

REGISTERED
SPEED POST



F.No. 195/240/11-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.....13/2/13

ORDER NO. 120 /13-Cx DATED 13.02.2013 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
ACT, 1944 AGAINST THE ORDER-IN-APPEAL No.
M-I/RKS/25/2010 dated 14.12.2010
passed by Commissioner of Central Excise,
(Appeals), Mumbai-I.

APPLICANT : M/s. Torrent Export Ltd.,
Ahemdabad.

RESPONDENT : Commissioner of Central Excise,
Mumbai.

ORDER

This revision application is filed by the M/s. Torrent Export Ltd., Ahemdabad, against the Orders-in-Appeal No. M-I/RKS/25/2010 dated 14.12.2010 passed by Commissioner of Central Excise (Appeal), Mumbai-I, with respect to Orders-in-Original passed by the jurisdictional Assistant Commissioner of Central Excise, Mumbai-I.

2. Briefly stated the facts of the case are that, the applicants are engaged in the business of export as a merchant exporter (of bulk drugs) falling under chapter 29. The applicant had exported the goods from the factory of the manufacturer i.e. M/s Torrent Pharmaceuticals Ltd. The applicants filed the following three (3) rebate claims in respect of duty paid on the goods exported relating to the following AR-4:-

S.NO.	R.C. No./Date	AR-4 No./ Date	Amount in (Rs.)
1	DM-735/25-03-1996	R-30/06-11-1995	88,060/-
2	DM-734/25-03-1996	R-35/21-12-1995	32,700/-
3	5953/18-03-1996	14/21-10-1995	21,510/-
		Total	1,42,270/-

However, since the applicants had not submitted the triplicate copy of ARE-I form to the concerned Range Superintendent for the purpose of verification of payment of duty on the goods cleared for export, a deficiency-memo was issued to the applicants on 25-03-1996. Subsequently, pursuant to issue of Show Cause Notices dated 22-01-2003, 22-01-2003 and 10-06-2003 (in respect of above said three rebate claims), the Deputy Commissioner (Rebate) vide Orders-in-Original No 360/03,361/03, both dated 14.08.2003 and 401/03 dated 18.08.03, rejected the aforesaid 3 rebate claims on grounds of failure to submit the requisite duty payment certificates. The applicants filed an appeal against the aforesaid Orders-in- Original,

with the Commissioner (Appeals). The appeals were decided vide Order-in-Appeal No. SDK(2358-2363)40-45/MI/2004 dated 30-01-2004, by the Commissioner (Appeals) with a direction to the lower authority to allow-the rebate claims after satisfying the duty payment nature of the goods from the concerned Central Excise authorities. Accordingly, the rebate claims were again examined and have been rejected by the Assistant Commissioner (Rebate) Central Excise, Mumbai-I, vide impugned Order-in-Original dated 14-06-2006, on the grounds that since the applicants has failed to acquire and produce duty payment certificate, the refund claims are not admissible.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 In the present matter the fact of export is not disputed. The earlier order of Appellate Commissioner has already granted the rebate by allowing the appeal of the applicant. The only question now is as regards the duty payments. It is submitted that the applicant had filed the rebate applications in time. The applications are for the period Oct 95. Till 2003 the Rebate authority did not take any action and hence the range office is unable to certify the payment details. It is matter of common knowledge that the department would not keep records beyond five years. Therefore even in 2003 the records from department would not be available. It is submitted that there is undue delay on the part of the department and therefore the necessary evidences are not available, again in the office of the department. For such undue delay, the applicant's claim cannot be defeated. The applicant cannot be made to loose the rightful claim because of delay on part of the officers. The department cannot permitted to hold on to the rebate claims on account of their own latches and profit thereby. The delay on part of department

cannot penalize the applicant. It is submitted that the issue is also beyond the notice and hence could not have been decided. The only dispute in the matter is proof of payment of duty on the goods exported. The proof in terms of triplicate copy of AR4 is already on record. However for better verification, certificate from Jurisdiction officer was to be produced. The certificate could not be produced since the matter is old records are not available with excise office.

4.2 It is submitted that when the exports were made, the entire procedures, as required by law was duly fulfilled. The triplicate copy evidencing payment was submitted to Maritime Commissioner's office as can be seen from following:

Sr.	AR 4 no	Particulars.
1	TE/EXP/R-30/95-96 dt. 06.11.1995	<ul style="list-style-type: none"> • SCN confirms receipt of Triplicate copy AR4. (Page 1 of paper book) • Excise invoice signed by Jurisdictional Inspector • Duty payment certified by the Inspector on the reverse page of AR4
2	TE/EXP/R-35/95-96 dt. 21.12.1995	<ul style="list-style-type: none"> • SCN confirms receipt of triplicate AR4. (Page 2 of paper book) • Excise invoice signed by Jurisdictional Inspector. • AR 4 also signed by Jurisdictional Superintendent.
3	TE/EXP/DP-14/95-96 dt.30.10.1995	<ul style="list-style-type: none"> • Submitted to Maritime Commissioner office as per letter dated 5-4-2001. • AR 4 also signed by Jurisdictional Superintendent.

