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F.No.195/573/2011-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 26/7/13

ORDER NO. 1061 /13-Cx DATED 26-07-2013 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 the orders-in-appeal No. PKS/555/BEL/2010 dated 31.03.2011 passed by Commissioner of Central Excise (Appeals) Mumbai-III
APPLICANT	:	M/s Intas Pharmaceuticals Ltd., Ahmedabad
RESPONDENT	:	Commissioner of Central Excise, Belapur

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ORDER

This revision application is filed by M/s Intas Pharma Ltd., Plot No.5, 6 & 7, Pharmez SEZ, Village Matoda, Tal-Sanand, Ahmedabad against the order-in-appeal No. PKS/555/BEL/2010 dated 31.03.2011 passed by Commissioner of Central Excise (Appeals) Mumbai-III with respect to order-in-original No. V/R-275/CAI/2010 dated 22.10.2010 passed by ACCE Belapur-I Division, Navi Mumbai.

2. Brief facts of the case are that M/s Intas Pharma Ltd. (hereinafter referred to as 'Claimant') , Plot No.5, 6 & 7, Pharmez SEZ, Village Matoda, Tal-Sanand, Ahmedabad, is an unit located in Special Economic Zone at Pharmez, Ahmedabad. The Claimant has filed two rebate claims dated 05.04.2010 stating that they are filed in terms of Rule 18 of Central Excise Rules read with circular No. 670/61/2002 dated 01.10.2002 which were received in the Division Office on 29.07.2010. The Claimant has stated that one claim is in respect of rebate of duty of Rs.11023/- paid on goods falling under Chapter 29 of CETA 1985, which were exported (deemed export) by M/s Merck Limited, Plot No. D-116, MIDC, Thane Belapur Road, Nerul, Navi Mumbai "hereinafter referred to as Dealer" under cover of Excise Invoice 6209602331 dated 10.02.2010 to the claimant's unit and another claim is in respect of rebate of duty of Rs.1952/- paid on goods falling under chapter 29 of CETA 1985 and exported (deemed export) by the "Dealer" under cover of Excise invoice No.6209602587 dated 04.03.2010 to the claimant's unit.

2.1 The adjudicating authority rejected the said claim on the ground that applicant had not prepared ARE-1 form, did not follow ARE-1 procedure and there was no certification of payment of duty as well as proof of receipt of goods in SEZ unit.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who after consideration of all the submissions rejected the appeal.

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

4.1 Nowhere the authorities, below, have alleged that the export goods, were non-duty paid goods. Nowhere the authorities, below, have denied the factual position that the said excisable goods, were duty paid goods, supplied by the applicants, to a Unit, situated in Special Economic Zone. The fact that when the goods are supplied by a DTA supplier, to a Unit or a Developer, situated in Special Economic Zone, it amounts to export of excisable goods, by DTA supplier, as per the provisions of Section 2(m) of the Special Economic Zones Act, 2005, has not been denied by the respondent.

4.2 As per the command of the Indian Parliament, any excisable goods, when supplied from DTA to SEZ, it amounts to physical export, as per the provisions of Section 2(m) of the Special Economic Zones Act, 2005, read with, Rule 30 of the Special Economic Zones Rules, 2006.

4.3 Once the excisable goods, on payment of Central Excise Duty, are exported and when the factum of export, has not been denied, rebate of Central Excise duty, cannot be denied, by the Central Excise authority, even if, the claimant has not fulfilled any of the conditions, specified in the Notification No. 19/2004-CE(NT) dated 6.9.2004, as per the judgment of the Hon'ble Madras High Court title as, Tablets India Ltd., vs. Joint Secretary, Ministry of Finance and Commr., of Central Excise and Customs, Chennai-I, reported in [2010 (259) ELT 191 (Mad.)].

5. Personal hearing was scheduled in this case on 5.3.2013 & 27.6.2013. Hearing held on 5.3.2013 was attended by Shri R.R. Dave, Consultant on behalf of the applicant who reiterated the grounds of revision application. Department has submitted written reply reiterating the contents of impugned orders.

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

7. In this case, the rebate claim was rejected by lower authorities on the ground that ARE-1 form was not prepared, ARE-1 procedure was not followed, there was no proof of receipt of goods in the SEZ Unit & the duty payment is not certified by range Superintendent. Applicant has in grounds of revision application stated that there is no dispute of export of goods, payment of duty and receipt of goods in SEZ unit.

