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**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.195/256-257/2018-RA / 152 Date of Issue: 17.03.2023

ORDER NO. 152-153/2023-CX (WZ)/ASRA/MUMBAI DATED 15.03.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,
1944.

Applicants : M/s Medley Pharmaceuticals Limited,
Unit-II, Survey No. 378/7 & 8, 379/2 & 3,
Kabra Industrial Estate,
Kanchigam, Daman

Respondents : Commissioner, CGST and Central Excise, Daman

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal Nos. CCESA-SRT-
(APPEALS)/PS-395/2018-19 dated 05.09.2018, No. CCESA-
SRT-(APPEALS)/PS-396/2018-19 dated 05.09.2018 passed by
Commissioner (Appeals) CGST & Central Excise, Surat .

ORDER

These Revision Applications are filed by M/s Medley Pharmaceuticals Limited, Unit-II, Survey No. 378/7 & 8, 379/2 & 3, Kabra Industrial Estate, Kanchigam, Daman (hereinafter referred to as "Applicant") against the Orders-in-Appeal No. CCESA-SRT-(APPEALS)/PS-395/2018-19 dated 05.09.2018 and No. CCESA-SRT-(APPEALS)/PS-396/2018-19 dated 05.09.2018 passed by Commissioner (Appeals) CGST & Central Excise, Surat.

2. The facts of the case briefly stated are that the Applicant is engaged in the manufacture of P.P.Medicaments falling under Chapter 30 of the Central Excise Tariff Act, 1985. The Applicant cleared the excisable goods for export on payment of central excise duty under claim of rebate under Rule 18 of the Central Excise Rules, 2002 under self removal procedure. On processing the claims it was noticed that the Applicant had exported entire/part quantity after six months from the date of clearance of the said goods for export and also buff copy of the ARE 1 duly certified by Customs was not submitted. After following the due process of law, the rebate sanctioning authority decided on the rebate claims as under:

Sr No	OIO No and date	Amount of claim sanctioned	Amount of claim rejected (Rs)	Reason for rejection
1	DMN-III/AC/02/18-19/R dated 12.04.2018	NIL	2,76,094	Exported after six month from the date of clearance for export
2	DMN-III/AC/04/18-19/R dated 12.04.2018	81,971/-	2,92,752	Exported after six month from the date of clearance for export

3. Being aggrieved with the Orders-in-Original mentioned above, the Applicant filed appeals before the Commissioner (Appeals), CGST & Central Excise, Surat on the grounds that the OIO did not consider the dynamics involved in export transactions like securing a licence from the destination country within a time frame which the participants involved in the export transaction does not have control on and also that the time stipulation of six months for export is not rigid and can be

extended by the Commissioner, in his discretion and can be condoned even at the time of an application for refund/drawback and should not be construed within pedantic rigidity.

4. The Appellate Authority vide Orders-in-Appeal Nos. CCESA-SRT-(APPEALS)/PS-395/2018-19 dated 05.09.2018 and No. CCESA-SRT-(APPEALS)/PS-396/2018-19 dated 05.09.2018 passed by Commissioner (Appeals) CGST & Central Excise, Surat rejected the appeals filed by the Applicant for violation of condition (b) of Para 2 of Notification No 19/2004-CE (NT) dated 06.09.2004 and also failing to seek extension from the Commissioner of Central Excise for export within any extended period.

5. Aggrieved by the said Orders-in-Appeal, the Applicant filed separate Revision Applications in respect of the OIA's on the common grounds barring the computation of the period of delay.

5.1. FOR REVISION APPLICATION IN RESPECT OF OIA NO. CCESA-SRT(APPEALS)/PS-395/2018-19 dated 05.09.2018

(i) That as per section 9 of the General Clause Act, 1897 whenever the word 'from' is stated for computing the period, the first day of series should be excluded for computing the period and thus there was a nominal delay of 9 days and 70 days in respect of ARE 1 No. DMN-III/R-V/463/17-18 dated 30.03.2017 and DMN-III/R-V/365/17-18 dated 01.02.2017 respectively

(ii) The Applicant relies upon following case laws:

a) Commissioner of Customs, Kandla vs. Puja Steel [2014 (299) ELT 0494 (Tri-Ahmd)]

b) Sarvamangal Synthetics Ltd. vs. Commr. of Central Excise, Coimbatore, [2003 (153) ELT 545 (Tri-Mad)]

