

REGISTERED
SPEED POST



F.No. 198/503/11-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.....

16/8/13

Order No. 1082/13-cx dated 16-8-2013 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.
YDB/289/RGD/2011 dated 05-04-2011
passed by Commissioner of Central Excise,
(Appeals), Raigad.

Applicant : Commissioner of Central Excise,
Raigad.

Respondent : M/s. Alkem Laboratories Ltd.,
Mumbai.

ORDER

This revision application is filed by Commissioner of Central Excise, Raigad against the Order-in-Appeal No. YDB/289/RGD/2011 dated 05-04-2011 passed by the Commissioner of Customs (Appeals), Raigad with respect to Order-in-Original No. 1044/10-11/AC (Rebate), Raigad passed by the Assistant Commissioner of Central Excise (Rebate), Raigad. M/s. Alkem Laboratories Ltd., Mumbai is the respondent in this case.

2. Brief facts of the case are that respondents, a merchant exporter who had procured excisable goods from various manufactures. The respondent exported the goods so procured from various manufactures and filed following 4 rebate claims as indicated below:

Sr. No.	RC. No.	RC-Date	ARE-1 Nos.	ARE 1 Date	Amount Claimed
1	12055	20-09-2006	06	27-01-2008	10,888/-
2	16571	17-11-2006	08	07-08-2006	118605/-
3	32851	16-02-2006	13	01-07-2004	50440/-
4	19487	30-11-2007	04	06-06-2007	67288/-
					156202/-

Show Cause Notice was issued to the applicant on following grounds:-

- The goods covered under all the above rebate claim are not cleared directly from the manufacturing unit.
- The declaration at Sr. No. 3 (a) (b) & (c) is incomplete.
- In case of R.C. No. 32851 and 19487 Chapter heading No. on the Central-Excise Invoice and Export Documents are not tallying.
- In case of RC. No. 16571, the FOB value is on the lower side when compared with assessable value on the Central Excise Invoice.
- In case of R.C No. 19487 the assessable value shown on ARE-1 and C.Ex. Invoice is not tallying.

The adjudicating authority vide impugned Order-in-Original rejected the rebate claim.

3. Being aggrieved by the said Order-in-Original, respondent filed appeal before Commissioner (Appeals), who set aside the Order-in-Original and allowed the appeal, in favour of respondent.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant department has filed this revision application under Section 35 EE of Central Excise Act, 1962 before Central Government mainly on the following grounds:

4.1 The Commissioner (Appeals) has accepted the claimant's contention that they have exported the consignments from their godown -at Taloja/Turbhe by following the procedure under Rule 18 of Central Excise Rules, 2002 read with Notfn. No- 19/2004 CE(NT) dated 06-09-2004 and Chapter 8 of the Central Excise Manual of Supplementary Instructions and the instructions laid down in the CBEC's circular No. 294/10/97 - CX dated 30-01-1997. However, the respondent has not exported the goods directly from the factory of manufacture or warehouse on payment of duty for export. The basic condition of Notification No. 19/2004-CE (NT) dated 06-09-2004 is that, "the goods shall be exported after payment of duty directly from the factory of manufacturer or warehouse." Their contention is not correct as the said godowns are not approved godown / warehouse under Rule 20 of Central Excise Rules 2002. Further, the claimant has not submitted any permission from the Department by a general or special order for the clearance of duty paid excisable goods for export from their premises/godowns so as to fulfill the condition laid down under the Provisions of Notification No.19/2004- CE(NT) dated 06.09.2004 as amended. Permission from Customs for loading and stuffing of containers from godowns is not permission for export of duty paid goods from a place other than the factory or warehouse for the purpose of rebate notification 19/2005 - CE (NT).

4.2) The Circular No.294/1 0/97.CX dated ;3 0.0 1.1997 stipulates that the condition for direct export from the factory or warehouse can be waived if the goods are clearly identifiable and corelatable with the goods cleared from factory on payment of duty and it is otherwise possible to verify the duty paid character of the goods beyond doubt and the exporters should submit the proof that the same goods have been exported to the satisfaction of the rebate sanctioning authority. In this case, however, it has clearly been recorded by the adjudicating authority that the item said to have been exported by the claimant are pharmaceutical products which bear batch number. This batch number is not unique for individual strips but is unique only for a particular batch of the product manufactured. Several strips /packs of medicine may have the same batch number. Hence the batch number cannot be equated with 'distinct' engine no, chassis no etc. Therefore, the above mention circular is not applicable for the present case and it has been clearly seen, that there has been no correlation done and established between the goods exported' by M/s Alkem Lab Ltd and goods cleared from factory on payment of duty. In fact the duty paid character of the goods not having been established, the rebate cannot be sanctioned.

4.3. The applicant department has relied upon following case laws in favour of their contention:-

- a) Indian Overseas Corpn. {2009(234) ELT(405(H.P.))}.
- b) Mihir Textiles Vs. Collector of Customs, Bombay {1997(92)ELT 9(SC)}.
- c) Ginni Filaments Ltd. {2005(181)ELT145(S.C.)}.
- d) M/s. Philip Electronics in Revision order No. 388/10-CX dated 25-03- 2010.

