

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. 195/534/13-RA

Date of Issue: 7/11/19

ORDER NO. 130/2019-CX (WZ) /ASRA/Mumbai DATED 15.10.2019
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Sun Pharmaceuticals Industries Ltd.
ACME Plaza, Andheri-Kurla Road,
Andheri (E)- Mumbai - 400 059.

Respondent : Commissioner of Central Excise, Mumbai III.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
No. BC/497/RGD(R)/2012-13 dated 31.12.2012 passed
by the Commissioner of Central Excise (Appeals)
Mumbai-III.

ORDER

This Revision Application has been filed by M/s Sun Pharmaceuticals Industries Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/497/RGD(R)/2012-13 dated 31.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant had filed rebate claim of Rs. 1,09,89,288/- under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004 -CE(NT) dated 06.09.2004 for the duty paid on goods exported. The rebate claims totally amounting to Rs. 1,07,75,373/- proportionate to FOB value were sanctioned by the rebate sanctioning officer vide Order in Original No. 2481/11-12/DC(Rebate)/Raigad dated 30.03.2012.

3. The Department filed an appeal against the said order in original in respect of one rebate claim out of total 20 rebate claims on the following grounds :

3.1 In the ARE-1, under the head 'Particulars of the manufacturer of goods and his central excise registration no.', the name of "M/s Sun Pharmaceutical Industries Ltd. 100% EOU" was mentioned.

3.2 The invoice issued under Rule 11 of the Central Excise Rules, 2002 is signed by the authorized signatory of M/s Sun Pharmaceutical Industries Ltd. 100% EOU.

3.3 The Customs Invoice also shows name of the manufacturer as "M/s Sun Pharmaceutical Industries Ltd. 100% EOU".

3.4 The department alleged that the goods have been manufactured by a 100% EOU and cleared for export on payment of duty by 100% EOU and the rebate is claimed by M/s Sun Pharmaceutical Industries Ltd.

4. The Commissioner (Appeals), Mumbai III vide order in appeals No. 2481/11-12/DC(Rebate)/Raigad dated 20.11.2012 allowed the appeal filed by the department and directed the respondent to pay back the impugned amount alongwith due rate of interest.

5. Aggrieved by the said order in appeal, the applicant filed instant revision application on the following grounds:

5.1 Rebate claim rejected on the grounds other than raised in the order in original.

5.2 The raw material required for manufacture of export products were procured by the DTA unit; the said material was sent for job work to the 100% EOU for converting it into finished goods; the permission for the same was granted by the jurisdictional Deputy Commissioner; the applicant has followed the procedure laid down under FTP and Circulars in this regard; the ARE-1 has been signed by both DTA and EOU; the duty has been paid by DTA Unit. These facts were not considered by the Commissioner while passing the impugned order.

6. A Personal hearing held in this Revision Application was attended by Shri Kiran Sawale, Advocate on behalf the applicant on 27.08.2019. He reiterated the submission filed on the date of personal hearing and pleaded that in view of the same, the Revision Application may be allowed and Order in Appeal be set aside.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the raw materials required for manufacture of the exported goods were procured by the applicant in the year 2009. The unit of applicant was partially converted into 100% EOU on 01.01.2010 and the facility to manufacture of said export goods was shifted to EOU. As such the applicant requested the department to grant them permission to get the finished goods manufactured at EOU on job work basis and to export the same from their premises. The Assistant Commissioner granted permission to DTA Unit to sub-contract production on 19.02.2010. Accordingly, the DTA unit sent raw material to EOU for manufacturing of the final product vide job work challan No. 095 dated 23.02.2010. The export was effected from the EOU on 19.05.2010.

9. The Government has perused the export documents available on record and the observations drawn by the Appellate Authority in the impugned order in appeal. Some of the discrepancies noticed in the observations made by the Appellate Authority in impugned Order are as under:

9.1 The Appellate Authority at para 8 of page 3 of the order mentioned that :

“the issue of manufacture of goods by EOU on job work basis has started when they sought permission to manufacture Pentoxifyline-on job work basis. The said permission was granted subject to few conditions. One of the conditions is that the finished goods shall be cleared from EOU and another condition is that the DTA shall not take credit of the inputs. The respondent, i.e. EOU has manufactured and exported the goods but duty was paid by the DTA unit.”

Whereas, in this regard, the Government observes that the goods exported are actually 'Metoprolol Tartrate USP' and not 'Pentoxifyline' as mentioned by appellate authority in order.

9.2 It is also observed that the permission for export was granted for product 'Metoprolol Tartrate USP' vide letter dated 19.02.2002 and not vide letter dated 26.04.2010 as mentioned in the para 14 of the order.

9.3 Further, the permission letter dated 19.02.2002 does not contain any condition that restricts the applicant from availing Cenvat Credit on the raw materials.

9.4 It is also observed that the goods were exported from the factory premises of M/s Sun Pharmaceutical Industries Ltd. EOU-I as per the permission letter. The goods were cleared under ARE-1 No. 070/10-11 dated 19.05.2010 and Ex. Invoice No. 070 dated 19.05.2010 issued by the DTA unit which can be seen from the registration no. i.e. AADCS3124KXM005 appearing on both the documents. It is also observed

that the documents have been signed by the authorized signatory of both the units.

The above discrepancies are serious in nature and imply that the order in appeal was passed without proper in appreciation of facts. The Order in appeal is therefore not legal and just and needs to be set aside.

10. In view of inconsistency in the observations vis-à-vis facts on records as highlighted above, the Government sets aside the impugned Order in Appeal and remands it back to the Commissioner (Appeals) for fresh decision after careful consideration of facts.

11. The appeal is disposed of in the above terms.

12. So, ordered.


(SEEMA ARORA)

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

ORDER No. 130/2019-CX (WZ) /ASRA/Mumbai DATED 15-10-2019

To,
M/s Sun Pharmaceutical Industries Ltd.
ACME Plaza, Andheri-Kurla Road,
Andheri (East), Mumbai - 400 059.

Copy to:

1. The Commissioner of CGST & CX, Belapur Commissionerate, 1st floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
2. The Commissioner of CGST (Appeals), Raigad, 5th Floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai - 400 614.
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX, Raigad.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.