

**REGISTERED  
SPEED POST**



F.No.195/842/12, 195/066, 891 & 892/13-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..23/4/14

ORDER NO. 154-157/2014-CX DATED 21.04.2014 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 Act, 1944 against orders-in-appeal No. (as reflected in the table of this order) passed by Commissioner of Central Excise (Appeals), Mumbai Zone-II.

Applicant : M/s Socomed Pharma Pvt. Ltd., Belapur.

Respondent : Commissioner of Central Excise, Raigad,

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**ORDER**

These revision applications are filed by applicant M/s Socomed Pharma Pvt. Ltd. Belapur, against the orders-in-appeal passed by Commissioner of Central Excise (Appeals), Mumbai Zone-II, with respect to Orders-in-Original passed by the Deputy Commissioner of Central Excise (Rebate), Raigarad Commissionerate as detailed in the table below:-

Sr. No.	Revision Application No.	Orders-in-Appeal No. & date	Order-in-Original No./Date
1.	195/842/12	US/400/RGD/12 dated 18.06.2012	1083/11- 12/DC(Rebate)Raigarh dt. 31.10.11
2.	195/066/13	US/552/RGD/2012 dated 10.09.2012	1823/11- 12/DC(Rebate)Raigarh dt. 16.01.12
3.	195/891/13	US/206/RGD/2013 dated 25.07.2013	Raigarh/ADC/200/SJ/12-13 dt. 31.03.13
4.	195/892/13	US/208/RGD/2013 dated 29.07.2013	Raigarh/ADC/142/SJ/12-13 dt. 28.02.13

2. Brief facts of the case are that the applicant M/s Socomed Pharma Pvt. Ltd. Belapur are Merchant Exporters engaged in business of export of medicaments. The applicant has exported medicaments from supporting manufacturer under various AREs-1 on payment of duty. Thereafter, the applicant filed rebate claims, of excise duty paid on the goods which were exported by the applicant as per AREs-1, to the Office of Assistant Commissioner, Central Excise, New Panvel, under Rule 18 of the Central Excise Rules, 2002 alongwith supporting documents. The original adjudicating authority after due verification and scrutiny of records sanctioned rebate claims under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 vide impugned Orders-in-Original in respect of cases mentioned at Sr. No. (1) and (2) of the table above. The said Orders-in-Original

sanctioning the rebate/refund were reviewed by the Commissioner vide his review orders and the appeals against the said Orders-in-Original sanctioning the refund here filed on the ground that the applicant a merchant exporter has ticked in the declaration in impugned ARE-1 that they are availing benefit of 21/04-CE(NT) dated 06.09.04 and Notification 43/2001-CE(NT) dated 26.06.2001, however they failed to follow the mandatory provisions as required under Notification No. 21/2004-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001. Commissioner (Appeals) vide impugned Orders-in-Appeal mentioned at Sr. No. (1) &(2) table above decided the appeals in favour of revenue.

2.1 Subsequent to Orders-in-Appeal mentioned at Sr. No. (1)&(2) passed by Commissioner (Appeals) the original authority i.e. Additional Commissioner of Central Excise confirmed the demand of already sanctioned rebate claim vide Order-in-Original dated 31.03.13 and 28.02.13 mentioned at Sr. No. 3 & 4 of table.

2.2 The applicant filed appeals before Commissioner (Appeals) against Orders-in-Original confirming demand of already sanctioned rebate claims. Commissioner (Appeals) vide impugned Orders-in-Appeal mentioned at Sr. No. (3) & (4) of table above, rejected the applicants appeals.

3. Being aggrieved by the impugned four Orders-in-Appeal, the applicant has filed these four revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following common grounds:-

3.1 The Commissioner (Appeals) has failed to appreciate the fact that once the applicant has cleared the export consignment and if he has erroneously ticked on pre-printed declaration of ARE-1, same cannot be the cause or ground for rejecting the refund claim when there is no dispute about the excise duty

payment on final product and final product has been exported. The applicants have relied upon various case laws in this regard.

3.2 In case of applicant, the impugned excisable goods are exported on payment of duty and as per Rule 18 and Rule 19 of the Central Excise Rules, 2002 the goods which are exported are not liable for payment of Excise Duty. Under the circumstances, when the goods are not liable for payment of excise duty, the Government is not allowed to retain the duty without authority of law; therefore, the impugned order rejecting the refund claim of duty paid on exported goods needs to be set aside in the light of following judgments:

(a) Commissioner Vs. Suncity Alloys Pvt. Ltd. – 2007(218) ELT 174(Raj.)