4.4. As regards to the assessable value shown in relevant central excise invoice No - 609 dated 9.3.2006 and FOB value in shipping bill, in respect with rebate claim No. 16571/17-11-06, the Commr (A) in his findings, held that the lower authority has not recorded any findings on the difference of value between two and therefore

accepted the respondents contention that they had exported only part consignment of the central excise invoice No - 609 dated 09-03-2006 read with relevant ARE-1. The conclusion drawn by the Commissioner (A) is factually not true and correct and seems to be held merely on the declaration of the claimant M/s. Alkem that they cleared only the part quantity out of the relevant excise invoice. It is clearly apparent from the records of the case that the relevant invoice & ARE-1 have indicated that the total quantity was of 5000 bottles of Sorbicid Liquid 170 MI and the entire quantity was exported. The central excise officer, who attended the export, has clearly recorded on the copy of the invoice that the entire quantity of invoice is exported. Therefore, the claim accepted by the Commissioner (A) that M/s. Alkem exported only the part quantity of the said invoice is incorrect.

4.5. Further, there was difference between invoice value and Shipping Bill FOB value. The claimant, M/s. Alkem has not explained as to how the difference in value arises when the entire quantity is exported. This clearly indicates that the difference is un- accounted and unexplained. M/s. Alkem have suppressed the material facts as regards to the value, only for getting the inadmissible amount of rebate. The material point in the matter is that the value aspect of the exported goods is not tallying. Therefore, the claimant is not entitled for grant of rebate of duty because correct assessable value for determination of rebate of duty is not available.

5. Personal hearing was scheduled in this case on 26-06-2013 and 07-08-2013. Nobody appeared for hearing on behalf of applicant department. Sheri M.S Mohan Krishnan, Consultant appeared for hearing on 07-08-2013 at Mumbai Camp Office on behalf of respondents and requested to uphold the impugned Order-in-Appeal.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. The department has contended that the applicant has not exported the goods directly from factory or warehouse and as such, violated the condition of the

Notification No.19/2004-CE(NT). The applicant has stated that the goods can be exported from factory or warehouse or any other place, in term of the CBEC Circular No.294/10/97-Cx dated 30.1.97 which prescribes the procedure for export of goods from place other than factory or warehouse. Applicants have stated that they have complied with requirement of the said circular dated 30.1.97

8. Government notes that the admissibility of these rebate claims mainly depends on the compliance of provisions and procedure laid down in CBEC Circular dated 30.01.97. The relevant paras of said Circular are as under:

"8.1 An exporter; (including a manufacturer-exporter) desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from the factory stored outside the place of manufacturer should make an application in writing to the Superintendent of Central Excise in-charge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sextuplicate, the invoice on which they have purchased the goods from the manufacturer or his dealer and furnish the following information:

- (a) Name of Exporter*
- (b) Full description of excisable goods alongwith marks and/or numbers*
- (c) Name of manufacturer of excisable goods*
- (d) Number and date of the duty paying document prescribed under Rule 52A under which the excisable goods are cleared from the factory and the quantity cleared.*
- (e) The rate of duty and the amount of duty paid on excisable goods.*

8.2 The AR4 form should have a progressive number commencing with Sl. No.1 for each financial year in respect of each exporter with a distinguishing mark. Separate form should be made use of for export of packages/consignments cleared from the same factory/warehouse under different invoices or from the

different factories/warehouses. On each such form it should be indicated prominently that the goods are for export under claim of rebate of duty.

- 8.3 *On receipt of the above application and particulars, the particulars of the packages/goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner.*
- 8.4 *If the Central Excise Officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he will endorse such forms and permit the export.*
- 8.5 *The exporter will have to pay the supervision charges at the prescribed rates for the services of the Central Excise Officer deputed for the purpose.*
- 8.6 *The disposal of different copies of AR4 forms should be in the following manner:*
- (i) *the original and duplicate copies are to be returned to the exporter for being presented by him alongwith his shipping bill, other documents and export consignment at the point of export.*
 - (ii) *triplicate and quadruplicate copies to be sent to the Superintendent Incharge of the Range in whose jurisdiction the factory from which the excisable goods had been originally cleared on payment of duty is situated. That Superintendent will requisition the relevant invoice duty paying document which the manufacturer shall handover to the Superintendent promptly under proper receipt and the Superintendent will carry out necessary verification, and certify the correctness of duty payment on both triplicate & quadruplicate copies of AR4. He will also endorse on the reverse of manufacturers' invoice "GOODS EXPORTED - AR-4 VERIHED", (and return it to the manufacturer under proper receipt). He will forward the triplicate copy to the Maritime Commissioner of the Port from where the goods were/are exported. The quadruplicate copy will be forwarded to his Chief Accounts Officer. The Range Superintendent will also maintain a register indicating name of the exporter. Rangel Division/Commissionerate indicating name of the exporter's godown'warehouse etc.' are located end where AR-4*

is prepared, AR-4 No. and date, description of item corresponding invoice No. of the manufacturer; remarks regarding verification, date of dispatch of triplicate & quadruplicate copy.

