



**REGISTERED  
SPEED POST**

**F.No. 195/32/12-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...17/4/14

Order No. 149/14-cx dated 15-4-2014 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.  
US/364/RGD/2011 dated 21-10-2011  
passed by Commissioner of Central Excise,  
(Appeals), Raigad.
- Applicant : M/s. Glenmark Phamaceuticals Ltd.,  
Glenmark House,  
B.D. Sawant Marg,  
Andheri (E), Mumbai-400099.
- Respondent : Commissioner of Central Excise,  
Raigad.

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## ORDER

This revision application is filed by the applicant M/s. Glenmark Pharmaceuticals Ltd., Glenmark House, B.D. Sawant Marg, Andheri (E), Mumbai against the Order-in-Appeal No. US/364/RGD/2011 dated 21-10-2011 passed by the Commissioner of Customs (Appeals), Raigad with respect to Order-in-Original dated 28-10-2010 passed by the Assistant Commissioner of Central Excise, (Rebate), Raigad Commissionerate.

2. Brief facts of the case are that the applicant M/s. Glenmark Pharmaceuticals Ltd. are manufacturer of excisable goods falling under chapter 30 of Central Excise Tariff Act, 1985 and also get the goods manufactured from various job-workers which are also known as Loan Licensees in a pharmaceutical industry. Around eleven numbers of job-workers had paid duty along with applicable education cess while clearing the goods from their factory premises and the said goods were exported by the applicants wherein the job-workers had issued no objection certificate to the applicants to claim refund/rebate of duty on the goods exported by the applicants. The refund claims were filed in the office of Assistant Commissioner (Rebate), Central Excise, Raigad. A deficiency Memo cum SCN was issued by the Assistant Commissioner vide his letter dated 16-09-2010 contending that, " the rebate claims cannot be processed as wrong address of rebate sanctioning authority is stated on ARE-1 Forms and the same appears to be manipulated as they do not tally with the ARE-1 forms received by them from Range Superintendent." The Assistant Commissioner rejected the total refund claims amounting to Rs. 8903752/- vide common Order-in-Original No. 1325/10-11-AC (Rebate) Raigad dated 28-10-2010. Aggrieved with the aforesaid Order-in-Original dated 28-10-2010 passed by the Assistant Commissioner, the applicants preferred appeal with the office of Commissioner of Central Excise (Appeals-II), Mumbai. Prior to personal hearing granted by the Commissioner (Appeals) but after submission of appeal, two refund orders were made by the Assistant Commissioner wherein the rebate claims amounting to Rs. 20,16,637/- & Rs. 570629/- were sanctioned vide Order-in-Original No. 1474/10-11-AC (Rebate)/Raigad dated 29-12-2010 and Order-in-Original No. 1545/10-11-AC (Rebate)/Raigad. Accordingly, applicants requested the

Commissioner (Appeals) during personal hearing dated 06-06-2011 to grant the refund claim by reducing the amount of Rs. 25,87,266/- as already sanctioned to them. In the meanwhile, the Assistant Commissioner also had preferred one appeal with Commissioner (Appeals) for the reason that why the refund claim as sanctioned to the applicants should not be rejected for the reason that the Assistant Commissioner who had rejected the earlier refund, vide Order-in-Original NO. 1325/10-11 dt. 28-10-2010 for Rs. 20,16,637/-, becomes functus officio and cannot legally pass the subsequent Order-in-Original 1474/10-11 dt. 29-12-2010. The Commissioner (Appeals) vide impugned Order-in-Appeal allowed the rebate claim for Rs. 63,13,355/- as the amount by Rs. 25,87,266/- was already sanctioned by ACCE.

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 Impugned Order-in-Original No. 1325/10-11/AC (Rebate) Raigad dt. 28-10-2010 is contrary to legal and factual position and is liable to be set aside on this ground itself. The Assistant Commissioner has erred in passing the impugned Order-in-Original without considering the hardship caused to the applicants by extensive delaying the refund claims.