5.2. FOR REVISION APPLICATION IN RESPECT OF OIA NO. CCESA-SRT(APPEALS)/PS-396/2018-19 dated 05.09.2018

(i) That as per section 9 of the General Clause Act, 1897 whenever the word 'from' is stated for computing the period, the first day of series should be excluded for computing the period and thus there was a nominal delay of 23 days in respect of ARE 1 No. DMN-III/R-V/018/17-18 dated 01.05.2017

6. COMMON GROUNDS IN BOTH THE REVISION APPLICATIONS

6.1. That there was no dispute that the duty paid goods cleared from factory was exported and proceeds in foreign currency was realized and thus rebate should be allowed to the Applicant;

6.2. That the delay for export of goods was beyond the control of the Applicant as the necessary license has to be obtained from the foreign country before exporting the goods to comply with international law and rebate should be allowed as held by the Hon'ble Gujarat High Court in the case of Cosmonaut Chemicals Vs Union of India [2009 (233) E.L.T. 46 (Guj.)] which allowed the refund on the ground that when the claim was filed beyond time limit of one year as the delay was due to circumstances beyond control of claimant even though the condition of notification was not complied;

6.3. That the Notification is beneficial and aim to encourage exports and it is required to be interpreted liberally as held in the case of M/s. Kosmos Healthcare Pvt. Ltd. Vs Asstt. Commr. of C.Ex., Kolkata-1, [2013 (297) ELT 345 (Cal)];

6.4. That is was a settled law that substantial benefit cannot be denied for infraction of procedures as held by the Hon'ble Revisionary Authority in Re-Cotfab Exports [2006 (205) E.L.T. 1027 (G.O.I.)] that procedural infraction of notification is to be condoned if exports have taken place. Procedures prescribed are only to facilitate verification of substantive requirements and the core aspect or fundamental requirement for rebate is manufacture and subsequent export. As long as this is met, other procedural deviations can be condoned. In the instant case the Applicant had paid the applicable excise duty at the time of clearance of goods from the factory for

exports and prepared all the requisite documents and exported the goods out of India and realized foreign currency;

6.5. That for availing the rebate of duty, the primary requirement is the export of excisable goods and Rule 18 specifically provides that once it is established that the goods have been actually exported then even if some or all of the requirements set out in the notification issued under Rule 18 are not fulfilled, the exporter will be entitled to rebate of duty and so the Applicant was entitled to grant of rebate. The Applicant has relied on the following case laws in support of their contention:

- (a) Alpha Garments vs Commissioner-[1996 (86) ELT 600 (Tribunal)]
- (b) Birla VXL Ltd. vs. Commissioner-[1998 (99) ELT 387 (Tribunal)]
- (c) In Re: Coffab Exports [2006 (205) ELT 1027 (G.O.)]

6.6. That the order is the case of Ind-Swift Laboratories Ltd., [2004 (312) ELT 865 (GOI)] and Kosmos Healthcare P. Ltd., [2013 (297) ELT 465 (GOI)] relied by the AA for rejecting the appeal are not applicable to the instant case as the reasons for delay and period of delay in the said orders are totally different from the instant case;

7. Personal hearing in this case was scheduled for 09.11.2022 or 22.11.2022 or 13.12.2022 or 10.01.2023. Shri Jagdish Surti, Advocate and Shri Krishna Parab, Assistant Manager, of the Applicant appeared for the hearing on 13.12.2022. They submitted that export of duty paid goods is not in doubt, therefore their claims should not be disallowed for procedural lapse. They submitted copies of two judgements on the matter.

8. Government has carefully gone through the relevant case records available in case files, and perused the impugned Order-in-Original and Order-in-Appeal.

8.1 On perusal of records, Government observes that the Applicant had accepted that there has been delay of 9 days in respect of ARE 1 No. DMN-III/R-V/463/17-18 dated 30.03.2017, delay of 70 days in respect of ARE-I No. DMN-III/R-V/365/17-18

dated 01.02.2017, 23 days in respect of ARE-I No. DMN-III/R-V/18/17-18 dated 01.05.2017 and were hit by limitation prescribed under Rule 18 of the Central Excise Rules, 2002, as the goods were exported beyond six months from the date of removal from the factory.

8.2 Government notes that the Applicant has reasoned that the basic condition of Rule 18 of the Central Excise Rules, 2002 was satisfied as the goods were actually exported on payment of duty and also the relevant documents were prepared and the foreign exchange was realized against the export of goods. The Applicant has further averred that non adherence to the time stipulation was a procedural infraction and the rebate claim should not be rejected on technical grounds or for procedural lapses. The Applicant has further submitted that rebate cannot be denied when the delay is beyond the control of the claimant.

