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**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. 195/124 (I & II)/WZ/2019/7700 Date of Issue: 10.12.2022

ORDER NO. ¹²⁰⁸⁻ 1209/2022-CX(WZ) /ASRA/MUMBAI DATED 19.12.2022
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.

Applicant : M/s Leben Laboratories Pvt. Limited,
Plot No.L-4, Phase - III,
MIDC, Akola - 444 104.

Respondent : The Pr. Commissioner of GST & Central Excise,
Nagpur - II Commissionerate,
2nd floor, Room No.221, Telanghedi Road Civil Lane,
Nagpur - 440 001.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
NGP/EXCUS/000/APPL/451-452/18-19 dated 31.01.2019
passed by the Commissioner (Appeals), Customs, Central
Excise & GST, Nagpur.

ORDER

The subject Revision Application has been filed by M/s Leben Laboratories Private Limited, Akola (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 31.01.2019 passed by the Commissioner (Appeals), Customs, Central Excise & GST, Nagpur. The said Order-in-Appeal disposed of appeals against two Orders-in-Original both dated 12.09.2018 passed by the Assistant Commissioner, CGST and Central Excise, Division Akola, Nagpur - II Commissionerate, which in turn had rejected rebate claims of the applicant amounting to Rs.3,80,847/-.

2. Brief facts of the case are that the applicant who held Central Excise registration manufactured and exported P & P medicines and thereafter filed rebate claims in respect of the duty paid by them on the same. Show Cause Notices were issued to the applicant seeking to reject the said claims as they had failed to submit original copy of the ARE-1s as stipulated by notification no.19/2004-CE dated 06.09.2004. In response, the applicant submitted that the goods were cleared for export on 22.06.2017, i.e. pre-GST era, however the same could clear the Land Customs Border only in the month August 2017, i.e. in the GST era; and that the Custom Officer at the border refused to endorse, issue or return the Form ARE-1s for the reason that ARE-1s stood dispensed with, in the GST era. The original authority did not accept this explanation provided by the applicant and rejected the rebate claims in question for non-submission of original copy of the ARE-1s. The applicant preferred appeals before the Commissioner (Appeals), who vide the impugned Order-in-Appeal dated 31.01.2019 upheld the Order of the original authority.

3.1 Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds: -

(a) The ARE-1s could not be presented before the original authority on account of situations beyond their control; that the Customs officials at LCS Sonauli refused to endorse the ARE-1s on the ground that they have been dispensed with in the GST era;

(b) They had provided all the possible evidence to both the lower authorities viz. Bill of Export, issued by Land Custom Stations and the related transport proofs to prove that the goods in question were exported; that the Rebate claim ought to be allowed based on the available collateral evidence given the circumstance in which they are in;

(c) The transitional provisions of Section 142(7) of the CGST Act 2017 squarely applies to this situation; that refund arising on account of their rebate applications are allowable in cash in accordance with Section 142(7) of the Act;

3.2 The counsel for the applicant, M/s Ashwin K. Shah & Co LLP, made further submissions on behalf of the applicant vide letter dated 09.11.2022:-

(a) That neither of the lower authorities had disputed the fact that there was an export of goods & that they had paid the requisite excise duty at the time of removal of goods; that the only basis for disallowing the rebate claims was the non-production of the ARE1s;

(b) That substantive benefit of export rebate should not be denied for mere non-fulfillment of procedural aspects; that the non-production of ARE1s was not on account of any lapse on their part but on account of the Custom House that refused to make any endorsements or return the ARE1s;

(c) They submitted the relevant 13 Bills of Export issued by the Land Customs Station;

(d) . That they had provided all the collateral evidence like Bill of export, etc., in the absence of the ARE-1s, so as to discharge the onus of proving that the goods had in fact been exported that the lower authority had ignored all the same;

(e) They relied on the Board's Circular No.1063/2/2018-CX dated 16.02.2018 which indicated that the Department had accepted the decision of the Hon'ble High Courts in the case of M/s Dashion Limited [TIOL 111 HC AHM ST] and M/s National Engineering Industries Limited [TIOL 922 HC RAJ CX]; they also sought to rely on the decision of the Bombay High Court in the case of M/s Madhav Steel vs UOI (Writ Petition No 2706 of 2006 dated 10.08.2010 in support of their case;

In light of the above, the applicant prayed that their rebate claims be allowed.