3.3 In case of applicant, as stated hereinabove the Notification No. 19/2004-CE/(NT) dated 06.09.2004 contemplates verification of AREs-1 received from the officer of Customs with the original copy received from the exporter and with the duplicate copy received from the Central Excise Officer having jurisdiction over the factory of manufacturer. Thus, the impugned order issued contrary to the notification is vitiated and hence needs to be set aside. In support of the contention, reliance is placed on the following judgments:-

(a) In Re: Audler Fasteners – 2007(216) ELT 465(G.O.I.)

(b) In Re: Cotfab Exports – 2006(205) ELT 1027 (G.O.I.)

3.4 In case of the applicant, as stated hereinabove, the rebate/refund claim has been lodged for the amount of Excise Duty paid on exported goods under Rule 18 of the Central Excise Rules, 2002. Rule 18 of the Central Excise Rules, 2002 inter-alia contemplates as under:-

- (i) The Central Government by notification grant rebate of duty paid on such excisable goods;
- (ii) Or on materials used in manufacture or processing of such goods;

- (iii) Such rebate should be subject to such conditions or limitation as specified in notification.

In view of the aforesaid ingredients contemplated under Rule 18, it is necessary to read the Notification No. 19/2004-CE/(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 for the purpose of rebate claim. The Notification No. 19/2004-CE/(NT) dated 06.09.2004 is applicable to export of goods to all the countries other than Nepal and Bhutan. The condition of said notification stipulates only the above conditions and does not stipulate the conditions which have been taken in the grounds of appeal by the Department before the lower Appellate Authority, therefore, the impugned order which is extraneous to the limitation and conditions of notification needs to be set aside.

3.5 The Appellate Authority which rejecting the refund/rebate claim of applicant has given the following findings:-

*"The ARE-1 under which the goods are exported have been ticked for all the declarations such as (i) the manufacturer has availed cenvat credit of duty paid on inputs used in manufacture of exported goods (ii) the manufacturer has availed the benefit of Notification 21/04-CE(NT) (iii) the manufacture has availed the benefit of Notification 43/2001."*

The cursory look at these declarations itself reveal all these three declarations are contrary to each other for e.g. the declaration stating the manufacturer has availed cenvat credit of duty paid on inputs used in manufacture of dutiable goods and declaration of availing benefit of Notification No. 21/2004 which inter-alia stipulates the drawback of duty paid on inputs which are used in manufacture of exported goods. The condition stipulated for sanction of such rebate is non-availment of cenvat credit. Similarly, the notification no. 43/2001 stipulates the procurement of excisable goods which are input to be utilized for manufacture of excisable goods. Thus, the very fact that manufacturer has availed cenvat credit of the inputs used in manufacture of excisable goods negates the other two declarations.

The Department has not brought out any evidence other than wrongly ticked declarations to prove their claim that the manufacturer has availed the benefit of Notification No. 21/2004 or 43/2001. It is to be noted that even the benefit of Notification No. 21/2004 is not available if the benefit under notification no. 43/2001 is obtained, therefore, it is a matter of application of mind that the manufacturer cannot avail of all the three facilities and the claim of department of set aside the order of rebate on such contradictory grounds without adducing any evidence in support of their grounds is untenable, therefore, needs to be ex-facie rejected.

5. Personal hearing scheduled in this case on 03.04.2014 was attended by Shri Shaikh Shafiq, G.M.(Finance & Accounts) on behalf of the applicant who reiterated the grounds of revision applications. Nobody attended hearing on behalf of department.

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

7. Government observes that the applicant's rebate claims filed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004 was initially sanctioned by the original authority vide impugned Orders-in-Original dt. 31.10.11 and 16.01.12 mentioned at Sr. No. (1) & (2) of table. The department filed appeals before Commissioner (Appeals) on the ground that the applicant a merchant exporter has declared in impugned ARE-1 that they are availing benefit of 21/04-CE(NT) dated 06.09.04 and Notification 43/2001-CE(NT) dated 26.06.2001, however they failed to follow the mandatory provisions as required under Notification No. 21/2004-CE(NT) dated 06.09.2004 and Notification 43/01-CE(NT) dated 26.06.2001. Commissioner (Appeals) decided the cases in favour of department vide Order-in-Appeal dated 18.6.12