7.1 In this regard, it will be appropriate to go through the findings of original authority in his O-I-O which are as under :-

" The Ministry's instruction brought together the essential provisions contained in Rule 18 of Central Excise Rules, 2002 and Rule 30 of SEZ Rules, 2006 and reiterates a uniform procedure for supplies made from Domestic Tariff Area to Special Economic Zone, in case of procurement by SEZ units & SEZ developer from DTA for their authorized operations. We may therefore deal with the said instruction.

Specifically in para 6 of the said instruction it is stated that "the procedure for procurements of goods from Domestic Tariff to SEZ developer or a unit would be governed by the provisions of Rule 30 of the SEZ Rules, 2006, and the movement of goods from the place of manufacture to the SEZ shall be (i) on the basis of ARE-1 (in cases where export entitlements are not availed) (ii) on the basis of ARE-1 and Bill of Export (in cases where export entitlements are availed) and against a general Bond or Letter of Undertaking, specified in Ann-I and Ann-II under Notification NO. 42/2001-CE(NT) dated 26.06.2001 as amended, and furnished by the DTA supplier to the jurisdictional Assistant Commissioner of Central Excise.

Further, in para 7 it is stated that "clearance of goods at the place of dispatch i.e. at the factory or warehouse may be, at the option of exporter (DTA supplier) either "under examination and sealing of goods by the Central Excise Officer" or "under Self-sealing and Self examination, as is applicable in the case of export of goods under Rule 18 or 19 of Central Excise Rules, 2002. The manner of disposal of copies of ARE-1, monitoring of proof of exports, demand of duty in case of non-submission of proof of exports, etc. shall be the same as is applicable in case of exports made under Rule 18 or Rules 19 of the Central Excise Rules, 2002. The DTA supplier shall ensure the bonafides of the SEZ unit or SEZ developer to whom duty free goods are being supplied.

It can be seen from the above the provisions of Rule 18 of Central Excise Rules, 2002 that the above referred conditions are mandatory and substantive as the clearance of goods from warehouse by the DTA unit and the payment of duty on excisable goods and the certification of payment of duty by the

Range authorities on the ARE-1 and the movement of goods from DTA unit to SEZ unit shall be on the basis of ARE-1 and their receipt in SEZ unit and re-warehousing certification by authorized officer of Customs in charge of SEZ are bare necessities for proving that the goods have been cleared from DTA unit to an unit is SEZ.

Thus in the instant case the claimant has contravened the provisions of the Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT)_ (as amended) dated 6.9.2004 and CBEC Circular No. 29/2006-Cus dated 27.12.2006.

(a) The claimant neither received nor submitted the prescribed document viz. original duplicate copies of ARE-1 along with the rebate claim which is mandatory.

(b) There is no document showing the proof of payment of duty on excisable goods in question, at it mandatory in ARE-1 that the duty payment certification from Range Superintendent is obtained.

(c) The amount claimed as rebate in the application is not included in the definition of 'duties of Excise' in the Notification issued under Rule 18 of Central Excise Rules, 2002, as such, not eligible for claim of Rebate.

(d) The movement of goods is neither through self-sealing nor through sealing by Central Excise Authorities, as such the movement for goods from DTA to the Claimant's unit cannot be proved.

(e) There is no proof of receipt of goods in the unit of the Claimant located in the SEZ, as there is no document proving the warehousing of goods in the premises of claimant. The version of the claimant that there is a signed and stamped endorsement of SEZ and the same is the proof of receipt is incorrect and unacceptable. It can be seen from the invoices (duplicate copies) that there is no endorsement by any authorized officer under his signature evidencing the receipt of goods and their rewarehousing in the claimant's premises. Moreover, in a Special Economic Zone there shall be several units. A mere stamp of gate pass, without any signature shall not sufficient enough to prove the receipt of the goods in the premises.

Further, it can be seen that the ratio of the facts and circumstances cited in the case laws relied upon by the claimant are different from the facts of the impugned case, as such I shall not rely on the same. The claimant has accepted that they have not followed the provisions contained in Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) (as amended) dated 6.9.2004 and CBEC circular No. 29/2006-Cus dated 27.12.2006."

