



REGISTERED
SPEED POST

F.No. 195/695-696/12-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 5/1/18

ORDER NO. 14-15/2018.CX dated 04-01-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, 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 the Order-in-Appeal No. 91-92/CE/CHD-II(JK)/2012 dated 02.04.2012 passed by the Commissioner of Central Excise & Customs, Jammu.

APPLICANT : M/s Ind Swift Laboratories Ltd.

RESPONDENT : Commissioner of Central Excise & Customs, Jammu

ORDER

The Revision Applications No. 195/695-696/12-RA have been filed by M/s Ind Swift Laboratories Ltd., Industrial growth centre, Samta, Jammu (herein after referred to as the applicant) against Order in Appeal No. 91-92/CE/CHD-11(JU)/2012 dated 02.04.2012, issued by the Commissioner(Appeals), Chandigarh.

2. The Brief facts leading to the filing of the Revision Applications are that the applicant filed rebate claims for Rs. 2,20,967/- and Rs. 8,75,820/- which were rejected by the original adjudicating authority for the following reasons:

- i) The applicant failed to submit BRCs within stipulated period of six months in terms of Board's Circular 354/70/97-CX dated 13.11.1997 for some claims.
- ii) Proper documents shipping Bills and ARE-1s were not submitted for some claims.
- iii) Goods were exported after issuing notification No. 37/2007 CE(NT) dated 17.09.2007 as per which the rebate of duty cannot be granted to a unit availing benefit of area based exemption notification No. 56/2002.
- iv) Freight and insurance do not form part of the value under section 4 of Central Excise Act 1944.

3. Being aggrieved by the above order, the applicant preferred an appeal with Commissioner (Appeals) who has also rejected their claims and now the applicant has filed the Revision Applications mainly on the following grounds.

- i) Bank realisation certificate is not required for rebate under instructions given in chapter 8 of CBEC Excise Manual and notification No. 19/2004.
- ii) Proper documents were submitted in all the cases but misplaced in the Division office in some cases.
- iii) Freight is integral part of value of goods in case of export of goods.

iv) Date of export should be taken as the date of clearance of the exported goods from the factory.

4. Personal hearing was held on 11.12.2017 which was attended by Sh. G. Gurumurthy, Advocate, who reiterated the above grounds of revision. However, when he was asked to give the detail of amount of rebate of duty rejected for above stated each reason he expressed his inability.

5. On examination of orders of the Deputy Commissioner, the order of the Commissioner (Appeals) and the two Revision Applications, the Government finds that the first Revision Application has been filed to make out a case that rebate of duty of Rs.2,20,967/- rejected against ARE-1 Nos. 51 dated 13.07.2007, 55 dated 27.07.2007, 56 dated 27.7.2007 and ARE No. 67 dated 9.8.2007 by the Deputy Commissioner as well as Commissioner (Appeals) is erroneous and the same is admissible to them. From detailed reading of the Deputy Commissioner's order it is noticed that out of rebate of duty of Rs. 2,20,967/-, rebate of duty of Rs. 2,12,980/- has been rejected due to non-submission of BRCs and Rs. 7,987/- has been rejected for the reason that the freight amount incurred from factory gate to port of export is not includible in the transaction value and no Excise duty was payable accordingly. However, from Commissioner (Appeals)'s order it is observed that rebate claim in respect of ARE-1 No. 56 dated 27.7.2007 involving rebate of duty of Rs. 5491/- has already been granted and thus the Revision Application is limited to the issue of admissibility of rebate of duty in respect of remaining ARE-1s 51, 55 & 67/2007 only.

6. As discussed above, the rebate of duty in respect of above mentioned three ARE-1s has been rejected mainly on the ground that the BRCs have not been submitted as proof of export. The applicant has contended that BRC is not a specified document for grant of rebate of duty either under Rule 18 of CER or Notification No. 19/2004 CE(NT) and even chapter 8 of the CBEC's Excise manual does not specify BRC as a specified document for claiming rebate of duty. The Government finds force in this argument of the applicant and it agrees that rebate of duty cannot be denied merely on the basis of non-submission of BRC when there are other documents to establish export of goods and when condition of submission of BRC is not specified either in Rule 18 or Notification 19/2004. The rejection of rebate

of Rs. 7987/- on account of payment of duty on freight and insurance amount is also not found legally maintainable as for export of goods the place of removal is undoubtedly the port of export /airport and, therefore, the freight and insurance is integral part of the exported goods. Further rebate of duty is allowed under Rule 18 and notification 19/2004 for the whole of duty paid by the exporter which may be inclusive of duty on freight and insurance also. Accordingly, the first Revision Application is found legally sustainable and rebate of duty of Rs. 220967/- is found admissible to the applicant.

