

REGISTERED SPEED POST



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. 195/1022 & 1023/2013-RA, /1612

Date of Issue: 03.03.2021

114-115
ORDER NO. /2021-CX (WZ) /ASRA/MUMBAI DATED 26.02.2021
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.

Subject:- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals)-II, Mumbai and Commissioner (Appeals) of Central Excise Mumbai-III respectively.

Sl. No.	Revision Applications / Order in Appeal No.	Applicant	Respondent
1.	195/1022/13-RA against OIA No. US / 166 /RGD/ 2013 dated 27.06.2013	M/s. Heni Drugs Pvt. Ltd. C-572, TTC Indl. Area, Village-Pawne, Navi, Mumbai -400507	Commissioner, Central Excise, Raigad.
2.	195/1023/13-RA against OIA No. SDK/ 151/RGD(R) /2013-14 dated 04.09.2013	M/s. Heni Drugs Pvt. Ltd. C-572, TTC Indl. Area, Village-Pawne, Navi, Mumbai -400507	Commissioner, Central Excise, Raigad.

ORDER

These Revision applications have been filed by M/s. Heni Drugs Pvt. Ltd. C-572, TTC Indl. Area, Village-Pawne, Navi, Mumbai - 400507 (hereinafter referred to as 'the applicant' against the Orders-in-appeal No. US/166/RGD/2013 dated 27.06.2013 passed by the Commissioner of Central Excise (Appeals)-II, Mumbai and SDK/151/RGD(R)/2013-14 dated 04.09.2013 passed by Commissioner (Appeals) of Central Excise Mumbai-III respectively.

2. The brief facts of the case are that the applicant had filed rebate claim for the duty paid on goods exported amounting to Rs. 7, 53,138/- under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004 and said rebate claim was sanctioned vide Order in Original No.507/11-12/DC(Rebate) Raigad dated 30.06.2011 passed by the Deputy Commissioner, Central Excise(Rebate) Raigad.

2.1 Being aggrieved by Order-in-Original, the Department filed appeal before Commissioner of Central Excise (Appeals)-II, Mumbai, who vide Order in Appeal No. US/453/RGD/2012 dated 13.07.2012 allowed the department appeal by setting aside the aforesaid Order in Original to the extent of Rs.2,81,699/- out of sanctioned amount of Rs.7,53,138/-.

2.2 Being aggrieved by said order-in-appeal, the applicant filed Revision application bearing No. **195/1463/12** under Section 35EE of Central Excise Act, 1944 before Central Government pleading for allowing rebate claim of Rs.2,81,699/- which had been rejected by the Commissioner (Appeals) vide aforementioned Order.

3. Subsequent to issuance of Order in Appeal No US/453/RGD/2012 dated 13.07.2012, a protective demand cum Show Cause Notice was issued to the applicant demanding an amount of Rs. 2,81,699/- of erroneously sanctioned rebate claim, along with applicable interest.

3.1 The Additional Commissioner, Central Excise, Raigad then decided the protective demand issued to the applicant wherein he confirmed a demand of erroneously sanctioned rebate of Rs.2,81,699/- along with interest under section 11AB of the Central Excise Act, 1944 vide Order in Original No. Raigad/ADC/196/SJ/12-13 dated 31.03.2013.

3.2 Being aggrieved with the said Order in original No. Raigad /ADC/196/ SJ/12-13 dated 31.03.2013 confirming demand of Rs.2,81,699/- the applicant filed appeal before Commissioner (Appeals) contending that they had filed Revision Application (No.195/1463/12) before the Joint Secretary, Government of India, Revision Authority, New, Delhi against Order in Appeal No. US/453/RGD/2012 dated 13.07.2012 along with the stay application. The applicant further contended that in spite of this, the Additional Commissioner confirmed the said demand of rebate sanctioned and pending before Revision Authority instead of keeping the said SCN in Call Book till the issue is finally settled. However, Commissioner of Central Excise (Appeals-II), Mumbai vide Order in Appeal No. US/166/RGD/2013 dated 27.06.2013 upheld the Order in Original No. Raigad/ADC/196/SJ/12-13 dated 31.03.2013 passed by the Additional Commissioner and rejected the appeal filed by the applicant.

3.3 Being aggrieved by the said Order in Appeal, the applicant filed Revision Application bearing **No. 195/1022/13** under Section 35EE of Central Excise Act, 1944 before Central Government on the grounds mentioned therein.

4. Meanwhile, the applicant had filed another rebate claim for Rs.8,29,002/- under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE(NT) dated 06.09.2004 before Deputy Commissioner (Rebate), Central Excise, Raigad. The rebate sanctioning authority vide Order in Original No. 195/12-13/DC(Rebate)/Raigad dated 18.04.2013 sanctioned the rebate to the extent of Rs. 8,29,002/- but appropriated Rs. 3,72,969/- (i.e. Rs.2,81,699/- + Interest Rs. 91,270/-) towards confirmed demand of Rs.2,81,699/- which was erroneously refunded to the applicant alongwith applicable interest (para 3.1 supra).