4. Personal hearing in the matter was held on 09.11.2022. Shri Shrenik Shah, C.A., appeared on behalf of the applicant. He submitted that their claim has been rejected merely on the ground of non-submission of triplicate copy of ARE-1. He further stated that documents submitted establish that duty paid goods have been exported. He gave a written submission on the matter and requested to allow the application. The details of the said written submissions have been mentioned above.

5. Government has carefully gone through the relevant records, the written submissions and also perused the impugned Orders-in-Original and the impugned Order-in-Appeal.

6. Government finds that the issue involved in the present case lies in a narrow compass and is limited to deciding whether the impugned Order-in-Appeal is proper in upholding the rejection of the rebate claims of the applicant for the reason that they failed to file copies of the relevant ARE-1s. Government finds that the primary grounds on which the Commissioner (Appeals) has rejected the rebate claim was that the original copy of the

ARE-1s was an essential requirement under the notification no.19/2004-CE(NT) dated 06.09.2004 and also as per the Manual of Instructions issued by the CBEC in this regard.

7. On examination of the Orders-in-Original passed by the original authority, Government finds that the only ground for rejection of the rebate claims of the applicant was non-submission of the relevant ARE-1s. Government finds that neither the duty paid nature of the goods nor the fact that the goods were exported have been disputed. Government observes that the applicant had cleared the goods in the pre-GST era and the same crossed the land borders in the GST era. Government notes that the applicant find themselves in this predicament as there was a change in procedure prescribed for export in the GST era wherein the requirement for ARE-1s was dispensed with. Government has examined copies of the 13 Bills of Export that have been submitted by the applicant during these proceedings. Government finds that all of them bear the signature of the "Inspector, Land Custom Station, Maharganj", indicating that the goods mentioned therein have crossed the Land border. Government finds that these documents along with the corresponding Invoices indicating the duty payment submitted by the applicant were good enough to establish that the goods cleared for export were the goods that were exported and also its duty paid nature. There is no gainsaying the fact that it is a well settled principle that substantial benefit like rebate should not be denied on procedural grounds, particularly in a situation like the present one, wherein the applicant is at a disadvantage for no fault of theirs. Government finds that the case laws relied upon by the Commissioner (Appeals) will not be applicable here as the facts of the present case are entirely different from the cases decided therein.

8. Government finds that the Hon'ble High Court of Madras in the case of Shree Ambika Sugars Limited vs Jt. Secretary Ministry of Finance, Department of Revenue, New Delhi [2019 (368) ELT 334 (Mad)] had held that

rebate claimed cannot be rejected on the ground of procedural infractions. Government finds the non-submission of the copy of the ARE-1s in this case was due to circumstances beyond the control of the applicant. Government finds that in this case rebate cannot be denied when other documents establishing the export of the goods and its duty paid nature are available on record.

9. In view of the above, Government sets aside the impugned Order-in-Appeal dated 31.01.2019 and holds that the respondent is eligible to the rebate claimed by them. The Revision Application is allowed with consequential relief.


(SHRAWAN KUMAR)

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

ORDER No. ¹²⁰⁸⁻~~1209~~/2022-CX (WZ) /ASRA/Mumbai dated ¹⁹~~10~~.12.2022

To

M/s Leben Laboratories Pvt. Limited,
Plot No.L-4, Phase - III,
MIDC, Akola - 444 104.

Copy to:

1. The Pr. Commissioner of GST & Central Excise, Nagpur - II
Commissionerate, 2nd floor, Room No.221, Telangkhedi Road, Civil
Lane, Nagpur - 440 001.
2. Commissioner (Appeals), Customs, Central Excise & GST, Nagpur,
2nd floor, Room No.221, Telangkhedi Road, Civil Lane,
Nagpur - 440 001.
3. M/s Ashwin K. Shah & Co LLP,
2A(1), Maker Bhavan II, 18, Sir Vithaldas Thackersey Marg,
Lines, Behind Aaykar Bhavan, Mumbai - 400 020.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.