

**REGISTERED
SPEED POST**



F.No. 195/1275/11 & 195/471-472 & 627/12-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... 13/9/13

Order No. 226-229/13-cx dated 09-09-2013 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 Orders-in-Appeal No. YDB(73)MI/2011 dated 30.08.2011, YDB/12-13/M-I/12 dated 08.02.2012 and YDB/32/M-I/2012 dated 28.03.2012 passed by Commissioner (Appeals), Central Excise, Mumbai Zone-I.
- Applicant : M/s. Watson Pharma Pvt. Ltd., 21-22, Kalpataru Square, Kondivita Lane, Off Andheri Kurla Road, Andheri (East), Mumbai 400 059.
- Respondent : Commissioner of Central Excise, Mumbai-I.

ORDER

These revision applications are filed by the applicant M/s. Watson Pharma Pvt. Ltd., Mumbai against the Orders-in-Appeal passed by Commissioner (Appeals), Central Excise, Mumbai Zone-I, as detailed below:-

S.No.	Revision Application No.	Against O_I_A No./ date
1.	195/1275/11-RA-Cx	YDB(73)MI/2011 dated 30.08.2011
2-5.	195/471-472/12-RA-Cx	YDB/12-13/M-I/12 dated 08.02.2012
6.	195/627/12-RA-Cx	YDB/32/M-I/2012 dated 28.03.2012

2. Brief facts of the case are that the applicant a 100% EOU, have filed rebate claims in respect of Central Excise Duty paid on the excisable goods cleared for export. Show Cause Notices were issued proposing rejection of rebate claims on the ground that the goods manufactured by an 100% EOU were exempted absolutely from payment of duty as per Notification No. 24/2003-CE dt. 13-03-2003 and therefore, in terms of section 5A (1A) of the Central Excise Act, 1944, they had no option to pay duty and thereafter, claim rebate of duty paid. The adjudicating after following due process of law, rejected the said rebate claims.

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

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

4.1 It has been observed in the impugned orders that Notification 24/2003-CE dt. 31-03-2003 provides absolute exemption to the goods manufactured by EOU in terms of section 5A (1) of Central Excise Act, 1944 and therefore EOU do not have option to pay duty on their own. In this regard, it is submitted that we are unable to provide any comment on the said circular as the copy of the same is not available but we reserve our right to make submission against the said circular as an when copy provided to us. Without prejudice to this, it is submitted that impugned notification does not grant exemption absolutely and therefore provision of section

5A (1) of Central Excise Act, 1944 would not apply in this case. Subsection (1A) of section 5A states that where an exemption under subsection (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon have been granted absolutely, the manufacturer of such excisable goods shall not pay the duty. Thus said provision will apply only if exemption has been granted absolutely. The term absolutely is not defined anywhere in the Central Excise Act and the rules made there under, therefore it would be appropriate to look into its dictionary meaning. In the present case, 24/03-Cus does not grant absolute exemption. It grants exemption subject to condition given in the proviso. Therefore, section 5A (1A) would not apply in the present case.

4.2 The impugned show cause notice does not dispute about compliance with the conditions and limitations specified in para 2 of the notification. It is submitted that the respondent has complied with all the conditions of the notification provided in para 2 in as much as:

- a) The goods have been exported directly from the factory.
- b) The goods have been exported within 6 months from the date on which they were cleared from the factory.
- c) The market price of the goods is not less than the amount of rebate claim.
- d) The amount of rebate is not less than Rs. 500/-.
- e) The respondent has paid duty vide debit entry number 319 dt. 30-11-2009 in cenvat register.

4.3 Circular 510/06/2000-Cx. Dt. 03-02-2000 has clarified that rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim. Assessment becomes final unless the same is challenged by the department and the only remedy with the department was to review the assessment under, which they failed to do in this case.

- 4.4 The said amount is denied as rebate, then the same should be allowed to be taken back as cenvat credit in the cenvat credit account of the company. In the case of Sri. Bhagirath Textiles Ltd. 2006 (202) ELT 147 (GOI). Government of India has permitted the respondents to take back the cenvat credit which is related to Central Excise duty paid on CIF value of the impugned goods.
- 4.5 The Tribunal in the case of Capital Impex (P) Ltd. 2010 (261) ELT 844 (Tri. Del.) has allowed the rebate wherein goods exemption from payment of excise duty under Notification No. 10/2003-CE dt. 01-03-2003 r/w/ the section 5 (1A) of the Central Excise Act, 1944.
5. Personal hearing scheduled in this case on 07.08.2013 at Mumbai was attended by Shri Vishal Kulkarni, Sr. Manager (Taxation) and Shri Shyam Maladik, Deputy Manager (Taxation) on behalf of the applicant who reiterated the grounds of Revision Application. Shri D.S. Rupani, Superintendent, MTC Rebate Mumbai-I attended hearing on behalf of the department and requested to uphold the impugned Orders-in-Appeal.
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.
7. Government observes the instant rebate claims were rejected by the original authority on the ground that the goods manufactured and cleared for export by 100% EOU, were exempted absolutely from payment of duty in terms of the Notification No. 24/03-CE dt. 13-03-2003 and therefore in terms of section 5A (1A) of the Central Excise Act, 1944 they had no option to pay duty and claim rebate of duty paid. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.
8. In order to understand the issue it proper to go through relevant legal provision which are extracted below:-

8.1 Notification No. 24/2003-CE dated 31-03-2003 states as follows-

" In exercise of the power conferred by sub-section (1) of section 5A of Central Excise Act, 1944, (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby;