4.1 Being aggrieved by the aforesaid Order-in-original, the applicant filed appeal before Commissioner (Appeals) of Central Excise Mumbai-III, who vide Order in Appeal No. SDK/151/RGD(R)/2013-14 dated 04.09.2013 rejected the appeal filed by the applicant.

4.2 Being aggrieved by said Order-in-appeal, the applicant filed Revision application bearing No. **195/1023/13** under Section 35EE of Central Excise Act, 1944 before Central Government on the grounds mentioned therein.

5. Accordingly the applicant had in all filed 3 Revision Applications as detailed below:-

TABLE

Sl. No.	R.A.File.No	Order-In-Appeal No. which upheld Orders of Original Authority	Reasons for filing Revision Applications
1.	195/1463/12	US/453/RGD/2012 dated 13.07.2012.	Rejection of Rebate claim of Rs.2,81,699/- out of sanctioned amount of Rs.7,53,138/-.
2.	195/1022/13	US/166/RGD/2013 dated 27.06.2013	Confirmation of demand of erroneously sanctioned rebate of Rs.2,81,699/- along with interest under section 11AB of the Central Excise Act, 1944 during the pendency of Revision Application
3.	195/1023/13	SDK/151/RGD(R)/2013-14 dated 04.09.2013	Appropriation of Rs. 3,72,969/- (i.e. Rs.2,81,699/- + Interest Rs. 91,270/-) being the confirmed demand of erroneously sanctioned rebate claim along with interest.

6. A personal hearing in Revision Applications No. 195/1022/13-RA and 195/1023/13-RA was fixed on 18.02.2021 and 24.02.2021 respectively. Shri R.V. Shetty, Advocate on record for the applicant vide letter dated 11.02.2021 informed that the Revision Application No. 195/1463/12 filed by them (Sl. No. 1 of Table above) has been allowed by the Hon'ble Principal Commissioner & Ex-Officio Additional Secretary to Government of India vide Order No. 06/2017/ CX (WZ) / ASRA/MUMBAI dated 24.11.2017 by setting aside Order in Appeal No. US/453/RGD/2012 dtd.13.07.2012 and restoring the Order in Original No.507/11-12/DC(Rebate) Raigad dated 30.06.2011 passed by the Deputy Commissioner, Central Excise, Rebate, Raigad. He further informed that the other two Revision Applications viz. 195/1022/13 and 195/1023/13 (Sl. No. 2 & 3 of Table above) on the same issue, which are the offshoot of the first Order in Appeal which has been decided by the Revisionary Authority vide Order No. 06/2017/CX(WZ)/ASRA/MUMBAI dated 24.11.2017 and these two Revision Applications are also needed to be decided accordingly.

7. Government has carefully gone through the relevant case records available in case files & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. Since, the issues involved in these two remaining Revision Applications 195/1022/13 and 195/1023/13 (Sl. No. 2 & 3 of the Table at para 5

above) are offshoot of issues in dispute in Revision Application No. 195/1463/12-RA which stands decided vide Revision Order No. 06/2017/CX (WZ)/ASRA/MUMBAI dated 24.11.2017, these two Revision Applications are taken up together and are disposed of by common order.

8. Government observes that the Revision Application No. 195/1463/12 (Sl. No. 1 of the Table supra) filed by the applicant against Order-in-Appeal No. US/453/RGD/2012 dtd.13.07.2012 has already been decided by this authority, vide Order No. 06/2017/ CX(WZ)/ ASRA / MUMBAI dated 24.11.2017 by setting aside the Order-in-Appeal No. US/453/RGD/2012 dtd.13.07.2012 and restoring the Order-in-Original passed by the original/rebate sanctioning authority thus allowing rebate claim of Rs.2,81,699/- to the applicant. Under the aforesaid factual background, Government takes up the remaining two Revision Applications for final decision.

REVISION APPLICATION NO. 195/1022/2013

9. Government observes that a protective demand cum Show Cause Notice issued to the applicant demanding an amount of Rs. 2,81,699/- of erroneously sanctioned rebate claim, along with applicable interest was confirmed by Additional Commissioner, Central Excise Raigad vide Order in Original No. Raigad/ADC/196/SJ/12-13 dated 31.03.2013. The applicant challenged the same before the Commissioner (Appeals) of Central Excise, Mumbai Zone II. The Commissioner (Appeals) rejected applicant's appeal vide Order-in-Appeal No. US/166/RGD/2013 dated 27.06.2013. While rejecting the appeal filed by the applicant the Commissioner (Appeals) in his aforementioned Order observed that

"The department had filed an appeal against the Order in Original No.507/11-12/DC(Rebate) Raigad dated 30.06.2011 which was decided vide Order in Appeal No. US/453/RGD/2012 dtd.13.07.2012. In the said Order it was observed that the appellants had manipulated the corrections, subsequently, in the objectionable documents, to justify their claim for rebate and accordingly the order sanctioning the rebate claim to the extent of Rs.2,81,699/-has to be set aside.. The impugned Order of the Additional Commissioner has been passed on adjudication of the protective demand already issued in the matter following the Order in Appeal No. US/453/RGD/2012 dtd.13.07.2012. Therefore, I don't find any reason to interfere with the Order of Additional Commissioner".

