

REGISTERED SPEED POST



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.195/180A-180B/14-RA

332

Date of Issue:

28.01.2022

ORDER NO. 129 - 130 /2022-CX (WZ)/ASRA/MUMBAI DATED 24.1.2022 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.

Subject : - Revision Application filed under Section 35EE of the Central  
Excise Act, 1944 against Order-in-Appeal No. PD/32-  
33/MI/2014 dated 17.02.2014 passed by the Commissioner of  
Central Excise (Appeals) - Mumbai-I and D.C.C.Ex., Mumbai-I.

Applicant : - M/s Uniworld Pharma Pvt. Ltd.

Respondent: - Commissioner of Central Excise (Appeals), Mumbai-I, and  
D.C.C.Ex., Mumbai-I.

**ORDER**

This Revision application is filed by M/s. Uniworld Pharma Pvt. Ltd., situated at 12, Gunbow Street, Fort, Mumbai 400001 (hereinafter referred to as 'applicant') against the Order in Appeal No. PD/32-33/MI/2014 dated 17.02.2014, passed by the Commissioner of Central Excise (Appeals), Mumbai -I.

2. Brief facts of the case are that the applicants are merchant exporter of excisable goods and had filed five Rebate claims amounting to Rs.1,72,708/- (Rs.1,57,500/-+ Rs.15,008/-) in respect of goods cleared for export on payment of duty, from the original manufacturers, under Notification No.19/2004 C. Ex. (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944. The applicant had filed five Rebate claims on the dates as shown below before the original authority claiming rebate of the duty paid on the exported goods as shown in the five ARE1s listed in the table below. But as the rebate claims were not filed properly complying to the checklist as required for processing the claims, the rebate claims were returned under the cover of Defect Memos for: (i) non submission of triplicate copy in respect of the first three cases shown below (ii) in respect of the fourth case it was returned since the quantity did not tally with the invoice and the shipping bill; (iii) in respect of the fifth case there was no signature of Custom Officer on the shipping bill.

TABLE

| ARE-1 No/Date  | Date of Shipment | Rebate claim | Rebate claimed originally filed without relevant documents on | Defect Memo issued on | Rebate claim resubmitted on | Order in Original No and date |
|----------------|------------------|--------------|---|-----------------------|-----------------------------|-------------------------------|
| 245/17.05.2010 | 01.08.2010       | 63233/-      | 20.07.2011  | 03.10.2011            | 04.07.2013                  | KII/786-R/2013(MTC)           |
| 263/19.05.2010 | 01.08.2010       | 31055/-      | 20.07.2011  | 03.10.2011            | 04.07.2013                  | KII/786-R/2013(MTC)           |
| 234/14.05.2010 | 01.08.2010       | 63262/-      | 08.11.2011  | 01.02.2012            | 04.07.2013                  | KII/786-R/2013(MTC)           |
| 150/30.09.2010 | 27.10.2010       | 6258/-       | 08.09.2011  | 01.12.2011            | 10.07.2013                  | KII/790-R/2013(MTC)           |
| 157/11.10.2010 | 27.10.2010       | 8750/-       | 08.09.2011  | 01.12.2011            | 10.07.2013                  | KII/790-R/2013(MTC)           |

3. The applicant resubmitted these claims, beyond the one year period of limitation. Hence SCN was issued to the applicant asking them as to why the

rebate claim should not be rejected being time barred in terms of Section 11B of the Central Excise Act, 1944. The Adjudicating Authority vide his Order in Original Nos K-II/786-R/2013 (MTC) and KII/790-R/2013 (MTC) dated 30.09.2013 rejected the rebate claims filed by the applicant on the grounds of time bar by considering the date on which the claim was filed with relevant documents is over one year from the date of export.

4. Being aggrieved by the aforesaid Orders in Original, the applicant filed appeal before Commissioner (Appeals) who vide Orders in Appeal PD/32-33/MI/2014 dated 17.02.2014 (impugned Order) dismissed the appeals filed by the applicant and upheld the Orders in Original

5. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:-

5.01) The applicant submitted that the word "resubmission" is nowhere defined under the provision of Section 11B of Central Excise Act, 1944. The word "resubmission" included "submission" and they have correctly submitted their rebate claim as per the provision of Section 11B of Central Excise Act, 1944. Rebate claim resubmitted after removing deficiency pointed out by the Rebate sanctioning authority cannot alter its status/ nature/ originality, it remains the same. Therefore after compliance of any discrepancy the said rebate claim should not come again under the purviews of the provisions of section 11B of central Excise Act, 1944. Therefore the proceeding initiated vide impugned Order in Original is to be dropped.

5.02) The applicant submitted that they have correctly followed the procedure and conditions laid down under the Notification No. 19/2004-CE (NT) dt. 6.9.2004 issued under Rule 18 of central excise Rule 2002, and not contravened the provisions of said Act. In respect to para 9 of Order in Originals the learned Deputy Commissioner have mentioned Chapter 8 Part IV of CBEC's Manual of supplementary instruction relating to "Time limit for disposal of claim". The procedural instruction given under chapter 8 of manual are of guiding in nature and are silent on resubmission issue, rather there is no such instruction about returning of rebate claim to the claimant along with deficiency memo, therefore proceeding initiated vide impugned show cause notice on this ground is bad in law. Further, if any provision / procedure given under supplementary instruction is of contradictory to the provision of section of Act then the provision of section will prevail over, as in the present case section 11B of Central excise Act, 1944 does not direct/ instruct on resubmission issue.