7.2 These findings make it quite clear that there is no proof of receipt of goods in SEZ unit, and ARE-I procedure is also not followed. The rebate claim of duty paid on

exported goods is admissible subject to compliance of conditions and procedure as laid down in Not. No. 19/04-CE(NT) dated 6.9.2004. The relevant condition and procedure prescribed in Not. No. 19/04-CE(NT) is as under :-

"(2) Conditions and limitations:- (a) that the excisable goods shall be exported after payment of duty, directly form a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

(3) Procedures:- (a) Sealing of Goods and examination at the place of dispatch and export:-

(vii) The triplicate copy of application shall be-

(a) Sent to the officer with whom rebate claim is to me filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records.

(b) Where goods are not exported directly from the factory of manufacture or warehouse, the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse who shall after verification, forward the triplicate copy in the manner specified in sub-paragraph (Vii);

(c) In case of self-sealing, the said superintendent or Inspector of Central Excise shall after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars-

(d) Send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after postings the particulars in official records, or

(e) The officer of Customs shall return the original and quadruplicate copies of application to the exporter and forward the duplicate copy of application either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the application, from whom the exporter wants to claim rebate;

(b) Presentation of claim for rebate to Central Excise:-

(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. "

In this case no ARE-1 procedure was followed. The claimant was required to produce ARE-1 original/duplicate copies duly certified by Customs officer in SEZ with certification regarding receipt of goods and the triplicate copy of ARE-1 duly certified by Range Superintendent certifying payment of duty. Applicant has failed to produce both the certifications regarding receipt of goods in SEZ and payment of duty in this case. As

per provisions of rule 18 of Central Excise Rules, 2002, rebate of duty paid on excisable goods exported is admissible subject to compliance of conditions and procedure as laid down in Notification No. 19/04-CE (NT) dated 06-09-2004. In this case duty paid nature of goods is not proved since triplicate copy is not certified by Range Superintendent and at the same time export of goods is also not proved in the absence of endorsement of receipt of goods in SEZ by Customs Officer on the ARE-I form. Therefore, the export of duty paid goods is not proved.

7.3. The fundamental condition for sanctioning rebate claim is that export of duty paid goods is proved. In these cases said condition is not satisfied and therefore rebate claims are rightly held inadmissible by the lower authorities.

7.4 It is also emphasized here that for interpreting the (above) provisions of law, Hon'ble Supreme Court of India in its judgements in case matters of M/s ITC Vs. CCE [2004(171) ELT-433(SC)] and M/s Paper Products Ltd. Vs. CCE [1999 (112) ELT-765(SC)] has made it unambiguously clear that "simple and plain readings of wordings of law are to be strictly adhered to" thereby leaving no room to interpret and twist the purpose and meaning of such legal provisions written in the applicable statute.

7.5 Government further notes that in this case applicant being a SEZ unit is the deemed importer of goods. The rebate claims is admissible to the either manufacturer exporter or merchant exporter and the rebate claim is also required to be filed either with the Maritime Commissioner or the jurisdictional ACCE having jurisdiction over factory of manufacture as per para 3 (b) of Notification No. 19/04-CE (NT) dt. 06-09-2004. Therefore rebate claim is not admissible to the applicants on these grounds also.

8. In view of above discussions, Government do not find infirmity in order of Commissioner (Appeals) and hence, upholds the same.

9. Revision Application is thus rejected being devoid of merits.

10. So, Ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

M/s Intas Pharma Ltd.,
Plot No.5, 6 & 7, Pharmez SEZ,
Village Matoda, Tal-Sanand,
Ahmedabad

Attested

26/7

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Revn)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 1061 /13-Cx dated 26-7-2013

Copy to:

1. Commissioner of Central Excise & Customs, 1st Floor, C.G.O. Complex, C.B.D. Belapur, (Navi Mumbai) – 400 614

2. Commissioner of Central Excise (Appeals), Mumbai-III, 5th Floor, C.G.O. Complex, C.B.D. Belapur, (Navi Mumbai) – 400 614

3. The Assisant Commissioner of Central Excise, Belapur-I Division, 3rd Floor, C.G.O. Complex, C.B.D. Belapur, (Navi Mumbai) – 400 614

4. PA to JS(RA)

5. Guard File.

6. Spare Copy

26/7

(B.P. Sharma)
OSD(Revision Application)