

REGISTERED
SPEED POST



F.No. 195/746/11-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....27/9/13

Order No. 1285 /13-cx dated 26-09-2013 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 Order-in-Appeal No.
320/2011/Ahd-II/CE/PKJ/Comm (A)/Ahd. dt. 06-09-2011
passed by Commissioner of Customs and Central
Excise, (Appeals), Ahmadabad.

Applicant : M/s. Intas Pharmaceuticals Ltd.,
Plot No. 457 & 458, Village Matoda,
Taluka Sanand, Distt-Ahmedabad.

Respondent : The Commissioner of Central Excise,
Commissionerate, Customs House,
Navrangpura, Ahmadabad-380009.

ORDER

This revision application is filed by the applicant M/s. Intas Pharmaceuticals Ltd., Ahmedabad. against the Order-in-Appeal No. 320/2011/Ahd-II/CE/PKJ/Comm (A)/Ahd. dt. 06-09-2011 passed by Commissioner (Appeals) of Central Excise, Ahmadabad-II with respect to Order-in Original passed by Assistant Commissioner of Central Excise, Ahmadabad-II.

2. Brief facts of the case are that the applicants have exported finished goods and filed rebate claims of Rs. 1,76,143/- on inputs , which have gone into production of export goods, under Rule 18 of Central Excise Rules, 2002 r/w Notification No. 21/04-C.E (NT) dt. 06-09-2004. The original authority sanctioned part rebate claim to the extent on Rs. 1,60,291/- on the ground that actual quantity of inputs mentioned in label of final export products i.e. medicament is to be taken into consideration. He partially rejected rebate claims amounting to Rs. 15852/-.

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 The authorities, below have canvassed that the rebate of Central Excise Duty paid on inputs is to be allowed under Rule 18 of the Central Excise Rules, 2002, read with Not. No. 21/2004-CE (NT) dt. 06-09-2004, only to the extent of quantity of inputs, specified on the labels of the Medicaments and therefore, any excess consumption of inputs, said to have been used for production of export goods, is not eligible for rebate. The applicants claim that rebate of Central Excise Duty paid on inputs which had gone in production of export goods, on the basis of actual Ratio of inputs to outputs and this is the best system of claiming and sanctioning rebate instead of going for any other system of selecting SION or reading the contents of the inputs, on the labels of the Medicaments.

4.2 The lower authorities, below have presumed that in manufacturing process, there should not be any loss of any inputs, which loss is natural to the manufacturing process. It is always required to be recorded that on the labels of the medicaments the actual contents of the Drugs, are to be specified as per the Drugs law but this should not mean that when the said medicament was produced, exactly the same quantity of inputs, as specified on the label of the said medicament were used. It is never possible to produce a medicament, containing various ingredients, as specified on the label of a medicament by starting with exactly the same quantities of inputs, as specified on the label. The process gain or loss, is a natural phenomenon to a particular Manufacturing Process and Technology.

4.3 The provisions of rule 18 of the Central Excise Rules, 2002 as well as the provisions of Not. No. 21/2004-CE (NT) dt. 06-09-2004 are extremely clear and they say that any inputs which are used in production of export goods, would be eligible for rebate of Central Excise Duty, paid thereon. "Any Inputs or Materials used", contained in the aforestated provision, means any inputs or Materials, issued honestly by a Manufacturer, for production of a particular export consignment.

4.4 The authorities, below have not made any allegation that the actual ratio provided by the applicants, is fictitious or it involves mis-use of rebate scheme. In the premises as per the actual ratio of inputs to outputs, presented by the applicants, rebate claim should be given and therefore, the rebate claim, which has been denied, is required to be sanctioned in favour of the applicants.

4.5 Even the Hon'ble Gujrat High Court has maintained that loss to the tune of 4% cannot be questioned, for demanding duty. In this connection, Judgment reported as 2010-TIOL-71HCAHM-CX C.C.E. Vs. CMC (INDIA), is relevant

5. Personal hearing scheduled in this case on 08-08-2013 at Mumbai was attended by Shri K.D. Dholakia, DGM (Indirect Taxes) on behalf of the applicant who reiterated the grounds of Revision Application.

