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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005**

F.No.195/258/2018-RA

1540

Date of Issue: 16.03.2023

ORDER NO. 101/2023-CX (WZ)/ASRA/MUMBAI DATED 13.03.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,
1944.

Applicants : M/s Medley Pharmaceuticals Limited,
Unit-II, Survey No. 378/7 & 8, 379/2 & 3,
Kabra Industrial Estate,
Kanchigam, Daman

Respondents : Commissioner, CGST and Central Excise, Daman

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
107/AGU/ADT-VAD/2017-18 dated 04.10.2018 passed by the
Commissioner (Appeals), GST & Central Excise, Vadodara.

ORDER

This Revision Application is filed by M/s Medley Pharmaceuticals Limited, Unit-II, Survey No. 378/7 & 379/2 & 3, Kabra Industrial Estate, Kanchigam, Daman (hereinafter referred to as "the applicant") against the Order-in-Appeal No. 107/AGU/ADT-VAD/2017-18 dated 04.10.2018 passed by the Commissioner (Appeals), GST & Central Excise, Vadodara.

2. The facts of the case briefly stated are that the applicant is engaged in the manufacture of P.P. Medicaments falling under Chapter 30 of the Central Excise Tariff Act, 1985. The Applicant cleared the excisable goods for export on payment of central excise duty under claim of rebate under Rule 18 of the Central Excise Rules, 2002 under self removal procedure. On processing the 21 claims, it was noticed that the Applicant was eligible for 19 claims and amount of Rs. 22,20,971/- was sanctioned to the applicant and Rs. 2,32,906/- was rejected for the reasons as under:

Sr No	OIO No and date	Amount of claim sanctioned	Amount of claim rejected (Rs)	Reason for rejection
3	DMN-III/AC/14/16-17/R dated 30.05.2016	22,20,971/-	2,32,696/-	Exported after six month from the date of clearance for export and short quantity exported

3. Being aggrieved with the Orders-in-Original mentioned above, the Applicant filed an appeal before the Commissioner (Appeals), GST & Central Excise, Vadodara on the grounds that the OIO did not consider the dynamics involved in export transactions like securing a licence from the destination country within a time frame which the participants involved in the export transaction does not have control on and also that the time stipulation of six months for export is not rigid and can be extended by the Commissioner, in his discretion and can be condoned even at the time of an application for refund/drawback and should not be construed within pedantic rigidity.

4. The Appellate Authority vide Order-in-Appeal No. No. 107/AGU/ADT-VAD/2017-18 dated 04.10.2018 passed by the Commissioner (Appeals), GST &

Central Excise, Vadodara rejected the appeals filed by the applicant for violation of condition (b) of Para 2 of Notification No 19/2004-CE (NT) dated 06.09.2004 and also failing to seek extension from the Commissioner of Central Excise for export within any extended period.

5. Aggrieved by the said Orders-in-Appeal, the applicant filed the Revision Application following grounds

5.01. That the goods in respect of ARE-1 No. DMN-III/R-V/152/15-16 dated 03-08-2015 having excise duty of Rs.57,950/-have been exported within the period permitted by Commissioner. The goods under ARE-1 No. DMN-III/R-V/152/15-16 was cleared on 03.08.2015 and the time of 6 months expired on 02.02.2016. Before the expiry of 6 months, the Applicant requested the Commissioner of Central Excise on 22.01.2016 to grant extension for export of goods informing the reason for delay in making the exports. The Commissioner, on due satisfaction of the reason granted the permission upto 01.04.2016 to export the goods. Therefore, the Applicant was permitted to export the goods upto 01.04.2016 as per the Notification. In the present case, the Applicant has exported the goods on 01.04.2016 i.e. within the time period provided in the Notification.

5.02. That in respect of goods cleared under ARE-1 No_DMN-III/R-V/240/15-16 dated 01.10.2015 having excise duty of Rs.1,43,711.64, the goods have been exported within the stipulated period of six months as the date of clearance of goods from factory is 01.10.2016 and not 30.09.2016 as the excise invoice was prepared on 30.09.2016 but the goods were cleared from factory on 01.10.2016 after preparing the ARE-1 on 01.10.2016 and the Lorry Receipt issued by Transporter also indicate the goods were cleared from factory on 01.10.2016. In view of above, the clearance of goods from factory was made on 01.10.2016.