4.2 Even, soon after vide Order-in-Original No. 1474/10-11 (Rebate) Raigad dt. 29-12-2010 rebate claims for Rs. 20,16,637/- and vide Order-in-Original No. 1545/10-11 (Rebate) Raigad dt. 31-12-2010 for Rs. 5,70,629/- were sanctioned the applicants, they had requested the Commissioner (Appeals) to reduce the total refund by Rs. 25,87,266/- as already sanctioned, in their Written Submissions during personal hearing. The Commissioner had accepted the total submissions made in their appeal Memorandum and sanctioned the refund claim by reducing the said amount of Rs. 25,87,266/-. If it was not for the applicants fair submissions, the Commissioner (Appeals) would have granted Order-in-Appeal with full refund.

4.3 The reason for preferring the appeal with your office is due to sequence of events that were developed later on due to appeal preferred by the Assistant Commissioner and the said appeal was accepted by the Commissioner (Appeals) as per the Order-in-Appeal dated 11-11-2011.

4.4 Also, it should be pertinent to note that the Commissioner (Appeals) while accepting the submissions of the applicants by granting refund claim for Rs. 63,13,355/- had erred in by not granting interest as applicable for the delay in refund of duty, including on the amount of Rs. 25,87,266/- as granted earlier by the Assistant Commissioner but without payment of interest at applicable rate 19. The Applicants therefore, humbly request to grant refund of Rs. 25,87,266/- along with interest for delay in refund of duty as well on Rs. 63,13,355/- already passed by Commissioner (Appeals).

5. Personal hearing was scheduled in this case on 25-09-2013 and 11-03-2014. Hearing held as 11-03-2014 was attended by Shri R.K.Sharma, Advocate and Shri A. Vijay Chaudhery, Consultant 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 in the instant case, 79 rebate claims totalling Rs. 89,03,752/- were rejected by the original authority on the ground that name and address of Maritime Commissioner was either over written or wrongly mentioned. Applicant preferred appeal before Commissioner (Appeals) against said Orders-in-Original passed by adjudicating authority. However, Commissioner (Appeals) decided the appeal in favour of applicant only to the extent of allowing 75 rebate claim of Rs. 63,13,355/- and did not pass any order with respect to rebate claim amounting to Rs. 25,90,397/- as the same were sanctioned by adjudicating authority in subsequent orders dated 29-12-2010. Applicant has now contested the said Order-in-Appeal in this revision application on the grounds stated above.

8. Government notes that Commissioner (Appeals) has not passed any order w.r.t. rebate claim amount of Rs. 2587266/- as the said amount was sanctioned by ACCE in subsequent orders. It is a settled legal position that an authority after passing the order become functus officio and cannot revise its own order. Commissioner (Appeals) has erred in not passing any order with respect to said claims. This legal infirmity is required to be rectified to meet the ends of justice. Therefore case is required to be remanded back for deciding the said claims. Commissioner appeal has already set aside the impugned Order-in-Original and therefore no order exists in r/o the rebate claim of Rs. 2587266.

9. In view of above position, Government modifies the said Order-in-Appeal and directs the original authority to consider the said rebate claims for sanction in accordance with impugned Order-in-Appeal if the same are otherwise in order. A reasonable opportunity of hearing will be afforded to the parties before deciding the case.

10. Revision Application is disposed off in above terms.

11. So, Ordered.



(D.P. Singh)  
Joint Secretary to the Govt. of India

M/s. Glenmark Phamaceuticals Ltd.,  
Glenmark House,  
B.D. Sawant Marg, Andheri (E), Mumbai-99.

ATTESTED



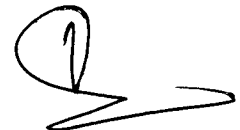
Joint Secretary to the Government of India  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
भारत सरकार

Order No. 149 /14-Cx dated 15-4 -2014

Copy to:

1. The Commissioner, Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
2. The Commissioner (Appeals), Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
3. The Assistant Commissioner, Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
4. Shri R.K.Sharma counsel and Shri A. Vijay Chaudhery, Consultant, C/o M/s R.K. Sharma & Associates Pvt. Ltd., 157, 1<sup>st</sup> Floor, DDA Office Complex, C.M. Jhandewalan Extn. New Delhi – 55.
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)