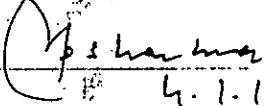
7. Coming to the second Revision Application, it is noticed that the applicant has challenged the rejection of rebate of duty of Rs. 8,75,820/- for the reasons as mentioned above that duty is paid on CIF, non-submission of BRCs and for export of goods after issuing of notification No. 37/2007. Out of rebate of duty of Rs. 8,75,820/-, it is observed from the Deputy Commissioner's order that rebate of Rs. 13316/- is rejected on the ground that the destination of the export of goods has been given differently in ARE-1 and shipping bill and the applicant failed to provide any cogent explanation for the aforesaid vital discrepancy. Further as per order in original (para 8), the applicant had requested the Deputy Commissioner to ignore the rebate of duty of the said amount against ARE-1 No. 35 dated 30.06.2007 and requested to sanction rebate of duty in respect of other ARE-1s. Accordingly, the Deputy Commissioner rejected the rebate of duty against ARE-1 No. 35 on request of the applicant. However, on their appeal, the Commissioner (Appeals) in his order has already allowed rebate of duty of Rs. 13,316/- and, therefore, the applicant does not have any basis for agitating the issue regarding admissibility of rebate of duty of Rs. 13,316/- in respect of ARE-1 35 which has been included in the total amount of Rs. 8,75,820/-. After deducting the above amount of Rs. 13,316/- out of Rs. 8,75,820/-, the total disputed rebate of duty amount is Rs. 862504/- out of which it is observed that only rebate Rs. 24,341/- is rejected due to non-submission of BRCs by the applicant as per order in original and remaining amount Rs. 8,38,163/- is rejected on the grounds that the export of the goods is effected after 17.9.2007 i.e. after issuing notification No. 37/2007 -CE(NT) dated 17.9.2007 as per which the rebate of duty is not admissible to the manufacturer exporter availing area based

exemption specified therein. As regards rejection of rebate of duty of Rs. 24,341/- due to non-submission of BRCs by the applicant, the Government is of the view that the rejection is not maintainable for the reasons already discussed above and accordingly the rebate of duty of this amount is admissible to the applicant. However, the Government fully agrees with the view of the Deputy Commissioner and the Commissioner (Appeals) that the rebate of duty of Rs. 8,38,163/- to the applicant in respect of the exports effected after issuing of notification No. 37/2007, whereby clause (h) is inserted in notification No. 19/2004-CE(NT) is not admissible.

The applicant has not disputed that they are not availing area based exemption notification and not covered by the above stated notification No. 37/2007. But they have claimed that they had cleared the goods for the purpose of export prior to the issue of notification 37/2007 and, therefore, the date of clearance of the goods from their factory should be considered as date of export of the goods. However, this contention is found devoid of any legal force in as much as as per explanation in Rule 18 of Central Excise Rules, 2002, which is governing rule for rebate of duty on exported goods, -export-means-taking-goods-out-of-India. -Thus export of goods occurs only when these are physically sent across the Indian territory. Further as per explanation in section 11 AB of the Central Excise Act, refund includes rebate of duty of Excise and relevant date in case of goods exported by sea or air is the date on which the ship or the aircraft in which such goods are loaded leaves India. Thus the loading of goods in the ship or the date of Bill of lading is considered the date of the export of the goods and mere clearance of goods from the factory cannot be considered as export of goods at all. Date of payment of the duty on exported goods is also not relevant factor in the instant case as payment of duty on excisable goods is on the removal stage as per Central Excise Rules and the export of the goods is totally different from the removal of the goods from the factory. Accordingly the reliance on the Supreme Court's decision in the case of Collector of Central Excise Vs. Vazir Sultan Tobacco Co. Ltd., 1996 (83) ELT 3(SC), and CESTAT's decision in the case of Arjuna Sugars & Enterprises Ltd. Vs. Collector of Central Excise Trichy, 1996 (87) ELT 540 (Tribunal), is completely misplaced as it is nowhere held in these two decisions that the date of export of the goods will be considered as the date of clearance of the goods from the factory. Instead in these two decisions the leviability

and dutiability of the excise duty on the goods is determined which is not an issue in the present proceeding.

8. Accordingly, the Commissioner (Appeals)'s order is modified and Revision Applications are allowed to the above extent.


4.1.18

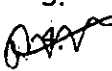
(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s Ind Swift Laboratories Ltd.
Industrial Growth Centre, Samba, Jammu

ORDER NO. 14-15/2018-CX dated 04-01-2018

Copy to:-

1. The Commissioner of Central Excise & Customs, GST Commissionerate, Jammu & Kashmir, OB-32, Rail Head Complex, Jammu-180 012.
2. Commissioner of Central Excise (Appeals), Central Revenue Building, Plot No. 19, Sector 17, Chandigarh.
3. Deputy Commissioner of Central Excise Division Jammu.
 Mr. G. Gurumurthy, Advocate, BSM Legal, C-5/8, Third Floor, Safdarjung Development Area, New Delhi- 110 016.
5. PS to AS(RA)
6. Guard File.

ATTESTED

(Debjit Banerjee)
STO (REVISION APPLICATION)