8.3 Government notes that there are many orders of Government of India wherein it is held that the limiting condition of goods to be exported within six months of clearance from the factory and requirement of permission by authority for extension of time, is a statutory and mandatory condition under Notification No. 19/2004-C.E. dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 and as a result, rebate is not allowed for violation of the said mandatory conditions.

8.4 In Order No. 1228/2011-CX, dated 20-9-2011 of Kosmos Healthcare Pvt. Ltd.[2013 (297) E.L.T. 465 (G.O.I.)], Government notes that the rebate claim was denied on the grounds that *"Clause 2(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 stipulates that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture, which has been violated by the Applicant; that they had not made any application for extension of time-limit before proper authority; that they had not produced any permission granting extension of time limit from competent authority till date; that the non-compliance of a substantive condition of Notification cannot be treated as a procedural lapse to be condoned"*. This Order No. 1228/2011-CX, dated 20-9-2011 was

challenged by Kosmos Healthcare Pvt. Ltd. before Hon'ble High Court Calcutta vide Writ Petition No. 12337(W) of 2012.

8.5 The Hon'ble High Court Calcutta while remanding back the case to the Revisionary Authority vide its Order dated 19.09.2012 observed as under:

"21. On a reading of the Notification No. 40/2001 there is nothing to show that the time stipulation cannot be extended retrospectively, after the export, having regard to the facts of a particular case. The benefit of drawback has, in numerous case, been allowed notwithstanding the delay in export. This in itself shows that the respondent authorities have proceeded on the basis that the time stipulation of six months is not inflexible and the time stipulation can be condoned even at the time of consideration of an application for refund/drawback.

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28. When there is proof of export, as in the instant case, the time stipulation of six months to carry out export should not be construed within pedantic rigidity. In this case, the delay is only of about two months. The Commissioner should have considered the reasons for the delay in a liberal manner.

29. It would perhaps be pertinent to note that an exporter does not ordinarily stand to gain by delaying export. Compelling reasons such as delay in finalization and confirmation of export orders, cancellation of export orders and the time consumed in securing export orders/fresh export orders delay exports.

30. As observed above, the notification does not require that extension of time to carry out the export should be granted in advance, prior to the export. The Commissioner may post facto grant extension of time.

31. What is important is, the reason for delay. Even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed. If there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended. In my view, in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports.

32. Of course, in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is

reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned.

33. *The impugned revisional order is set aside and quashed. The Respondent No. 3 is directed to decide the revisional application afresh in the light of the observations made above."*

8.6 Upon perusal of Order Hon'ble High Court Calcutta referred supra, Government observes that Hon'ble High Court has interalia observed that the "Notification No.40/2001 does not require that extension of time to carry out the export should be granted in advance, prior to the export; that the Commissioner may post facto grant extension of time; that what is important is, the reason for delay; that even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed; that if there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended; that in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports". Government further observes that the Hon'ble High Court in the order has further noted that, "in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned".

8.7 In the instant case, Government does not find anything on record indicating that the Applicant had applied for extension of time in respect of delayed exports, either before or even after carrying out exports explaining the reasons for the delay to the Competent Authority. Government, taking into account the directions of Hon'ble High Court, Calcutta is of the considered opinion that in the absence any application for extension of time explaining sufficient cause for delay to the Competent Authority by the Applicant, before filing the rebate claim or even before filing an appeal before the Appellate Authority, delay cannot be condoned.

9. Further, Government finds it pertinent to reproduce the relevant part of the Order of Hon'ble High Court of Judicature at Bombay dated 15.09.2014 dismissing the Writ Petition No. 3388 of 2013, filed by M/s Cadila Health Care Limited [2015 (320) E.L.T. 287 (Bom.)] and upholding the Order-in-Original dated 23.12.2009 which is as under:-

2. *The concurrent orders are challenged on the ground that there was compliance with the notification and particularly the condition therein of export from the factory of manufacturer or warehouse. Though Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6th September, 2004 requires that the excisable goods shall be exported within six months from the date on which it were cleared for export from the factory of manufacture or warehouse, Mr. Shah would submit that the condition is satisfied if the time is extended and it is capable of being extended further by the Commissioner of Central Excise. In the present case, the power to grant extension was in fact invoked. Merely because the extension could not be produced before the authority dealing with the refund/rebate claim does not mean that the claim is liable to be rejected only on such formal ground. The notification itself talks of a condition of this nature as capable of being substantially complied with. The authority dealing with the claim for refund/rebate could have itself invoked the further power and granted reasonable extension.*