(iii) the quintuplicate copy is to be retained by the superintendent Incharge of the Range from where the goods have been exported for his record.

(iv) the sextuplicate copy will be given to the exporter for his own record.

8.7 The goods, other than ship stores, should be exported within a period of six month from the date on which the goods were first cleared from the producing factory or the warehouse or within such extended period (not exceeding two years after the date of removal from the producing factory) as the Commissioner may in any particular case allow, and the claim for rebate, together with the proof of due exportation is filed with the Assistant Commissioner of Central Excise before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

8.8 The rebate will be sanctioned, if admissible otherwise after following the usual procedure."

9. Government observes that in this case the respondent procured the goods on payment of duty and stored them in his godown. The above said circular dated 30.1.1997 grants permission to export goods from a place other than factory or registered warehouse subject to compliance of procedure laid down therein. The department has not brought out any violation of circular dated 30.1.1997 by the respondent. Moreover, the respondent kept the department informed that they were going to export the goods in term of said circular dtd. 30-01-1997. The applicant got their goods examined stuffed in containers in presence of Superintendent, Central Excise. As such, the applicant cannot be alleged to have violated the provisions contained in the above said circular.

9.1 On sample perusal of excise documents and export documents, Government observes that the details regarding quantity, net weight, gross weight, description etc. are tallying in impugned AREs-1 and shipping bills. The applicant has stated in their written submission/cross objection that is Custom certification also appear in

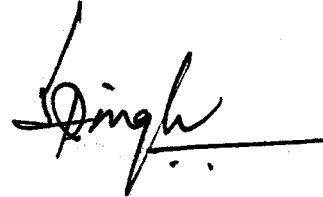
part 13 of the original and duplicate copies of ARE-1. At the same time Part-B on reverse side of ARE-1 has the endorsement of Central Excise Officers, which denotes that identity of goods and its duty paid character is established. The Central Excise Officers are required to verify the particulars of packages/goods lying/stored with the particulars given in ARE-1 Form and if the Central Excise Officer is satisfied about identity of goods, its duty paid character and all the particulars given by the exporter in his application, he will endorse the ARE-1 Form and permit export. In this case no contrary observation is made by Central Excise Officers and therefore they have made endorsement in ARE-1 after doing the requisite verification and allowed exports. In view of, this position, Government finds no force in the contention of department that Central Excise Officers have not made verification as required under CBEC Circular dated 30.01.97. The certification by Central Excise Officers in ARE-1 is certainly required to be done after verifying that goods are in original packing. The Central Excise Officers have nowhere pointed out that goods were not in original packing. So the contention of department regarding correlability is not sustainable. The cross reference of AREs-1 and Shipping Bills is available on AREs-1 and shipping bills. The AREs-1 duly certified Customs Officers that goods have been exported. So the export of goods cannot be doubted as there is no reason for not accepting the Customs endorsement about of export of said goods on the said ARE-I Form. There is no infirmity in the impugned Order-in-Appeal as regards allowing the rebate claims the above extent.

10. The department has also contended that there is difference in value mentioned in Shipping Bill and ARE-1 in r/o Rebate Claim No. 16571/17-11-2006, Invoice No. 609/09-03-2006, ARE-I No. T4/008/06-07. Department has also contended that relevant invoice and ARE-I have indicated that total quantity was of 5000 bottles of Sorbicid liquid 170 ML and the entire quantity was exported. The Central Excise Officer who attended examination and shuffling of export goods has recorded on the copy of invoice that entire quantity was exported. The respondent has accepted this version but stated that the Shipping Bill value was indicated on the basis of their export invoice value and therefore there was difference of value to the

extent of Rs. 47097. Government finds that department is basically arguing that FOB value mentioned in the shipping i.e. Rs. 66903 is the transactions value and duty payable on said value should be rebated. He original authority has not given any finding on this aspect. So, the original authority is required to determine assessable value under section of Central Excise Act, 1944 is r/o said rebate claim No. 16571/17-11-2006 and then decide the said rebate claim afresh. The impugned Order-in-Appeal is modified to this extent.

12. Revision applications is disposed off in above terms.

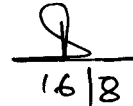
13. So, ordered.



(D.P. Singh)
Joint Secretary to the Govt. of India

The Commissioner (Appeals), Central Excise,
Raigad, Ground Floor,
Kendriya Utpad Shulk Bhawan,
Sector-17, Plot No. 1, Khandeshwar,
Navi Mumbai-410 206.

ATTESTED



16/8


(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 10 82/13-Cx dated 16-8-2013

Copy to:

1. The Commissioner (Appeals), Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
2. The Deputy Commissioner, Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
3. M/s. Alkem Laboratories Ltd., Alkem Marg, Senapati Bapat Marg., Lower Parel, Mumabai-400013.
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED


16/8

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)

