

**REGISTERED  
SPEED POST**



**F.No. 195/127/12-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.....6/2/14

Order No. 16/14-cx dated 28-01-2014 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/478/RGD/2011 dated 22.12.2011 passed by Commissioner of Central Excise, (Appeals), Mumbai Zone-II.

**Applicant** : M/s. Medrel Pharmaceutical (India) Pvt. Ltd., Corporate Office, 901, Raheja Plaza, L.B.S Marg, Ghatkopar (West), Mumbai 400096.

**Respondent** : Commissioner of Central Excise, Mumbai.

**ORDER**

This revision application is filed by the applicant M/s. Medrel Pharmaceutical (India) Pvt. Ltd., Mumbai against the Orders-in-Appeal No. US/478/RGD/2011 dated 22.12.2011 passed by Commissioner of Central Excise (Appeal), Mumbai Zone-II, with respect to Order-in-Original passed by the Deputy Commissioner (Rebate), Raigad.

2. Brief facts of the cases are that the applicant filed the rebate claim which was sanctioned by the original authority. The department filed appeal before Commissioner (Appeals) on the ground that the rebate claim was wrongly sanctioned. The details of the claim is as under:-

Sl. No	S/B No.	ARE Nos. & date	Rate of duty	Value of ARE-1 (Rs.)	FOB Value in S/B	Amount sanction	Excise rebate claim sanctioned as per department (Rs.)
1	8341080	199 dtd. 27-10-2009	4.12%	2453165/-	2286232	101070	6877
	dt. 09-04-2010						
2	-----do---	400 dtd. 22-02-2010	4.12%	1966800/-	1950709	81032	663
					Total	182102	7540

It is contended in the appeals that the value declared in the ARE-1 was more than the value declared in the Shipping Bills. The value declared in the ARE-1 was more, which was not the correct transaction value and the duty amount paid on the said excess value was not admissible as rebate. The transaction value as per Section 4 of Central Excise Act, 1944 is the value at which goods are sold but does not include freight and insurance. The Commercial invoice value is the value at which goods are sold. Therefore, the value after deducting freight and insurance from commercial invoice value (which is equal to FOB value) should be the transaction value for the purpose of Section 4 of Central Excise Act, 1944. The difference in the value of the goods shown in the ARE-1 and the FOB value shown in the invoice is arrived after reducing the Freight and Insurance charges (if any) from the

Commercial value. The excess amount paid on ARE-1 value over and above FOB value is not the duty of Central Excise but it is to be treated as "Excess Payment". The Rebate in terms of Rule 18 of Central Excise Rules, 2002 is the rebate of Central Excise duty paid on the exported goods. Hence, the sanction of rebate of such "Excess payment" is in violation of Rule 18 of Central Excise Rules, 2002. Commissioner (Appeals) decided the case in favour of respondent department.

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 In the case of clearance under ARE-I No. 199/09-10 dtd. 27-10-2009 they have removed the goods from the factory of manufacturer in the month of October 2009 and we have prepared ARE-1 @ 23.50 per 10X10. However the CIF rate is USD 0.5 per 10X10 and the exchange rate in the month of October was Rs. 47.70 per USD therefore CIF rate arrives Rs. 23.85 per 10X10 and the rate in ARE- I is 23.50 after deducting the freight and Insurance 0.35 per 10 X 10.

4.2 In the case of clearance under ARE-1 No. 400/09-10 dtd. 22-02-2010 they have removed the goods from the factory of manufacturer in the month of February 2010 and we have prepared ARE-1 @ 22 per 10 X 10. However the CIF rate is USD 0.5 per 10X10 and the exchange rate in the month of February was Rs. 45.70 per USD therefore CIF rate arrives Rs. 22.85 per 10X10 and the rate in ARE- I is 22.00 after deducting the freight and Insurance 0.85 per 10 X 10. But the said goods were exported in the month of April 2010 vide shipping bill No. 8341080 dated 09-04-2010 while the exchange rate for US Dollar is reduced to Rs. 45 which cause straight decline in the rate of US Dollar and the difference between FOB value and assessable value of ARE-1 occurred.

4.3 Due to big fluctuation of Exchange Rate in the month of April 2010 in comparison with the month of October 2009 and February 2010 the difference in

FOB and assessable value occurred which is beyond our control and requested to drop the proceedings against us in view of the above facts.

5. Personal hearing was scheduled in this case on 23-12-2013 was attended by Shri Gopal N. Jadhav, Assistant Manager of the applicant comply on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of the department.

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 rebate claims of applicant was sanctioned in toto by the original authority. Department filed appeal before Commissioner (Appeals) mainly on the ground that the rebate claims were sanctioned of duty paid on value which was more than transaction value and the claims should be restricted to duty paid on transaction value. Commissioner (Appeals) allowed department's appeal. Now, the applicant has filed this revision application on grounds mentioned in para (3) above.

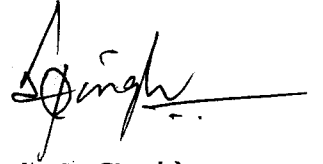
8. Government observes that the applicant has stated that while clearing the goods from factory they prepared ARE-1 No. 199/09-10 dtd. 27-10-2009 in the month of October 2009, when exchange rate was 47.70 Rs. Per US \$ and ARE-1 No. 400/09-10 dtd. 22-02-2010 when exchange rate was 45.70. However, the goods covered vide both AREs-1 could be exported only in the month of April 2010 vide single shipping Bill No. 8341080 dtd. 09-04-2010, when exchange rate reduced to Rs. 45 per US \$ due to this reason, the difference in ARE-1 value and FOB has occurred. Government notes that CBEC has clarified in circular No. 510/06/2000-Cx dtd. 03-02-2000 that there is no question of requantifying the amount of rebate by applying same other rate prevalent to subsequent the date to which duty was paid. In this case applicant has stated the different in ARE-I value and FOB value is due to difference in foreign exchange rates. This pleading is not examined by lower

authorities. This factual position is required to be verified by the original authority, and if said contention is found correct, then rebate claims cannot be reduced as clarified in the above said CBEC circular.

9. In view of above position, Government in the interest of justice, sets aside the impugned Order-in-Appeal and remands the case back to the original authority for fresh consideration of claim in terms of above observations. A reasonable opportunity of hearing will be afforded to the applicants.

10. The revision application is disposed off in terms of above.

11. So, ordered.

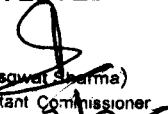


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Medrel Pharmaceutical (India) Pvt. Ltd.,  
Corporate Office, 901, Raheja Plaza,  
L.B.S Marg, Ghatkopar (West),  
Mumbai 400096.

ATTESTED



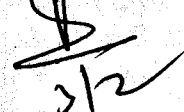
(भागवत शर्मा/Bhiswadev Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi

Order No. 16 /14-CX dated 28-01-2014

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, Mumabi Zone-II, 3<sup>rd</sup> Floor, Ground Floor, Kendriya Utpad Shulk Bhawan, Plort No. C-24, Sector-E, Khandeshwar, Navi Mumbai-51.
3. The Deputy Commissioner, Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
4. Guard File.
5. PS to JS (RA)
6. Spare Copy

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(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)