

REGISTERED
SPEED POST



F.No. 195/626/11-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. 1062 /13-cx dated 26-7 -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,
1944 against the Order-in-Appeal No.
SB(36)36/M-I/2011 dated 03.05.2011
passed by Commissioner of Central Excise,
(Appeals), Mumbai-I.

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

Respondent : Commissioner of Central Excise,
Mumbai.

ORDER

This revision application is filed by the M/s. Intas Pharma Ltd., Ahmedabad against the Orders-in-Appeal No. SB(36)36/M-I/2011 dated 03.05.2011 passed by Commissioner of Central Excise (Appeal), Mumbai-I, with respect to Orders-in-Original passed by the jurisdictional Deputy Commissioner (Rebate), Central Excise, Mumbai-I.

2. Brief facts of the case are that the applicant is an unit situated in SEZ, Pharmez and engaged in production and clearance of finished excisable goods. They procure their goods from foreign country as well as DTA dealers and manufacturers. In this impugned case M/s. Jay Ami Polymers Pvt. Ltd., a merchant exporter lifted the excisable goods from manufacturer M/s. Mobile Resources and Trading India Ltd. and supplied the same to the applicant i.e. an unit situated in SEZ, under a claim of rebate under Rule 18 of the Central Excise Rules, 2002. The said goods were accounted for by the applicant. The said dealer i.e. M/s. Jai Ami Polymers Pvt. Ltd., issued No objection certificate (NOC) to the applicants, who filed rebate claim as per Notification No. 19/2004-C.Ex (NT) dtd. 06-09-2004, issued under Rule 18 of Central Excise Rules, 2002. The scrutiny of said documents revealed the discrepancies; that Triplicate copy was not signed by the jurisdictional range officer; that ARE-1 was not dated; that proof of goods for receipt in SEZ was not produced, i.e, the certificate to that effect from SEZ officer was not submitted; that there was a remark on Invoice No. 000653 dt. 22-10-2009, stating- "without availing any benefit". The original authority rejected the claim on the aforesaid grounds, vide impugned Order-in-Original.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

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 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 Zone Act, 2005, has not been denied by the respondent.

4.2 The fact that the goods, were lifted by the Registered Dealer, from the premises of the Manufacturer, under ARE-1 and then transmitted by him, to the applicants, through his own Excise Invoice, being registered with the Central Excise Officer, has not been disputed by the authorities below. The Excise Invoice of the said Registered Dealer, has been provided with a stamp, declaring SEZ Gate Pass No., 9373 dt. 26-10-2010. The authorities, below have not denied the fact that it is a fictitious endorsement.

4.3 There is a complain of most of the SEZ Units or Developers that whenever they receive any duty paid goods, with proper duty paying documents, from a Registered Dealer the specified/Authorised Officer, raises an objection for entry of such duty paid excisable goods, into the SEZ Area, on the ground that the Registered Dealer or SEZ Unit or Developer, intends to claim rebate of Central Excise duty, under Rule 18 of the Central Excise Rules, 2002 but the same is not admissible as rebate in case of supply by a Registered Dealer being not allowed and accordingly, in most of the cases all over the country, there are disputes between the SEZ Unit or Developer and the Specified/Authorised Officer and finally, they allow the goods to enter but without signing ARE-1 and the corresponding Invoice. It is not understandable, as to, why the respective Specified/Authorised Officer, is not transparent and why should not be provide authentication of such documents, because he has no authority, to grant rebate of Central Excise Duty, paid on the excisable goods and if, the same is not admissible, then it is the rebate Sanctioning Authority, who has to look into the matter and disallow the rebate claim of Registered Dealer or SEZ Unit or Developer. It is the behaviour of the respective Specified/Authorised Officer, which has created dispute all over the country, whenever excisable goods are supplied by a Registered Dealer to a SEZ Unit or

Developer and this case is not exception, to the aforesaid manner of the SEZ Officer.

4.4 It was upto the Original authority, to make inquiry as to, whether physical entry of the said duty-paid goods into the premises of the applicants, situated in a SEZ, was made. The tax payer is always dozed between two Government Authorities and the applicants, do not hesitate to state that none of the two is transparent in the interest of exports and development of SEZ Area and this unnecessarily creates litigation in simple matters, where any excisable goods are exported on payment of Central Excise Duty, the duty is bound to be refunded to the Exporter or his counterpart, based on NOC.