5.03. That 01.10.2016 is to be excluded for computing the period in terms of Section 9 of the General Clause Act, 1897 whenever the word "from" is stated for computing the period, the first day of series should be excluded for computing the period. The Applicant relies upon following case laws:

- a) Commissioner of Customs, Kandla vs. Puja Steel, [2014 (299) ELT 0494 (Tri-Ahmd)]
- b) Sarvamangal Synthetics Ltd. vs. Commr. of Central Excise, Coimbatore [2003 (153) ELT 545 (Tri - Mad)]

5.04. That as per Section 10 of the General Clause Act, 1897, 2nd October 2016 being a public holiday should be excluded for computing the period of 6 months and the computation of date should start from 3rd October 2016 and therefore, the 6-month period expires on 2nd April 2016. In the present case, the goods were exported on 2nd April 2016 i.e. within a period of 6 months. Hence, the rebate should be granted to the Appellant.

5.05. That there was no dispute that the duty paid goods cleared from factory was exported and proceeds in foreign currency was realized and thus rebate should be allowed to the Applicant.

5.06. That the delay for export of goods was beyond the control of the Applicant as the necessary license has to be obtained from the foreign country before exporting the goods to comply with international law and rebate should be allowed as held by the Hon'ble Gujarat High Court in the case of Cosmonaut Chemicals Vs Union of India [2009 (233) E.L.T. 46 (Guj.)] which allowed the refund on the ground that when the claim was filed beyond time limit of one year as the delay was due to circumstances beyond control of claimant even though the condition of notification was not complied.

5.07. That the Notification is beneficial and aim to encourage exports and it is require to be interpreted liberally as held in the case of M/s. Kosmos Healthcare Pvt. Ltd. Vs Asstt. Commr. of C.Ex., Kolkata-1, [2013 (297) ELT 345 (Cal)]

5.08. That is was a settled law that substantial benefit cannot be denied for infraction of procedures as held by the Hon'ble Revisionary Authority in Re-Cotfab Exports [2006 (205) E.L.T. 1027 (G.O.I.)] that procedural infraction of notification is to be condoned if exports have taken place. Procedures prescribed are only to

facilitate verification of substantive requirements and the core aspect or fundamental requirement for rebate is manufacture and subsequent export. As long as this is met, other procedural deviations can be condoned. In the instant case the Applicant had paid the applicable excise duty at the time of clearance of goods from the factory for exports and prepared all the requisite documents and exported the goods out of India and realized foreign currency

5.09. That for availing the rebate of duty, the primary requirement is the export of excisable goods and Rule 18 specifically provides that once it is established that the goods have been actually exported then even if some or all of the requirements set out in the notification issued under Rule 18 are not fulfilled, the exporter will be entitled to rebate of duty and so the Applicant was entitled to grant of rebate. The Applicant has relied on the following case laws in support of their contention:

- (a) Alpha Garments vs Commissioner-[1996 (86) ELT 600 (Tribunal)]
- (b) Birla VXL Ltd. vs. Commissioner-[1998 (99) ELT 387 (Tribunal)]
- (c) In Re: Coffab Exports [2006 (205) ELT 1027 (G.O.)]

5.09. That the order is the case of Ind-Swift Laboratories Ltd., [2004 (312) ELT 865 (GOI)] and Kosmos Healthcare P. Ltd., [2013 (297) ELT 465 (GOI)] relied by the AA for rejecting the appeal are not applicable to the instant case as the reasons for delay and period of delay in the said orders are totally different from the instant case.

6. Personal hearing in this case was scheduled for 09.11.2022 or 22.11.2022 or 13.12.2022 or 10.01.2023. Shri Jagdish Surti, Advocate and Shri Krishna Parab, Assistant Manager of the Applicant appeared for the hearing on 13.12.2022. They submitted that in one ARE-1 they had applied for extension. The submitted copy of the extension letter F.No V/Misc-44/Tech/2015-16 dated 01.07.2016. In the second ARE-1 dated 01.10.2015, as per General Clauses Act, limitation should be counted from 03.10.2015 as 02.10.2015 is a National holiday and the goods were exported within six months. They submitted copies of two judgements on the matter.

7. Government has carefully gone through the relevant case records available in case files, and perused the impugned Order-in-Original and Order-in-Appeal.

7.1. On perusal of records, Government observes that in the instant case, the issue at hand is whether the goods had been exported within 6 months from the date of clearance from the factory premises, in respect of the two ARE-1's in question i.e ARE-1 No. DMN-III/R-V/152/15-16 dated 03.08.2015 and ARE-1 No. DMN-III/R-V/240/15-16 dated 01.10.2015.