3. *We are unable to agree because in the facts and circumstances of the present case the goods have been cleared for export from the factory on 31st January, 2005. They were not exported within stipulated time limit of six months. The application was filed with the Jurisdictional Deputy Commissioner of Central Excise/Assistant Commissioner of Central Excise much after six months, namely, 17th June, 2005 and extension was prayed for three months upto 31st October, 2005. The goods have been exported not relying upon any such extension but during the pendency of the application for extension. The precise date of export is 9th September, 2005. The Petitioners admitted their lapse and inability to produce the permission or grant of extension for further period of three months.*

4. *In such circumstances and going by the dates alone the rebate claim has been rightly rejected by the Maritime Commissioner (Rebate) Central Excise, Mumbai-III by his order which has been impugned in the writ petition. This order has been upheld throughout, namely, order-in-original dated 23rd December, 2009. The findings for upholding the same and in backdrop of the above admitted facts, cannot be said to be perverse and vitiated by any error of law*

apparent on the face of the record. There is no merit in the writ petition. It is accordingly dismissed.

9.1 Government observes that in the said case, the Hon'ble High Court of Judicature at Bombay, in order dated 15.09.2014, while interpreting the amplitude of condition 2(b) of Notification No 19/2004 dated 06.09.2004 held that the Maritime Commissioner (Rebate), had rightly rejected the rebate claim where permission granting extension could not be produced by the exporter. In spite of the fact that the petitioner in that case was on a better footing as they had tried to obtain permission from the Commissioner for extension of time limit of six months, their Lordships did not extend any relief.

9.2 Government observes that the aforesaid High Court order dated 15.09.2014 is a clear instance of treating Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 as a mandatory condition and certainly not a procedural requirement, and violation of which renders Rebate claims inadmissible.

10. Government also relies on GOI Order No. 390/2013-CX dated 17-5-2013 [2014 (312) E.L.T. 865 (G.O.I.)] in Re: Ind Swift Laboratories Ltd. involving identical issue wherein Government held as under:

9. Government notes that the Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002 which reads as under :

"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow :"

As per the said provision, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The Commissioner has discretionary power to give extension of this period in deserving and genuine cases. In this case in fact such extension was not sought. It is obvious that the Applicants have neither exported the goods within prescribed time nor have produced any extension of time limit permitted by competent authority. The said

condition is a statutory and mandatory condition which has to be complied with. It cannot be treated as an only procedural requirement.

10. In light of above position, Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The respondents have categorically admitted that goods were exported after six months' time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-C.E. (N.T.), dated 6-9-2004. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-C.E. (N.T.) is not complied with. Government accordingly sets aside the order of Commissioner (Appeals) and restores the impugned Order-in-Original."

11. Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 is not rigid and allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional Commissioner for extension of the prescribed time limit. In the instant case there has been failure on the part of an established manufacturer in not applying for extension of time, leave alone obtaining permission from the Competent Authority for extension of time, which cannot be justified.

12. In view of the foregoing discussion and applying the rationale of case laws referred above, Government holds that the Applicant is not entitled to rebate of duty in respect of goods not exported within the period of six months of clearance from the factory, in violation of condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004 issued under Rule 18 of the Central Excise Rules, 2002.

13. In view of the above discussion, Government holds that the Appellate Authority has rightly rejected the appeal filed by the Applicant. Thus, Government does not find any infirmity in the Orders-in-Appeal No. CCESA-SRT-(APPEALS)/PS-395/2018-19 dated 05.09.2018 and No. CCESA-SRT-(APPEALS)/PS-396/2018-19

dated 05.09.2018 passed by Commissioner (Appeals) CGST& Central Excise, Surat and, therefore, upholds the impugned Orders-in-Appeal.

14. The Revision Application is dismissed as being devoid of merits.

Shrawan
15/3/23
(SHRAWAN KUMAR)

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

ORDER No. ¹⁵²⁻133/2023-CX (WZ)/ASRA/Mumbai DATED 15.03.2023

To,
M/s Medley Pharmaceuticals Limited,
Unit-II, Survey No. 378/7 & 8,379/2 & 3,
Kabra Industrial Estate,
Kanchigam, Daman

Copy to:

- 1) The Commissioner of CGST & Central Excise , Daman Commissionerate, GST Bhavan, RCP Compound, Vapi- 396 191
- 2) The Commissioner (Appeals), Surat, 3rd Floor, Magnus Mall, Althan , Surat 395017
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Notice Board
- 5) Spare Copy.