5.03) Further, Taxing statutes are strict in sense and shall require to be read literally. As per Literal Rule of Interpretation of statute, the provision of section 11B of Central Excise Act, 1944 only states about the limitation period for submission of rebate claim and not about the resubmission of rebate claim.

5.04) The applicant referred to the GOI Order No. 938/13 Cx dated 16/07/2013 2005 in the matter Commissioner of Central Excise, Mumbai-1 vs. M/s. Deprint Export, Surat and vide the above judgment it has been decided that "Rebate limitation -Relevant date-time to be computed from the date on which refund/rebate claim was initially filled and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944. He also referred to, Commissioner (Appeals), Mumbai Zone-I's Order In Appeal No BPS/95 to 96/M1/2013 Dt.23.09.2013 which was decided in their favour and Order In-Appeal No. BPS/89 to 94/M1/2013 Dt.23.09.2013 in the case of M/s Cipla Ltd.

5.05) In view of the above, the applicant requested to set aside the impugned Orders-In-Appeal dated 17.02.2014 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I and The Orders -in -Original passed by the Deputy Commissioner.

6. Personal hearing in this case was scheduled on 28.06.2018, 25.02.2020 or 03.03.2020 and 11.02.2021 or 25.02.2021. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records

7. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Orders in Original and Orders-in-appeal.

8. Government observes that the respondent had filed five separate rebate claims, claiming rebate of Central Excise duty paid on exported goods in terms of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE dated 06.09.2004. Subsequently, all the five rebate claims were returned vide deficiency memos. The applicant resubmitted the said rebate claims and since the date of re-submission of these claims was beyond the stipulated period of one year, the original authority rejected these five rebate claims as time barred.

9. Government observes that Hon'ble High Court of Gujarat in a similar situation while allowing Special Civil Application filed by United Phosphorus Ltd., vide its judgement dated 06.05.2003 [2005 (184) E.L.T. 240 (Guj.)] held that the The applicant resubmitted these claims, beyond the one year period of limitation. Hence SCN was issued to the applicant asking them as to why the rebate claim should not be rejected being time barred in terms of Section 11B of the Central Excise Act, 1944. The Adjudicating Authority vide his Order in Original Nos K-II/786-R/2013 (MTC) and KII/790-R/2013 (MTC) dated 30.09.2013 rejected the rebate claims filed by the applicant on the gsame. He is obliged to pass an order on the merits of such application. When the refund sanctioning authority who received the original refund claims has not rejected these refund claims on merits and has merely returned the same, further filing of the refund claims ought to be considered only as resubmission and not as fresh claims.

10. Government further observes that similar stand has been taken by Hon'ble High Courts, GOI and Tribunals vide following judgements/orders, holding that time-limit is to be computed from the date on which refund/rebate claim was originally filed; that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held as time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

- (i) CCE, Delhi-I v. Aryan Export & Ind. - 2005 (192) E.L.T. 89 (DEL.),
- (ii) A Tosh & Sons Pvt. Ltd. v. ACCE - 1992 (60) E.L.T. 220 (Cal.)
- (iii) CCE, Bolpur v. Bhandiguri Tea Estate - 2001 (134) E.L.T. 116 (T. Kol.)
- (iv) Good Year India Ltd. v. CCE, Delhi - 2002 (150) E.L.T. 331 (T.-Del.)
- (v) CCE, Pune-I v. Motherson Sumi Systems Ltd. - 2009 (247) E.L.T., 541 (T. Mum.) = 2011 (22) S.T.R. 496 (Tribunal).
- (vi) In Re: IOC Ltd. 2007 (220) E.L.T. 609 (GOI).
- (vii) In Re: Polydrug Laboratories (P) Ltd., Mumbai (Order No.1256/2013- CX dated 13.09.2013.
- (viii) IN RE : TATA BLUESCOPE STEEL LTD 2018 (364) E.L.T. 1193 (G.O.I.)
- (ix) Apar Industries (Polymer Division) Vs Union of India (2016 (333) E.L.T. 246(Guj.))

11. Government also observes that the decision of High Court of Gujarat in Apar Industries (Polymer Division) Vs Union of India (2016 (333) E.L.T. 246 (Guj.)) [Sl.

No. (ix)] supra has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

12. Relying on various case laws discussed at paras 9 to 11 supra, Government holds that the time limitation in the instant cases is to be computed from the initial date of filing of such rebate applications. Since the said rebate applications are initially filed within stipulated time limit by the applicant, the same are to be treated as filed in time. However, these applications are required to be decided on merits in accordance with law on verification of documents/records.

13. In view of above discussion, Government modifies and sets aside the Order-In-Appeal No. PD/32-33/MI/2014 dated 17.02.2014 passed by the Commissioner of Central Excise (Appeals-I), and remands the case back to original authority to decide all the five rebate claims afresh in view of above observations and for taking appropriate decision on these rebate claims in accordance with law after giving adequate opportunity to the applicant. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. Revision application is disposed off on the above terms.

*Shrawan*  
*24/01/22*  
(SHRAWAN KUMAR)  
Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

129-130  
ORDER No. /2022-CX(WZ) /ASRA/Mumbai Dated 24.01.2022

To,

M/s Uni World Pharma,  
12, Gunbow Street,  
Fort, Mumbai-400 001

Copy to:

1. The Commissioner of CGST, Mumbai South Commissionerate, Air India Building, Nariman Point, Mumbai 400021.
2. The Commissioner of CGST, Mumbai (Appeals-I), 9<sup>th</sup> Floor, Piramai Chambers, Jijibhoy Lane, Lalbaug, Parel, 400 012.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Notice Board.