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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. 195/15/WZ/2018-RA

Date of issue: 14.11.2022

ORDER NO. 1058 /2022-CX (WZ)/ASRA/MUMBAI DATED 10.11.2022
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.

Applicant : M/s. Cadila Pharmaceuticals Limited

Respondent : Commissioner of Central Excise, Ahmedabad-II.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
AHM-EXCUS-002-APP-117-17-18 dated 10.10.2017 passed
by Commissioner (Appeals), Central Tax, Ahmedabad.

ORDER

This Revision Application is filed by M/s. Cadila Pharmaceuticals Limited, Cadila Corporate Campus, Sarkhej-Dholka Road, Bhat, Tal. Dholka, Ahmedabad – 382 210 (hereinafter referred to as “the Applicant”) against Order-in-Appeal No. AHM-EXCUS-002-APP-117-17-18 dated 10.10.2017 passed by Commissioner (Appeals), Central Tax, Ahmedabad.

2. Brief facts of the case are that the Applicant exported medicaments manufactured by M/s. Zoetic Ayurvedic Pvt. Ltd. as a merchant exporter. The goods were cleared from the factory of the manufacturer on 23.07.2015 but were exported on 11.02.2016. The applicant filed claim of rebate for Rs.28,248/- on 08.04.2016 under the provisions of Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 06-09-2004. The rebate sanctioning authority, observed that the goods were not Shipped within the period of six months as stipulated under Notification No.19/2004-CX (N.T) dated 06.09.2004 and therefore rejected the claims vide Order-in-Original No. MP/67/2016-17/Reb dated 11.08.2016. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide the impugned Order-in-Appeal.

3. Hence, the Applicant has filed the impugned Revision Application mainly on the grounds that:

(a) The only dispute is that on verification of the said claim, it has been observed that the date indicated on the ARE-1 on which the applicant has cleared for export of goods from the factory was 23-07-2015 and let export order date for the said ARE-1 mentioned in the shipping bill is dated 11-02-2016. Therefore, the goods have not been exported within six months from the date of clearance from the factory. Therefore, subject rebate claim has not been allowed and rejected.

(b) In fact, the goods have already been exported and proof of export has been submitted by the applicant before the Assistant

Commissioner of Central Excise. The delay in consignment for export of goods cleared from the factory of production is only 18 days. The fact of the case is that earlier the foreign buyer had ordered the goods in the month of June, 2015. Accordingly, the applicant got goods manufactured. But in the last week of July, 2015, buyer cancelled the order. The goods were already cleared from the factory but could not be exported within the stipulated period due to cancellation of the export order. When the order was again received the applicant immediately exported goods by filing the shipping bill and exported the goods on 11-02-2016. It is correct that the applicant had not applied for extension of time for a further period of three months after expiry of six months from the clearance from the factory only because of the person who was looking after the matter was not well as suffering from malaria. Hence, the applicant did not apply for extension of time for a further period of three months.

(c) The applicant submits that grant of extension to export of goods beyond six months is a procedural requirement. Had the same been a substantive requirement, the Customs authorities would not have allowed the clearance of exports. The substantive requirement is whether the goods have been actually exported, then rebate of duty paid thereon is admissible. It is submitted that rebate / refund, drawback etc. are export oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided to boost export and earn foreign exchange and in case substantive fact of export having been made is not doubt, a liberal interpretation is to be given in the case of any technical breach. In fact, as regards rebate specifically, it is now settled that procedure infraction of Notification, circular etc are to be condoned if exports had really taken place, and law is well settled now that substantive benefit cannot be denied for procedural lapse. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and

subsequent export. As long as this requirement is met other procedural deviation can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by various Hon'ble Tribunals and High Court / Government of India in a catena of judgments.

(d) It is submitted that as held by various Hon'ble Tribunals and High Courts that the rebate claim cannot be rejected merely because of delayed export of goods only for some days. In the Ford India (P) Ltd - reported in 2011 (272) ELT -353 (Madras HC), the court has held that substantive compliance of procedural requirements would be sufficient where factum of export is not in doubt. The Hon'ble Apex Court in the case of UOI Vs Konkan Synthetic Fibres - reported in 2012 (278) ELT 37 (SC) has held that a beneficial notification was required to be given a liberal interpretation. The notification in this case is a beneficial one. Therefore, when the goods on which excise duty has been paid and exported out of India, rebate claim should be sanctioned.