and 10.9.12. Subsequent to these Orders-in-Appeal mentioned at Sr. No. (1)&(2) passed by Commissioner (Appeals) the original authority i.e. Additional Commissioner of Central Excise confirmed the demand of erroneously sanctioned rebate claim vide Order-in-Original dated 31.3.13 and 28.2.13. The applicant filed appeals before Commissioner (Appeals) against Orders-in-Original confirming demand of already sanctioned rebate claims. Commissioner (Appeals) vide Orders-in-Appeal dated 25.7.13 and 29.7.13 mentioned at Sr. No. (3) & (4) of table above, rejected the applicants appeals. Now, the applicant has filed these four revision applications on grounds mentioned in para (4) above.

8. Government observes that the applicants exported the goods and filed rebate claim under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-CE/(NT) dated 06.09.2004. The applicant has contended that they have mistakenly ticked the declaration on availment of benefit of Notification 21/04-CE(NT) dated 06.09.04 and Notification 43/01-ce(NT) dated 26.06.01 in AREs-1. However, they exported the goods under Notification No. 19/2004-CE/(NT) dated 06.09.2004 on payment of duty and as such they were not required to export the goods under Bond or under cover of ARE-2 as they had not claimed input rebate.

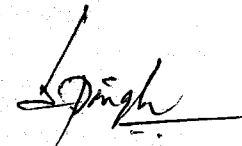
8.1 On sample perusal of some relevant ARE-1, Government finds that the applicant prepared the ARE-1 under claim of rebate and paid applicable duty at the time of removal of goods. The original authority in rebate sanctioning orders have categorically held that applicants have exported the goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004 and also that range Superintendent confirmed the verification of duty payment. As such, the exported goods are duty paid goods. Once, it has been certified that exported goods have suffered duty at the time of removal, it can be logically implied that provisions of Notification 21/04-CE(NT) dated 06.09.04 and Notification 43/01-ce(NT) dated 26.06.01

cannot be applied in such cases. There is no independent evidences on record to show that the applicant have exported the goods without payment of duty under ARE-2 or under Bond. Under such circumstances, Government finds force in contention of applicant that they have by mistake ticked in ARE-1 form declaration that they have availed benefit of Notification 21/04-CE(NT) dated 06.09.04 and Notification 43/01-CE(NT) dated 26.06.01. In this case, there is no dispute regarding export of duty paid goods. Simply ticking a wrong declaration in ARE-1 form cannot be a basis for rejecting the substantial benefit of rebate claim. Under such circumstances, the rebate claims cannot be rejected for procedural lapses of wrong ticking. In catena of judgements, the Government of India has held that benefit of rebate claim cannot be denied for minor procedural infraction when substantial compliance of provisions of notification and rules is made by claimant. Applying the ratio of such decisions, Government finds that rebate claims in impugned cases cannot be held inadmissible.

9 Government finds that once the merits of rebate claims, found to be in favour of applicants, the sanction of same cannot be treated as erroneous and hence, no recovery is warranted. In view of above circumstances, Government sets aside the impugned Orders-in-Appeal and restores the initial Orders-in-Original dated 31.10.11 and 16.1.12 sanctioning the rebate claims.

10. Revision Applications thus succeed in above terms.

11. So ordered.



( D. P. SINGH )

JOINT SECRETARY TO THE GOVT. OF INDIA

M/s Socomed Pharma Pvt. Ltd.  
3, Maruti Paradise,  
Plot No. 93-95, Sector 15,  
CBD Belapur, Navi Mumbai – 400614.

(Attested)


(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
New Delhi, New Delhi



G.O.I. Order No. 154-157/2014-CX dated 21.04.2014

Copy to:

1. The Commissioner of Central Excise, Raigad, Commissionerate, Plot No. 1, 4<sup>th</sup> Floor, Kendriya Utpat-Shulk Bhavan, Sector-17, Khandeshwar, New Panvel, Navi Mumbai -410206.
2. The Commissioner of Central Excise (Appeals) Mumbai Zone-II, 3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector E, Bhandra Kurla Complex, Bhandra (E), Mumbai – 400 051.
3. The Deputy Commissioner (Rebate) Central Excise , Raigad, 4<sup>th</sup> Floor, Kendriya Utpat Shulk Bhavan, Sector-17, Khandeshwar, Navi Mumbai -410206.
4. PS to JS(RA)
5. Guard File.
6. Spare copy.

  
(Bhagwat P. Sharma )  
OSD (RA)