

REGISTERED
SPEED POST



F.No. 195/488/11-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. 27.8.13

Order No. 1096/13-cx dated 22-08-2013 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. 70/2011 dated 28.02.2011 passed by Commissioner of Central Excise (Appeals), Ahmedabad.

Applicant : M/s. Dolphin Laboratories Ltd.,
C/o Intas Pharma Ltd., Ahmedabad.

Respondent : Commissioner of Central Excise, Ahmedabad-II.

ORDER

This revision application is filed by the M/s Dolphin Laboratories Ltd., C/o M/s. Intas Pharma Ltd., Ahmedabad against the Order-in-Appeal No. 70/2011 dated 28.02.2011 passed by Commissioner of Central Excise (Appeals), Ahmedabad.

2. Brief facts of the case are that the applicant M/s Dolphin Laboratories Ltd., (hereinafter referred to as 'the appellants') are a company registered under the Companies Act 1956 and having their manufacturing unit located at Kailash Industrial Estate, Iyava, Sanand-Viramgam Road, Ta:- Sanand, Dist-Ahmedabad. The applicants company was declared sick in BIFR and is merged with Intas Pharmaceuticals Ltd. as per order of Hon'ble High Court of Gujarat. The applicants were exporting their finished goods under letter of undertaking, issued by the respondents, under Rule 19 of Central Excise Rules, 2002. the applicants have not submitted few proof of exports for which the material were exported during the period of July-04 to Jan-05. Based on audit objections, the Assistant Commissioner of Central Excise -Division-IV, Commissionerate-Ahmedabad-II, have issued a show cause notice to the applicants on the ground that the applicants have not submitted the proof of exports of the period July-04 to January-05 within the stipulated time limit of six months from the date of export as per Rule 19 of Central Excise Rules, 2002, and demanded Central Excise duty of Rs. 4,73,183/- under Section 11A of Central Excise Act, 1944. The show cause notice also proposed to impose penalty under rule 25 of Central Excise Rules, 2002. The original authority vide Order-in-Original No. 24/D/2006 dated 20.03.2006, confirmed the demand of Central Excise duty amounting to Rs. 39,049/- [Excise Duty of Rs. 18086/- against ARE-1 No. DL-30 dated 28.07.2004 for Non submission of original and duplicate copies of ARE-1 duly endorsed by the Customs officers + Excise Duty of Rs.20963/- against ARE-1 No. DL-105 dated 25.01.2005 for Non submission of proof of export]. The balance demand raised in show cause notice was dropped as valid proof of export was submitted. The adjudicating authority has also imposed penalty of Rs. 10,000/- for delayed submission of proof of exports under Rule 25 of Central Excise Rules, 2002.

The adjudicating authority has also ordered to pay interest at the appropriate rate under section 11AB of Central Excise Act, 1944 in respect of confirmed demand.

3. Being aggrieved by the said Order-in-Original dated 20.3.06, applicant filed appeal before Commissioner (Appeals) who vide Order-in-Appeal No. 241/2006(Ahd-II)CE/Raju/Commr(A) dated 25.07.2006/17.8.06, remanded back the matter to the adjudicating authority with the remarks that "further verification of documents provided by the applicant with respect to ARE-1 No. 30 dated 28.07.2004 and ARE-1 No. 105 dated 25.01.2005 as the Shipping Bill contains ARE-1 No. 30 and matching invoice number and airway bill. The Assistant Commissioner of Central Excise, Division-IV, Ahmedabad-II, have vide their Order-in-Original No.01/D/2007 dated 10.01.2007, again confirmed the demand of duty. The Commissioner (Appeals) vide their Order-in-Appeal No. 103/2007(Ahd-II)CE/Raju/Commr(A) dated 30.08.2007 have partially set aside the OIO NO. 1/D/2007 dated 10.01.2007 and upheld the imposition of penalty and as the demand of duty is concerned with respect to ARE-1 No. 30 dated 28.07.2004 and ARE-1 No. 105 dated 25.1.2005, the matter was remanded back to the JAC to follow directions given in earlier order of Commissioner(Appeals). The JAC have confirmed the excise duty of Rs.39049/- under provisions of Section 11A of CEA, 1944. He has also ordered to pay interest at the appropriate rate under section 11AB of CEA, 1944 and also imposed the penalty of Rs.10,000/- as per the OIO No. 13/D/08 dated 25.07.2008, which was already been upheld by the Commissioner (Appeals) under Rule 25 of CER, 2002. Once again being aggrieved by the above said order, the applicants filed the appeal before the Commissioner(Appeals) against impugned OIO No. 13/D/2008 dated 25.7.2008 passed by the Assistant Commissioner of Central Excise, Division-IV, Ahmedabad-II. Commissioner(Appeals) vide Order-In-Appeal No. 92/2009(Ahd-II)CE/1D dated 27.02.2009 rejected the appeal of applicants on merits. Being aggrieved by the impugned Order-in-Appeal, the applicant filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government who vide G.O.I. order No. 1777/10-Cx dated 20.12.2010 remanded the matter. Commissioner (Appeals) has now vide Order-In-Appeal No. 70/11(Ahd-II) dated 28.2.2011 again rejected the appeal on merit.