(e) In the above matter rebate claim is rejected on the ground that the export is beyond period of Six months from date of removal from factory. The delay period is 18 days. The applicant had made application for extension of time in reply to notice. The matter is directly covered by following decisions:

- o Harison Chemicals - 2006 (200) ELT 171 (GOI)
- o Kosmos Healthcare Pvt. Ltd - 2013 (297) ELT 345 (Cal)
- o Vardhman Spinning & General Mills Ltd - 2005 (190) ELT 38 (Tri. Delhi)
- o Sanket Industries Ltd - 2011 (268) ELT 125 (GOI)

In the light of the above submissions, the applicant prayed to allow the appeal with consequential relief.

4. Personal hearing in the case was fixed for 07.10.2022. Shri Shridev Vyas, Advocate, attended the online hearing and submitted that export was

made after six months from removal from factory. He requested to condone the delay and allow export benefit.

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

6. Government observes that the issue involved is whether the condition of export of goods to be carried out within six months of its clearance from the factory under Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004 issued under rule 18 of the Central Excise Rules, 2002 is condonable?

7.1 Government observes that the relevant condition, mentioned at para 2(b) of the Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004, reads as under:

(2) Conditions and limitations: -

(b) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;

7.2 Government observes that the impugned goods were cleared from the factory of manufacturer, M/s. Zoetic Ayurvedics Pvt. Ltd., vide ARE1 No. 02/2015-16 dated 23.07.2015. The applicable central excise duty on the export goods amounting to Rs.28,248/- was paid vide invoice No. JW/002 dated 23.07.2015. Thus, the period of six months from the date of ARE-1 was lapsing in January 2016. An extension of period for export was sought by the applicant from jurisdictional Division in-charge vide letter dated 11.07.2016, after the shipment of export goods had already been effected in the month of February 2016.

7.3 Government notes that Section 11B allows time till expiry of one year from the date of shipment, for filing an application for rebate claim. Thus, in the instant matter, the applicant had time till February 2017 to file the impugned rebate claim. However, the applicant, instead of complying with the stipulated requirements, chose to file an incomplete rebate claim in April 2016.

7.4 Government further notes that, as informed by the applicant, the reason for delay in export was that their foreign buyer had cancelled the order in the last week of July 2015 itself, viz. the month in which export goods were cleared from the factory of the manufacturer. Therefore, in the month of January 2016, when six months from the date of clearance of goods from the factory of manufacturer were getting lapsed, the applicant was well aware that they did not have any export order in hand and should have abided with the law and sought an extension of period for export of goods from the competent authority, however they failed to do so.

7.5 Government finds that the contention of the applicant that grant of extension of period to export goods beyond six months is a procedural requirement, cannot be accepted. As per Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004, rebate of the whole of the duty paid on all excisable goods exported to any country is to be granted subject to specified conditions, limitations and procedures. Rule 18 of the Central Excise Rules, 2002, whereunder said Notification is issued, also specifies it:

Rebate of duty. — *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 fulfilment of such procedure, as may be specified in the notification.*

Thus, Government concludes that a specified condition is required to be mandatorily complied with and its non-adherence cannot be condoned as a procedural lapse.

7.6 In this regard the various case laws quoted by the applicant are not found applicable in the instant matter as in those cases sufficient cause for the delay had been put forth. In fact, Government has in its many orders in the past, including the ones quoted by the adjudicating and appellant authorities, emphasized on compliance of stipulated conditions before filing a rebate claim.

8. In view of the findings recorded above, Government upholds the Order-in-Appeal No. AHM-EXCUS-002-APP-117-17-18 dated 10.10.2017 passed by Commissioner (Appeals), Central Tax, Ahmedabad and rejects the impugned revision application filed by the applicant.

Shrawan
10/11/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 1058 /2022-CX (WZ)/ASRA/Mumbai dated 10.11.2022

To,
M/s. Cadila Pharmaceuticals Limited,
Cadila Corporate Campus,
Sarkhej-Dholka Road, Bhat,
Tal. Dholka, Ahmedabad – 382 210.

Copy to:

1. Commissioner of CGST, & CX,
Ahmedabad North, 1st Floor Custom House
Near All India Radio, Income Tax Circle,
Navrangpura, Ahmedabad – 380 009.
2. Adv. Shridev J. Vyas,
C-4, Jay Apartments,
Opp. Azad Society, Ambawadi,
Ahmedabad – 380 015.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.