



**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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

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F.No. 195/416/13-RA/618

Date of Issue: 12/01/2020

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ORDER NO. 118/2020-CX (WZ) /ASRA/MUMBAI DATED 15.01.2020 OF THE OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. Mistair Health & Hygiene Pvt. Ltd.

Respondent: Commissioner, Central Excise, Kolhapur

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Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. P-II/MMD/273/2012 dated 27.11.2012 passed by the Commissioner (Appeals), Central Excise, Pune-II

**ORDER**

This Revision Application has been filed by M/s. Mistair Health & Hygiene Pvt. Ltd., Plot No. 3, MIDC, Shirol, Kolhapur-416 122 (hereinafter referred to as "the Applicant" against the Order-in-Appeal No. P-II/MMD/273/2012 dated 27.11.2012 passed by the Commissioner (Appeals), Central Excise, Pune-II.

2. The case in brief is that the Applicant is engaged in the manufacture of Pharmaceutical products falling under CH 3004 and were availing the facility of Cenvat credit under the Cenvat Credit Rules, 2004. The Applicant had cleared their manufactured goods through Merchant Exporter i.e. M/s Uniword Pharama Pvt Ltd. under the claim for rebate of duty stating that they had no objection for claiming the rebate by the Merchant Exporter. M/s Uniword Pharama Pvt Ltd then filed rebate claim of Rs. 57,634/- of the duty which was debited in the Cenvat account of the Applicant in respect of ARE-1 Nos. 225/MIC/20 dated 12.08.2010, 226/MIC/20 dated 12.08.2010 and 232/MIC/20 dated 18.08.2010. M/s Uniword Pharama Pvt Ltd, Merchant Exporter was granted part amount of claim @ 4.12% amounting to Rs. 23,053/- under Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended, issued under rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944 and for the remaining amount of Rs. 34,581/- the exporter was directed to approach the respective jurisdictional Central Excise authority vide Order-in-Original No. K-III/255-R/2012 (MTC) dated 22.07.2011 issued by the Deputy Commissioner(Rebate), Mumbai-I. Since M/s Uniword Pharama Pvt Ltd, Merchant Exporter was not registered under Central Excise, they gave a declaration stating they have no objection if refund is sanctioned to the manufacturer i.e. Applicant by allowing to take credit in their Cenvat Account. Accordingly, the Applicant then filed refund claim for an amount of Rs. 34,581/- (Rupees Thirty Four Thousand Five Hundred and Eighty One Only) vide their application dated 27.02.2012 received by the department on

06.03.2012. They were issued Show Cause Notice dated 25.05.2012 as to why the refund claim should not be rejected on Time-Bar Element. The Deputy Commissioner, Central Excise, Kolhapur-I Division, Kolhapur vide Order-in-Original No. ADJ/54/KOP-I/2012-13 dated 21.06.2012 rejected the refund claim of Rs. 34,581/- as time barred under Section of the Central Excise Act, 1944. Aggrieved, the Applicant then filed appeal with the the Commissioner (Appeals), Central Excise, Pune-II who vide Order-in-Appeal No. P-II/MMD/273/2012 dated 27.11.2012 rejected their appeal and upheld the Order-in-Original dated 21.06.2012.

3. Aggrieved, the Applicant then filed the current Revision Application of the following grounds:

3.1 . That the said refund claim arose due to two parallel notification viz. 2/2008-CE(NT) dated 01.03.2008 and 4/2006-CE(NT) dated 01.03.2008 which were in existence without overriding effect to each other. The Applicant had opted for the option to claim benefit whichever beneficial to them and paid duty @10.30% for export under claim of rebate. But the rebate sanctioning authority, Maritime Commissioner, Mumbai-I had sanctioned rebate claim to the extent of 4.12% and with directions to claim the remaining claim through the office of jurisdictional authority. They followed the direction given by the rebate sanctioning authority hence cannot be treated as separate or fresh claim

3.2 That the rebate sanctioning Authority's said Order-in-Original have got finality as it has been not challenged by any person. Further, the refund claim submitted was out of this order direction and hence cannot be hit on the ground of limitation.

3.3 That in similar matter refund claimed submitted at various authorities on the same grounds and against the same Order-in-Original have been sanctioned to them. The details are as given below:

- (i) The Dy. Commissioner, Central Excise & Customs, Division Solapur vide OIO No. 02/CEX/2011-12 dated 20.04.2011.
- (ii) The Dy. Commissioner, Central Excise & Customs, Division Vijayawada vide
  - (a) OIO No C.No.V/18/24/2012 dated 30.04.2012
  - (b) OIO No C.No.V/18/25/2012 dated 04.05.2012
  - (c) OIO No C.No.V/18/26/2012 dated 04.05.2012

3.4 That in similar matter, the Revision Authority has decided the matter in favour of M/s Cipla vide GOI No. 1568-1595/2012-CX dated 19.11.2012

3.5 That they prayed the Order-in-Appeal dated 27.11.2012 and Order-in-Original dated 21.06.2012 be set aside and with directions to sanction the refund claims.