5. Personal hearing was scheduled in this case on 26-06-2013. However, nobody attended the hearing. Hence, Government proceeds to decide this case on merits on the basis of available records.

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 merchant exporter supplied the goods to the applicant, an unit situated in SEZ under claim of rebate under Rule 18 of the Central Excise Rules, 2002. The original authority rejected the rebate claim of the applicant. Commissioner (Appeals) upheld the impugned Order-in-Original mainly on the ground the export of duty paid goods is not established due various discrepancies in the rebate claim papers.

8. Government observes that the appellate authority has discussed in details the procedure required to be followed in terms of Notification No. 19/04-CE (NT) for claim rebate of duty paid on exported goods. The relevant para of impugned Order-in-Appeal dated 03-05-2011 are as under:-

" 6. I find that the issue involved is rejection of rebate claim by the respondent, mainly on two grounds i.e. firstly, the triplicate copy was not signed by the Range Superintendent, and secondly, proof of receipt of goods in SEZ was not given. I find that the

applicants have contended that the DTA supplier has issued a Central Excise invoice was bearing a stamp showing that goods were received in the SEZ and were also accounted in their records.

7. I reproduce only the relevant provisions of the Notification No. 19/2004 dated 06-09-2004, issue under Rule 18 of Central Excise Rules, 2002 which prescribes the procedures to be followed, for ready reference, as follows:-

"(2) Conditions and limitations:- (a) that the excisable goods shall be exported after payment of duty, directly from 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 be 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.

8. Thus, it can be seen clearly from the conditions/provisions laid down in the above Notification that the duty payment is required to be certified by the Range Superintendent only, and only the Central Excise Invoice, issued by the supplier, as such, cannot be taken as the final proof of the goods being duty paid. This provision is a deterrent for issue and use of bogus or fake invoices, and the correctness of the Central Excise invoices has to be verified and certified by the proper central Excise Officer. I also find that the Custom Officer, in this case the SEZ proper officer, is required to endorse

on the backside of the original and duplicate copy of ARE-1, which are required to be submitted to the rebate sanctioning authority. The contention of the applicants that the Central Excise invoice bears the stamp stating-SZ Gate pass No. 9373 dated 26-01-2009, cannot be accepted since the said stamp has not been signed by any authority and it is also not clear as to which authority has put the said stamp on the documents. The applicants could have got the document duly certified from the said authority. In the absence of the same, the document cannot be accepted as valid. Further, they have also stated that the goods were accounted in their inward register, but the said register is their private record and not a statutory prescribed record, duly authenticated for Central Excise purposes and hence the same cannot be accepted as valid. Thus, I find that the applicants have not adhered to the conditions/provisions of the relevant Notification under which the claim of rebate of duty has been filed and therefore, the claim cannot be sanctioned. "

9. Government notes that Commissioner (Appeals) has examined the case in the light of condition and procedure laid down in Notification No. 19/04-CE (NT) and found that neither the ARE-I contains the customs endorsement about receipt of goods in SEZ nor the triplicate copy ARE-I is signed by range Superintendent certifying payment of duty. Applicant has admitted these lapses but attempted to put all the blame on the departmental officers for not having signed the papers. This contention has no merit as applicant has not produced any evidence that the papers were not signed by Customs Officers in SEZ. 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) dtd. 06-09-2004. In this case duty 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.

10. The vital conditions 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.

10.1 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 before Assistant Commissioner/Deputy Commissioner of Central Excise 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 this ground also.

11. 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.

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

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

14. So, Ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

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

ATTESTED



(भगवती शर्मा/Bhagwati Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C-O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/NEW DELHI

Order No. 1062 /13-CX dated 26-7-2013

Copy to:

1. The Commissioner of Central Excise, Mumbai-I, Commissionerate, 115, Central Excise Building, Maharshi Karve Road, Mumbai-400020.
2. The Commissioner of Central Excise (Appeals) Mumbai Meher Building, Dadiseth Agyari Lane, Chowpatty, Mumbai-400007.
3. The Assistant Commissioner (Rebate) Central Excise, Mumbai Meher Building, Dadiseth Agyari Lane, Chowpatty, Mumbai-400007.
- ~~4. PS to JS(RA)~~
5. Guard File.
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)