It is also not in dispute that the abnormal delay in processing rebate claims, was not on account of the applicant. It is also not in dispute that no suspicious circumstance exists/ existed to doubt the correctness of the documents produced or rebate claim made. There is no doubtful track record of the applicant, so as to cast, however remote, doubt in the minds of the department about the rebate claims. The

applicant is reputed and regular exporter of medicines and drugs. Having exported the goods by following the correct prescribed procedure, the applicant has discharged its burden of proving duty paid nature of goods. The positive evidences are already filed and on record. At the same time the department has no basis, even remotely doubting the duty paid nature of the goods and therefore, the burden has not shifted back to applicant.

4.3 In these circumstances, the claims made are to be examined keeping in mind section 114 of the Evidence Act, that there is a presumption of existence of fact, which court thinks likely to have happened, regarding being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Thus there is a legal presumption that, at the time of export, the department did, in fact, followed the procedures required to be followed, viz. verifying the documents filed with the range office and submitting the office of Maritime Commissioner. Under Rule 187A, then prevailing applicant was required to send original, duplicate and sixuplicate the application along with the goods and send the triplicate, quadruplicate and quintuplicate copy of the application to the proper officer within 24 hours of the removal of the consignment. The proper officer shall after verifying the particulars of the duty paid or duty payable, send the triplicate copy of the application to the Maritime Collector. This procedure is legally presumed to have been followed. In fact in the first round of litigation this aspect was not disputed also lends support to the presumption. Thus the fact of payment of duty at the time of removal, in the facts and circumstances of the case, is legally presumed. Therefore it becomes clear the presumption of duty paid nature of the goods arises in the same is required to be accepted. The rebate is therefore required to be sanctioned with consequential relief.

5. Personal hearing was scheduled in this case on 11-10-2012 & 20-12-2012. Hearing held on 20-12-2012 was attended by Shri Shridev Vyas, advocate on behalf of the applicant who reiterated the grounds of Revision Application. Shri P.K.Vohra,

Dy. Commissioner attended hearing on behalf of respondent department, who stated that Order-in-Appeal being legal and proper, may be upheld.

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

7. Government observes that the applicant's rebate claim was rejected by the original authority on the ground that the applicant failed to produce any duty payment certificate. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that fundamental requirement for determining admissibility of rebate claim is that duty paid goods are exported out of India. In the instant case, the export of goods has not been disputed. The applicant's rebate was rejected solely on the grounds that they failed to submit duty payment certificate, on the triplicate copy of AR-4 from jurisdictional Superintendent of Central Excise.

The applicant in this grounds of revision application have contended that they had submitted the triplicate copy of AR-4 as is evident from the relevant Show Cause Notices and invoice/AR-4 is signed by Superintendent of Central Excise.

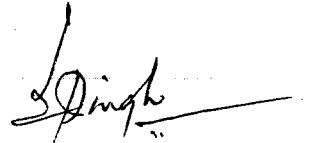
9. Government notes that as per provisions of relevant notification No. 41/94-CE (NT) dt. 22-09-94 & CBEC Excise Manual of supplementary instructions the rebate sanctioning authority is required to compare the duplicate copy of application AR-4, received from officers of Customs with the original copy of AR-4 received from Exporter and with triplicate copy of AR-4 received from the jurisdictional Central Excise Superintendent. The triplicate copy of AR 4 is required to be verified and endorsed by Superintendent Central Excise having jurisdiction over factory of manufacture, to the effect that duty on said exported goods was paid. In this case, applicant has submitted triplicate copy of AR-4 without any such certification about payment of duty from the jurisdictional Superintendent of Central Excise. So, the

submission of copy triplicate of AR-4 itself cannot prove payment of duty in the absence of its certification by Superintendent of Central Excise. The case pertaining to the year 95 was adjudicating twice. The applicant has the responsibility to submit all the requisite documents for claiming the rebate. Even after such a long period of 15 years, he is not able to submit the duty payment certificate on the triplicate AR-4 from Range Superintendent. So, the duty paid nature of the goods cannot be proved.

10. In view of above discussions, it is quite clear that applicant has failed to prove the duty paid nature of exported goods which is a vital condition for sanctioning rebate claim. Therefore, the rebate claim is rightly rejected by lower authorities. Government finds no infirmity in the impugned orders and therefore upholds the same.

11. The revision application is rejected being devoid of merit.


12. So Ordered.


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Torrent Export Ltd.,
(New Torrent Pvt. Ltd.),
Torrent House, Nr. Dinesh Hall,
Ashram Road, Ahemdabad-380009.

ATTESTED

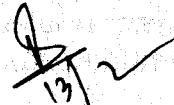

13/2
(भागवती शर्मा/Bhagwati Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त विभाग (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev)
संघीय सरकार/Govt. of India
13 दिल्ली/New Delhi

Order No. 120 /13-CX dated 13.02.2013

Copy to:

1. The Commissioner of Central Excise, Mumbai-I, Commissionerate, 115, Central Excise Building, Maharshi Karve Road, Mumbai-400020.
2. The Commissioner of Central Excise (Appeals) Mumbai Meher Building, Dadiseth Agyari Lane, Chowpatty, Mumbai-400007.
3. The Assistant Commissioner (Rebate) Central Excise, Mumbai Meher Building, Dadiseth Agyari Lane, Chowpatty, Mumbai-400007.
4. Shri. S.J.Vyas, advocate, C-4, Jay Apartment, Nr. Azad Society, Ambawadi, Ahemdabad.
5. ✓ PS to JS(RA)
6. Guard File.
7. Spare Copy,

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)