are not tallying with the Vessel Name 'CAPE MANUEL', Container No. 001557298-4 and seal no. 210325 mentioned in the relevant shipping bill no. 8764556 dated 18.08.2010 and Mate Receipt No. 3011 /16.09.2010.

3.2 Rebate Claim for Rs. 92,155.00 in respect of ARE-1 No. 36/10-11 dated 07.10.10

3.2.1 In the buff copy of the ARE-1 in part B, the Customs Officer has certified the Shipping bill no. 894715 / 07.10.2010 but the same was 8924901 / 07.10.2010.

3.3 Rebate Claim for Rs. 1, 17,837.00 in respect of ARE-1 No. 37/10-11 dated 16.10.10

3.3.1 In Shipping bill no. 8928656 / 08.10.2010, the seal number was '261131' whereas in the Corresponding Mate Receipt No. 205/02.11.2010, the seal No. in the bill of lading No. SLPNUM26U09909 / 26.10.2010 is differing from Mate Receipt. The Vessel name 'SANTA PAOLA' as mentioned in the above Shipping Bill and Mate Receipt is not tallying with the vessel name 'RHL FIDUCIA' as mentioned in the Bill of Lading dated 26.10.2010.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government pleading for allowing rebate claims of Rs. 2,81,699.00 which has been rejected by the Commissioner (Appeals) in the impugned order on the following grounds :-

- 4.1 That in respect Rebate Claim for Rs. 71,707.00 in respect of ARE-1 No. 27/10-11 dated 19.08.10, correction in the Bill of Lading is duly authenticated by the company. Further, since theirs was an LCL Cargo and the products falls under the hazard category they need to take steamer approval from the Indian Shipping Co. as well as from the counter part of the destination country. If they do not get the approval from the counter-part then there is shut out of Vessel issued to them and so the vessel name, container No. and seal no. will not tally with the other documents.
- 4.2 That in respect of Rebate Claim for Rs. 92,155.00 in respect of ARE-1 No. 36/10-11 dated 07.10.10, they submitted that the mentioned of incorrect number in ARE-1 was human error and they had submitted the ARE-1 with the certification of Customs, bearing the correct shipping bill number.
- 4.3 That in respect of Rebate Claim for 1, 17,837.00 in respect of ARE-1 No. 37/10-11 dated 16.10.10, the wrong seal number on the Mate Receipt was a typographical error and the same was corrected and duly stamped are submitted.
- 4.4 The applicant contended that they had full filled all the mandatory conditions of notification no. 19/2004-CE (NT) dated 06.09.2004 and lapses in procedural are condonable. The Applicant also contended that whatever goods has been cleared



for export, in fact has been exported. The Applicant relied upon various orders of CESTAT.

5. A Personal hearing was held in this case on 22.11.2017 and Shri V.R.Shetty, Advocate, appeared for hearing on behalf of the applicant and reiterated the grounds of revision application.

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

7. Government observes that the original authority viz. the Deputy Commissioner, Central Excise, Rebate, Raigad had sanctioned the rebated claims and subsequently Department filed appeal with Commissioner of Central Excise (Appeals)-II, Mumbai. The Commissioner (Appeals)-II, Mumbai allowed the appeal of the Department and had rejected rebate claim in respect of three ARE-1s amounting to Rs. 2,81,699.00. The applicant filed this revision application on grounds mentioned in para (4) above.

8. Government observes that as per the Notification No. 19/2004-C.E. (N.T.) dated 6.09.2004 certain conditions, limitations and procedures are specified and in the present case, the rebate claim was restricted on the ground of some procedural lapses though the character of duty paid on export goods, genuineness of the export has been accepted. During the Personal Hearing on 20.11.2017, the applicant submitted the True Copies of various documents in support of their contention about genuineness of the export; establishing duty paid nature of export goods and mitigating procedural lapse.

9. The Government observes that in respect of rebate claim of:

9.1 Rs. 71,707.00 covered in ARE-1 No. 27/10-11 dated 19.08.10, (Shipping bill no. 8764556 dated 18.08.2010), the applicant submitted the corrected true copy of Bill of Lading which incorporates the Vessel name as 'CAPE MANUEL', Container number as 'OOLU 5572984' and Customs seal as '210325' and corresponding True copy of ARE-1 no. 27/10-11 dated 19.08.10 also contains the certificate by the Customs officer showing the Shipping bill no. as 8764556 dated 18.8.10 and Mate receipt no. 3011 dated 16.09.10 and this mate receipt

also contains above shipping bill number and date on which Vessel left, container number and custom seal number.

9.2 Rs. 92,155.00 covered inof ARE-1 No. 36/10-11 dated 07.10.10 (shipping bill no. 9824901 dated 7.10.10), the applicant submitted corresponding True copy of ARE-1 no. 36/10-11 dated 7.10.10 which contains the certificate by the Customs officer showing the Shipping bill no. as 8924901 dated 7.10.10 and Mate receipt no. 21 dated 27.10.10 and date on which Vessel left.

9.3 Rs. 1,17,837.00 covered inof ARE-1 No. 37/10-11 dated 16.10.10 (shipping bill no. 8928656 dated 8.10.10), the applicant submitted True copy of Shipping bill no. 8928656 dated 8.10.10 and corrected copy of Mate receipt and copy of Bill of lading No. SLPLMUM26U09909 dated 26.10.10 duly signed and all these documents shows the seal number as '261131' and Vessel Name as 'SANTA PAOLA' and relevant true copy of ARE-1 no. 37/10-11 dated 16.10.10 which contains the certificate by the Customs officer showing the Shipping bill no. as 8928656 dated 08.10.10 and Mate receipt no. 205 dated 2.11.2010 and Vessel name as 'SANTA PAOLA'.

The aforementioned documents submitted by the revision applicant shows that the goods covered in the said three ARE-1 have been genuinely exported.

10. In this case, Government finds that there are some procedural shortcomings and these lapses should have been corrected before filing of the rebate claims. However, now the applicant has submitted the true copies (self-certified) requisite documents to substantiate their rejected rebate claim.

11. It is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in *Birla VXL* - 1998 (99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma*



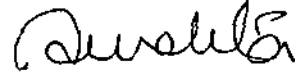
*Tube - 1998 (103) E.L.T. 270, Creative Mobous - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.*

12. In view of the discussions above and keeping in mind the observations of Hon'ble Supreme Court in judgments cited supra and catena of decisions of Hon'ble CESTAT/Govt. of India that when substantive fact of actual export is not disputed. Government feels that denial of export relief in this case on the sole ground of technical lapses is not justified.

13. The Government of India, accordingly, sets aside the impugned Order-in-Appeal and restores the Order-in-Original passed by the original/rebate sanctioning authority and rebate claim of Rs. 2,81,699.00 are allowed.

14. The Revision Application succeeds and accordingly allowed.

15. So ordered.



(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 06/2017-CX (WZ) /ASRA/ DATED 24.11.2017

To,  
M/s. Heni Drugs Pvt. Ltd.  
C-572, TTC Indl. Area,  
Village-Pawne,  
Navi, Mumbai -400507

Copy to:

1. The Commissioner of GST &CX, Raigad Commissionerate.
2. The Commissioner, Central Excise, (Appeals) -II, 3<sup>rd</sup> Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.
3. The Deputy / Assistant Commissioner (Rebate), Central Excise building, Plot no. 1, Sector-17, Khandeshwar, Navi-Mumbai -410206.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.