4. Applicant vide letter dated 26.08.2019 waived off personal hearing and requested matter be decided as per previous GOI orders i.e.

- (i) Order No. 1568-1595/2012-Cx dated 19.11.2012
- (ii) Order No. 1318-1329/2013-Cx dated 15.10.2013
- (iii) Order No. 248-273/2014-Cx dated 21.05.2014
- (iv) Order No. 59-81/2018-Cx dated 14.11.2018

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the Applicant had cleared their manufactured goods as per Notification No. 02/2008-CE dated 01.03.2008 as amended and the duty @ 10.30% i.e. Rs. 57,634/- was debited in the Cenvat account of the Applicant in respect of three ARE-1s and along with other ARE-1s was exported through Merchant Exporter M/s Uniword Pharama Pvt Ltd. M/s Uniword Pharama Pvt Ltd. subsequently filed the rebate of duty amounting to Rs. 1,80,809/- for the goods cleared from the

various factories and exported through Air Cargo Complex, Sahar, Mumbai. The Deputy Commissioner(Rebate), Mumbai-I vide Order-in-Original No. K-III/255-R/2012 (MTC) dated 22.07.2011 restricted the duty @ 4.12% under Notification No. 4/2006-CE dated 01.03.2006 as amended, sanctioned the duty Rs.72,325/- and for the remaining amount of Rs. 1,08,484/- directed the exporter to approach the respective jurisdictional Central Excise authority. The details of three ARE-1s in respect of which the Revision Application is filed are as given below:

Sl.No	ARE-1 Nos & date	Dt. Of export	Duty paid & rebate claimed by Merchant exporter @10.30%	Maritime D.C. OIO & dt	Amt allowed @4.12 %	Amount claimed by the Applicant @6.18% & date	Current case OIO & date
1	2	3	4	5	6	7	
1	ARE-1 Nos. 225/MIC/20 dated 12.08.2010	19.08.10	22,046	K-III/255-R/2012 (MTC) dated 22.07.2011	8,818	13,228	DC's OIO No. ADJ/54/KOP -I/2012-13 dt 21.06.12 rejected the claim of Rs.34,581/- as time barred
2	226/MIC/20 dated 12.08.2010	19.08.10	15,348		6,139	9,209	
3	232/MIC/20 dated 18.08.2010	22.08.10	20,240		8,096	12,144 dt	
		total	57,634		23,053	34,581 dt 06.3.2012	

7. Government observes that the adjudicating authority has rejected the refund on the ground of time bar aspect as the duty payment was affected in the month of August 2010 and the refund claim was filed on 06.03.2012. Government finds that the refund claim is an outcome of the Deputy Commissioner(Rebate), Mumbai-I vide Order-in-Original No. K-III/255-R/2012 (MTC) dated 22.07.2011 issued under Section 11B of the Central Excise Act, 1944 and within one year of the said order, the Applicant had filed the refund claim on 06.03.2012. Hence the refund claim is not time barred.

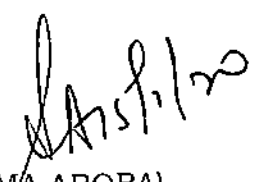
8. Government also places its reliance on the Hon'ble Gujarat High Court order dated 09.01.2016 in - In RE:Garden Silk Mills Ltd Vs UOI [2018 (2) TMI 15 Gujart High Court]

9. Further, the excess paid amount of duty which was not held admissible for being rebated under Rule 18 of CER, 2002, has to be allowed as re-credit back in their Cenvat credit account as the amount collected without any authority of law cannot be retained and the same has to be returned to the Applicant in the manner it was paid.

10. In view of the above, Government sets aside the impugned Order-in-Appeal dated 27.11.2012 and holds that the total excess paid amount of duty of Rs. 34,581 /- (Rupees Thirty Four Thousand and Five Hundred and Eighty One only) (details as per Para 6 above) be re-credited in their Cenvat credit account.

11. Revision Application is allowed in terms of above.

12. So, ordered.

  
(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No 118/2020-CX (WZ) /ASRA/Mumbai DATED 15.01.2020

To,  
M/s-Mistair-Health & Hygiene Pvt. Ltd.,  
MIDC, Shirol,  
Dist: Kolhapur.

Copy to:

1. The Commissioner of CGST, GST Bhavan, Kolhapur - 416 001.
2. The Dy. Commissioner, CGST, Division-II, Kolhapur
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.