9.1 Government observes that the applicant had filed Revision Application No. 195/1463/2012 against Order in Appeal No. US/453/RGD/2012 dtd.13.07.2012

which has already been decided by this authority vide Order No. 06/2017/CX (WZ) / ASRA/MUMBAI dated 24.11.2017. While allowing the Revision Application filed by the applicant and setting aside Order in Appeal No. US/453/RGD/2012 dtd.13.07.2012, the Revisionary Authority has observed that

“The aforementioned documents submitted by the revision applicant shows that the goods covered in the said three ARE-1 have been genuinely exported”.

9.2 As the Order in Appeal No. US/453/RGD/2012 dtd.13.07.2012 passed by the Commissioner of Central Excise (Appeals)-II, Mumbai is set aside by the Revisionary Authority vide Order No. 06/2017/CX(WZ) /ASRA/MUMBAI dated 24.11.2017, confirmation of protective demand of Rs.2,81,699/- alongwith interest vide Order in Original No. Raigad/ADC/196/SJ/12-13 dated 31.03.2013 and upholding of the same by the Commissioner of Central Excise (Appeals)-II, Mumbai vide Order-In-Appeal No.US/166/RGD/2013 dated 27.06.2013 is legally not sustainable. Accordingly, Government sets aside Order in appeal No. US/166/RGD/2013 dated 27.06.2013 passed by the Commissioner of Central Excise (Appeals)-II, Mumbai arising out of Order in Original No. Raigad/ADC/196/SJ/12-13 dated 31.03.2013 passed by the Additional Commissioner, Central Excise, Raigad. Revision Application No. 195/1022/13 filed by the applicant is thus allowed.

REVISION APPLICATION NO. 195/1023/2013

10. Government from Order in Appeal No. SDK/151/RGD(R)/453/RGD/2012 dated 04.09.2013 observes that the rebate sanctioning authority viz. Deputy Commissioner (Rebate), Central Excise, Raigad had sanctioned Rebate claim filed by the applicant amounting to Rs.8,29,002/- but deducted amount of Rs. 3,72,969/- (i.e. Rs.2,81,699/- + Interest Rs. 91,270/-) being the confirmed demand of erroneously sanctioned rebate claim along with interest.

10.1 Government has already held at para 9.2 supra that Order-In-Appeal No. US/166/RGD/2013 dated 27.06.2013 which has upheld Order in Original Raigad/ADC/196/SJ/12-13 dated 31.03.2013 confirming the demand of Rs. 2,81,699/- alongwith interest passed by Additional Commissioner, Central Excise, Raigad does not legally sustain. As a consequence, further recovery proceedings/appropriation of Government dues initiated vide Order in Original Nos.195/12-13/DC(Rebate)/Raigad

dated 18.04.2013 passed by Deputy Commissioner(Rebate) Raigad and also Order in Appeal No. SDK/151/RGD(R)/2013-14 dated 04.09.2013 upholding the said Order in Original also do not legally sustain.

10.2. Accordingly, Government sets aside Order in Appeal No. SDK/151/RGD(R)/2013-14 dated 04.09.2013 passed by Commissioner (Appeals) of Central Excise Mumbai-III and allows Revision Application No. 195/1023/13-RA filed by the applicant

11. The Revision Applications Nos. 195/1022/13 and 195/1023/13 are allowed.

Shrawan Kumar
26/2/21
(Shrawan Kumar)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

114-115 /2021-CX (WZ) /ASRA/MUMBAI DATED 26.02.2021

To,
M/s. Heni Drugs Pvt. Ltd.
Plot No.1901/1902A,
Phansa Char Rasta, GIDC,
Sarigam, Valsad, Gujarat,396155.

Copy to;

1. The Commissioner of GST & CX , Belapur Commissionerate, 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
2. The Commissioner, of GST & CX(Appeals) Raigad, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
3. The Deputy / Assistant (Maritime) Commissioner of GST & CX , Belapur Commissionerate , CGO Complex, CBD Belapur, Navi Mumbai-400614.
4. Shri R.V.Shetty, Advocate, 101-E, Sterling Court, Next to Maheshwari Nagar, Orkay Mill Road, MIDC, Andheri(E), Mumbai-400 093.
5. Sr. P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.