7.2. Government notes that the applicant has averred that the basic condition of Rule 18 of the Central Excise Rules, 2002 was satisfied as the goods were actually exported on payment of duty and also the relevant documents were prepared and the foreign exchange was realized against the export of goods. The applicant has further averred that non adherence to the time stipulation was a procedural infraction and the rebate claim should not be rejected on technical grounds or for procedural lapses. The Applicant has further submitted that rebate cannot be denied when the delay is beyond the control of the claimant.

7.3. Government notes that the Appellate Authority has at Para 5.2 and 5.3 has stated as under

"5.2 Notwithstanding the above, the said condition (b) provides scope of relaxation by way of export "within such extended period as the of Central Excise may in any particular case allow". I find that the appellant has failed to seek the said extension from the Commissioner of Central Excise for export within any extended period. In absence of any extension by the Commissioner, the rebate sanctioning Assistant Commissioner cannot travel beyond his competency specified by said condition (b) to sanction rebate.

5.3 I also find that in the citations quoted the appellant, extension to export the goods was obtained from the Commissioner. In the present case, Appellant has failed to seek such extension and therefore the said case law is not applicable in the present case. I also find no substance / force in the other arguments submitted by the appellant, hence the impugned order passed by the Original authority is just and proper and appeal filed the appellant is unsustainable."

7.4. Government observes that in respect of goods exported vide ARE-1 No. DMN-III/R-V/152/15-16 dated 03.08.2015, the Applicant had requested for permission for extension of the period of 06 months which was granted by the jurisdictional

Commissioner upto 01.04.2016. The goods cleared from the factory premises were exported finally exported on 01.04.2016 as is evident from the findings of the OAA. Thus Government observes that the Applicant is eligible for rebate in respect of goods exported vide ARE-1 No. DMN-III/R-V/152/15-16 dated 03.08.2015.

7.5. As regards the goods cleared from the factory and exported vide ARE-1 No. DMN-III/R-V/152/15-16 dated 01.10.2015, the goods have been finally exported on 02.04.2016, which is beyond the statutory and mandatory condition under Notification No. 19/2004-CE dated 06.09.2004 of goods to be exported within six months of clearance from the factory. As per the records no permission by authority for extension of time has been obtained by the Applicant.

7.6. In this connection Government notes that it is essential to refer to the General Clauses Act, 1897 to ascertain whether the period envisaged in condition (b) of Para 2 of Notification No 19/2004-CE (NT) dated 06.09.2004 has been adhered to by the Applicant. Section 9 and 10 of the General Clauses Act, 1897 reads as under:

"Section 9. Commencement and termination of time.- (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days any other period of time, to use the word "to".

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

SECTION 10. Computation of time. (1) Where, by any Central Act or Regulation made after the Commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1877.

7.7. Government observes by applying the provisions of Section 9 and Section 10 of the General Clauses Act, 1897 to the chronology of dates for calculation of the period of 06 months in the instant case, it is evident that 01.10.2015 needs to be excluded as per Section 9 (1) of the General Clauses Act, 1897 and 02.10.2015, being

a closed holiday needs to be excluded as per Section 10 (1) of the General Clauses Act, 1897. Thus from the above, the period of 06 months commences on 03.10.2015 and ends on 02.04.2016. Government further notes that the goods cleared from the factory premises vide ARE-1 dated 01.10.2015 have been actually exported on 02.04.2016, as evident from the relevant shipping bill.

8. Government is thus of the opinion that the goods cleared under ARE-1 No. DMN-III/R-V/152/15-16 dated 03-08-2015 and ARE-1 No. DMN-III/R-V/152/15-16 dated 01.10.2015 have been exported within 06 months from the date of clearance from the factory and the condition (b) of Para 2 of Notification No 19/2004-CE (NT) dated 06.09.2004 has not been violated and the Applicant is eligible for rebate on the duty paid in respect of the said goods.

9. In view of the above discussion, Government modifies the order of the Appellate Authority sets aside the Order-in-Appeal No. 107/AGU/ADT-VAD/2017-18 dated 04.10.2018 passed by the Commissioner (Appeals), GST & Central Excise, Vadodara and allows the Revision Application.

10. The Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 10/2023-CX (WZ)/ASRA/Mumbai DATED 3.03.2023

To,
M/s Medley Pharmaceuticals Limited,
Unit-II, Survey No. 378/7 & 8, 379/2 & 3,
Kabra Industrial Estate,
Kanchigam, Daman

Copy to:

- 1) The Commissioner of CGST & Central Excise, Daman Commissionerate, GST Bhavan, RCP Compound, Vapi- 396 191

- 2) The Commissioner of CGST, Vadodara (Appeals), Central Excise Building,
6th Floor, Race Course Circle, Vadodara 390 007
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Notice Board
- 5) Spare Copy.