- (a) Exempts all excisable goods produced or manufactured in an export oriented undertaking from whole of duty of excise leviable thereon under section 3 of Central Excise Act, 1944 (1 of 1944) and additional duty of excise leviable thereon under section 3 of additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and addition duty of excise leviable thereon under section 3 of additional Duty of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

" Provided that the exemption contained in this Notification in respect of duty of excise leviable under section 3 of said Control Excise Act shall not apply to such goods if brought to any other place in India; "

8.2 Sub-Section (1A) of Section 5A of the Central Excise Act, 1944 states as follows;-

" (1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely the manufacturer of such excisable goods shall not pay the duty of excise on such goods. "

8.3 Government notes that the Notification No. 24/03-CE dated 31-03-2003 issued under section 5A(1) of Central Excise Act 1944, exempts goods manufactured by 100% EOU and cleared for export from whole of duty unconditionally. Therefore in view of provisions of subsection (1A) of section 5A, the applicant manufacturer cannot pay duty. Applicant has contended that the said notification is conditional as the duty is payable on DTA clearances. Government notes that there is no condition for availing exemption from payment of duty on goods cleared for exports. Normally the 100% EOU has to clear all the goods manufactured by them for exports as per the EOU scheme. Such units can clear the goods in DTA only with prior permission of Development commissioner. Since there is no condition in the notification for availing exemption to goods manufactured by 100% EOU and cleared for export, the provisions of subsection (1A) of section 5A(1) are applicable and no duty was required to be paid on such exported goods. The duty paid without authority of law

can not be treated as duty paid under the provision of Central Excise Law. As such rebate claim is not admissible in terms of rule 18 of Central Excise Rule 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004. Government finds support from the observations of Hon'ble Supreme Court in the case of M/s ITC Ltd. Vs CCE reported as 2004 (171) ELT-433 (SC), and M/s Paper Products Vs CCE reported as 1999 (112) ELT -765 (SC) that the simple and plain meaning of the wordings of statute are to be strictly adhered to. CBEC has also clarified vide letter F.No. 209/26/09-Cx-6 dated 23.4.2010 (para 2) as under:-

"The matter has been examined. Notification No.24/2003-CE dated 13.3.2003 provides absolute exemption to the goods manufactured by EOU. Therefore, in terms of Section 5A(1A) of the Central Excise Act, 1944, EOUs do not have an option to pay duty and thereafter claim rebate of duty paid."

In view of this position, Government holds that the instant rebate claims are rightly held inadmissible under Rule 18 of Central Excise Rules, 2004 read with Notification No. 19/2004-CE(NT) dated 06.09.2004.

8.4 Government in its GOI Revision Order No. 537/12-Cx dt. 04-05-2012 in the case of M/s. GTN Engineering (India) Ltd. 2012 (284) ELT 737 (GOI) and in GOI Revision Order No. 498/11-Cx dt. 19-05-2011 in the case of Johari Digital Health care Ltd. 2012 (281) ELT 156 (GOI), has taken the similar view and ratio of said judgments is squarely applicable to this case.

9. Applicant has contended that in case rebate is not allowed then the said amount may be allowed as re-credit in their cenvat credit account. Government observes that the duty paid in this case without the authority of law cannot be treated as duty paid under the provision of Central Excise Act. As such said paid amount has to be treated as a voluntary deposit made by applicant with the Government. Government cannot retain any amount without any authority of law. So, any excess paid amount has to be returned to the applicant in the manner in which it was paid. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.09.2008 in CWP Nos. 2235 & 3358 of 2007, in the case of M/s Nahar

Industrial Enterprises Ltd. vs. UOI reported as 2009 (235) ELT 22 (P&H) has decided as under :

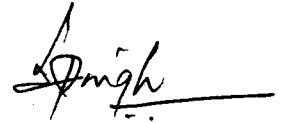
" *Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate. "*

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in cenvat credit is appropriate. As such the excess paid amount/duty is required to be returned to the respondent in the manner in which it was paid by him initially.

9. In view of above discussions, Government holds that in the instant case rebate claim is not admissible to the applicant under rule 18 of Central Excise Rules 2002 r/w Notification No. 19/04-CE (NT) dt. 06-09-2004. However the amount paid on duty without any authority of law being a voluntary deposit may be allowed to be re-credited in their cenvat credit account. The impugned Order-in-Appeal is modified to the extent.

10. The revision applications are thus disposed off in terms of above.

11. So, ordered.

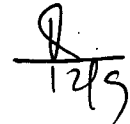


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Watson Pharma Pvt. Ltd.,
21-22, Kalpataru Square,
Kondivita Lane, Off Andheri Kurla Road,
Andheri (East), Mumbai 400 059.

ATTESTED

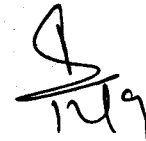


(भगवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India

Order No. 1226-1229/13-Cx dated 09-09-2013

Copy to:

1. The Commissioner of Central Excise, Mumbai-I, 115, New Central Excise Building, M.K. Road, Opp. Churchgate Station, Mumbai 400 020.
2. The Commissioner (Appeals), Central Excise, Mumbai Zone-I, Meher Building, Bombay Garage, Dadishet Lane, Chowpatty, Mumbai - 400 007.
3. Deputy Commissioner, Central Excise, Division-K-II, Rebate, Mumbai-I,
4. Office of the Maritime Commissioner of Central Excise, Mumbai 2nd Floor, MSEB Building, labour Camp, Dharavi, Mumbai 400 019.
5. PS to JS (RA)
6. Guard File.
7. Spare Copy



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)