4. Being aggrieved with the impugned order-in-appeal dated 28.2.11 applicant has filed this revision application under Section 35 EE of Central Excise Act 1944 on the following grounds:

4.1 The applicants are of the view that the proof of export should have been accepted under Rule 19 even though there is delay in submission. The applicants state that demanding duty for delayed submission of proof of export is technical breach of the condition. The second ground on which the Appeal is rejected by the Commissioner (Appeals-I), Central excise, is that the endorsement of Central Excise Officer is not appearing. There is no such requirement of any endorsement when the goods are cleared under self-removal procedure. It is undisputed fact that the clearance of goods for exports are under self-removal procedure. Under this procedure, the exporters are required to submit the Triplicate copy of ARE-1 within 24 hours after the removal of excisable goods from the factory. The Original and Duplicate copy of ARE-1 and Duplicate copy of Excise Invoice always accompanies with the consignment. The Commissioner has not justified this technical matter and ground taken has been considered by him as per his wishes and whims. The third ground on which the Appeal is rejected is that the endorsement of Custom officer on Airway Bill and late export shipping is absent. The Appellants have submitted the duly signed Exchange control copy of the Shipping Bill, Airway Bill, customs attested Invoice, in respect of export of goods covered vide ARE-1 No. DL 30 dated 28.7.2004. The goods covered vide this ARE-1 are free trade Samples. Therefore there is no realization of export proceeds. Further the Shipping Bill bears the reference of ARE-1 on page No.3 of the Shipping Bill. There is absolute co-relation of description of goods, quantity, no. of packages, gross weight, etc. among ARE-1, Shipping Bill, Invoice and Airway Bill. Similarly, the Appellants have submitted the duly signed Exchange control copy of the Shipping Bill, Airway Bill, DEPB Declaration, declaration under Foreign Exchange Management Act, 1999, customs attested Invoice and Packing List, in respect of export of goods covered vide ARE-1 No. DL 105 dated 25.01.2005. Further the Shipping Bill bears the reference of ARE-1 on page No.3 of the Shipping Bill. There is absolute co-relation of description of goods, quantity, no. of packages, gross weight, etc. among ARE-1, Shipping Bill, Invoice

and Airway Bill. Since the goods cleared from the Appellants unit, and which are exported, the duty cannot be recovered from the appellants, if the appellants are able to prove that the goods cleared under above referred two ARE-1 are exported in full and they produce the collateral evidenced to the effect that the goods are exported. Since the appellants have produced all such documents which they have, the cognizance is required to be given to such documents.

5. Personal hearing was scheduled in this case on 05.03.2013 and 27.06.2013. Nobody attended hearing on behalf of the applicants. Since the several rounds of litigation have taken place and applicant did not attend any of these hearing, another hearing was fixed on 7.8.13 at Mumbai and applicant was specifically asked to produce the set of documents which is claimed as valid proof of export by them. The hearing fixed on 7.8.13 at Mumbai was attended by Shri K.D.Dholkia, DGM Indirect Taxation of the Company and reiterated the grounds of revision application but failed to submit the requisite documents evidencing valid proof of export. However, applicant was given 10 days time to submit the copies of proof of export as submitted before lower authorities. But, applicant has failed to submit said documents till date. As such, Government proceeds to decide this case on the basis of available records.

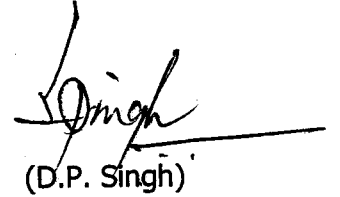
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that adjudicating authority in the order-in-original dated 25.7.08 had observed that endorsement by Central Excise Officer on ARE-1 was absent and in Shipping Bill and Airway Bill, there was no endorsement by Customs Authority regarding AWB No. and Let Export order in the Shipping Bill. So in the absence of original and duplicate ARE-1, the corroborating documentary evidences also could not establish the export of goods. As such the demand was again confirmed vide order-in-original dated 25.7.08. Government notes that since goods were cleared under self-sealing procedure, there cannot be any central excise endorsement. Regarding the second objection that there was no

customs endorsement on shipping bill regarding AWB No. and Let export order applicant is claiming that they had submitted signed exchange control copy of shipping bill, AWB and Customs attested invoice. Applicant has not answered the second objection and simply claimed to have submitted document. In the absence of customs endorsement on shipping bill regarding Let export order, the applicant's claim of submission of proof of export cannot be accepted. Moreover, as directed during personal hearing held on 7.8.13, applicant has not submitted the copy of set of documents claimed to be proof of export, till date. As such, it is quite clear that no valid proof of export in these cases was even submitted by applicant. Government therefore finds no infirmity in the order of confirming demand along with interest and imposing penalty.

8. In view of above circumstances, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same. The revision application is rejected being devoid of merits.

9. 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-382213.



(टी. आर. आर्य / T.R.
अधीक्षक, आर.ए./Superintendent
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 1096 /13-CX dated 22-8-2013

Copy to:

1. The Commissioner of Central Excise & Customs, Vadodara-II, Central Excise & Customs Building, Subhanpura, Vadodara – 390023.
2. The Commissioner of Central Excise & Customs (Appeals) Central Excise Building, Race Course, Vadodara – 390 007.
3. The Assistant Commissioner of Central Excise & Customs, City Division, Vadodara –II.

~~4.~~ PS to JS(RA)

5. Guard File.

6. Spare Copy

ATTESTED



(T.R.Arya)
Superintendent (Revision Application)