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 exported goods i.e medicament and filed rebate claims of Rs. 1,76,143/- of duty paid on inputs which are used in manufacturing of final export goods in terms of Rule 18 of the central Excise Rules, 2002 r/w Not. No. 21/04-C.E. (NT) dt. 06-09-2004. Original authority restricted rebate to Rs. 1,60,291/- i.e. duty involved on actual quantity of inputs mentioned in label of final export product i.e medicament and rejected remaining rebate claim amounting to Rs. 15,852/- Applicant filed appeal against said partial rejection, which was rejected by Commissioner (Appeals). Now the applicant has filed this revision application on grounds.

8. In order to appreciate the issue involved, the relevant provision of said Notification No. 21/04 may be perused which are extracted reads as under:-

"(1) Filing of declaration. - *The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.*

(2) Verification of Input-output ratio. - *The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.*

(3) Procurement of material. - *The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002:*

Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers."

8.1 The above said notification stipulates filing of declaration with Jurisdictional Assistant Commissioner/Dy. Commissioner of central Excise mentioning among other things quantity or proportion in which materials are actually used in

final export products. As such, the actual consumption of inputs can be ascertained and verified by the Jurisdictional Assistant Commissioner/Dy. Commissioner.

8.2 The original authority in para (1) of 'Discussion and findings' part of impugned Order-in-Original observed as under:-

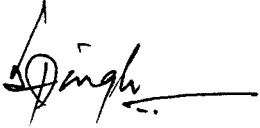
" I have verified the rebate claims with all relevant documents submitted by the assessee along with the claim applications. It is found that the product namely Oxaliplatin inj SMG/ML, Irinotecan HCL Inj 20 MG/ML100 MG is exempted from duty by virtue of No. No. 4/2006. They have used duty paid inputs viz. Oxaliplatin PH. EUR (E), Irinotecan HCL Trihydrate and claimed the rebate of the duty paid on said inputs used in the manufacture of the said final product exported under the said ARE-2, according to the provisions of No. No. 21/2004-CE (NT) dt. 06-09-2004 vide this office letter F.No. V/27-3/per/09-10 dt. 05-06-2009."

From above observation of original authority, it becomes clear that applicant was permitted to operate under Notification No. 21/04-CE(NT). It means that department had approved the input-out put ratio in the instant case. The applicant has not raised any objection as to whether rebate claim sanctioned is not in conformity with the approved input-out-put norms. Government notes that duty paid on actual quantity of inputs used in the manufacture of exported goods is to be rebated. The duty paid on input not used in manufacture of export goods can not be rebated under rule 18 of Central Excise Rule 2002. The case law cited by applicant does not relate to input rebate claim and as such can not be applied to this case.

9. In view of above discussions, Government finds no infirmity in the impugned order-in-appeal and upholds the same.

10. Revision application is thus rejected being devoid of merits.

11. So, ordered.


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Intas Pharmaceuticals Ltd.,
Plot No. 457 & 458, Village Matoda,
Taluka Sanand, Distt-Ahmedabad.

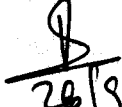
Attested

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली/NEW Delhi

Order No. 1285/13-Cx dated 26-09-2013

Copy to:

1. The Commissioner of Central Excise, Commissionerate, Customs House, Navrangpura, Ahmadabad-380009.
2. The Commissioner (Appeals), Central Excise, Ahmadabad, Central Excise Bhawan, Opp. Polytechnic, Ambawadi, Ahmedabad-380015.
3. The Assistant Commissioner of Central Excise, Division: IV, Vidhyalaya chambers, Paldi Char Rasta, Ahmedabad-380006.
4. Shri K.D. Dholakia, DGM (Ind. Tax.), C/o. M/s. Intas Pharmaceuticals Ltd., Plot No. 457 & 458, Village Matoda, Taluka Sananc. Distt-Ahmedabad.
- ✓ 5. PS to JS (RA)
6. Guard File.
7. Spare Copy


(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)