

REGISTERED
SPEED POST



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.195/785/2013-RA | 2021

Date of Issue: 09.04.2021

ORDER NO. \68/2021 -CX (WZ)/ASRA/MUMBAI DATED 30.3.21 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicants : M/s Meditab Specialities Pvt. Ltd.

Respondent : Commissioner(Appeals), Central Excise, Customs & Service Tax, Daman.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SRP/95/DMN/2013-14 dated 12.06.2013 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Daman.

ORDER

This Revision Application is filed by M/s Meditab Specialities Pvt. Ltd.(Unit-1), Plot No. 17 & 18, Golden Industrial Estate, Somnath Road, Daman - 396210 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. SRP/95/DMN/2013-14 dated 12.06.2013 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Daman.

2. The issue in brief is that the Applicant, manufacturer had exported their goods through M/s Uniworld Pharma Pvt Ltd, Merchant Exporter and then filed rebate claim amounting to Rs. 31,303/- under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004.

Sl.No	RC No. & date	ARE No. & Date	Amt claimed (Rs.)	Invoice No & dt	Qty Nos.	S/B No & dt	M/R & dt	Airway bill No & dt
1	1224 dt 14.9.12	14/MD1/2011 dt 19.4.11	31303	MD1/14/11 dt 19.4.11	2160	6209124 dt 12.11.11	-	19235612080 dt 17.11.11
					1512	5568214 dt 24.9.11	-	57430766046 dt 27.9.11
					972	5841640 dt 14.10.11	-	57430766352 dt 17.10.11
					1026	58422641 dt 14.10.11	-	57430766654 dt 20.10.11
					9018	6519548 dt 3.12.11	784 dt 12.12.11	-
					14148 total			

On scrutiny of the claim, several discrepancies were noticed and the Applicant was issued a Show Cause Notice dated 31.1.2012. The original adjudicating authority, Assistant Commissioner, Central Excise, Customs & Service Tax, Division-South Daman vide Order-in-Original No. SD/AC/210/12-13 dated 11.03.2013 rejected the rebate claim of Rs. 31,303/-(Rupees Thirty One Thousand Three Hundred and Three Only) rejected the rebate claim on the following grounds but refrained from

imposing any penalty under Rule 27 of Central Excise Rules, 2002 for want of any loss of revenue:

- (i) The Applicant declared in the ARE-1 that they would claim rebate from Maritime Commissioner, Mumbai-IV, but they filed claim with South Daman Division along with letter dated 07.09.2012 of Supdt (Rebate) of Mumbai-I stating that no claim of rebate has been filed for the said ARE-1.
- (ii) The prescribed conditions of Notification No. 19/2004-CE(NT) dated 06.09.2004 and CBEC instructions contained in Chapter 8 of Supplementary Manual have not been followed in as much as the export was not made directly from the factory or warehouse; that the clearance from the excisable goods were not exported within six months from the date of clearance from the factory; that the name of consignee shown in the invoice as "Cipla Ltd., Bhiwandi" but export was proposed by "M/s Uniworld Pharma Pvt. Ltd., Mumbai" as per ARE-1.

2. Aggrieved, the Applicant then filed an appeal with the Commissioner(Appeals), Central Excise, Customs & Service Tax, Daman. the Commissioner(Appeals) vide Order-in-Appeal No. SRP/95/DMN/2013-14 dated 12.06.2013 rejected the appeal and upheld the Order-in- Original.

3. Being aggrieved, the Applicant filed this Revision Application on the following grounds:

- (i) The Asstt. Commissioner erred in holding that the goods were not exported directly from factory premises as required under the provisions of the Notification and Circular. The condition of the Notification has been misconceived to mean that the goods cleared from factory for export should be directly transported to the port and en mute storage of goods would vitiate the said condition. In fact, the

Notification only required that *'the excisable goods after payment of duty, directly from a factory or warehouse'*, which had in fact been duly complied by the Applicant. The Notification did not, even remotely, suggest that the goods cleared for export from factory/warehouse should be transported directly to the port. In fact, the very second clause in the Para 2 of the Notification allowed time period up to six months, from the date of clearance of goods from the factory, till its actual exportation. Therefore, reading both these conditions simultaneously, the harmonious construction would only mean that the:

- (a) Goods should have been cleared for export directly from factory/warehouse i.e. no rebate shall be allowed when goods initially cleared for home consumption are diverted subsequently for export, except otherwise permitted by general or special order by the Board. In fact, the Board has issued a general order relaxing the condition of direct export from factory in case of those goods where identity of goods could be establish with the help of some identification nos./ marks to the duty paying character of the goods at the time of its original removal from factory.
- (b) Goods cleared from factory should be actually exported within stipulated period of six months or within such further extended period, as granted by the authorities. It is pertinent to note that the Notification does not lay any restriction of storage of goods within this stipulated period of six months. As such for storage of goods in their private godown, pending their exportation, is not restricted under the Notification.

Both the aforesaid conditions, thus, have been fulfilled by the Applicant. Hence the conclusion drawn by the Assistant

Commissioner is unreasonable and without any basis. In this they relied on few case laws:

- Commissioner of Central Excise, Mumbai v. Rama Petrochemicals Ltd. [2004 (173) E.L.T. 475 (Tri. Mumbai)].
- British Airways Plc. v. U.O.I. [2002 (139) ELT-6].

- (ii) As concern to doubt raised by Commissioner (Appeals) at para 9 of his order regarding doubt of export of same goods, the Applicant had submitted copy of goods receipt note, goods dispatch note, lorry receipt No. 29387 dated 02.12.2011 and delivery challan No. 44832 dated 02.12.2011 in respect of the goods transported from depot to their custom house agent at port of shipment.
- (iii) The matter was already settled by Revisionary Authority vide Order No. 12-30/2012-Cx dated 12.01.2012 in the case of CCE, Raigarh Vs M/s Cipla Ltd.
- (iv) Regarding the address of Rebate sanctioning authority mentioned as "The Maritime Commissioner, Mumbai IV" the Applicant clarified that at the time of removal of goods from the factory, the mode of shipment was decided by Air and thus on ARE-1 rebate sanctioning authority mentioned as 'Maritime Commissioner Mumbai-IV' as their office have jurisdiction to sanction rebate claim when goods exported from Air Cargo Complex, Sahar. From 2011, the Office of Maritime Commissioner, Mumbai IV has merged with Office of Maritime Commissioner, Mumbai I and now it is called as Maritime Commissioner, Mumbai I only. Due to non updation of same in their system, the address of rebate sanctioning authority had appeared as Maritime Commissioner, Mumbai IV.
- (v) However, as per further directions of their buyer party, export of subject goods affected from two ports viz. Air Cargo Complex, Sahar and JNPT. The Maritime Commissioner, Mumbai-I do not have jurisdiction to sanction rebate claim when goods have been exported

from other than Air Cargo Complex, Sahar. However, as per provision at Para 3(b)(i) of Notification No. 19/2004-CE.(NT.) dated 06.09. 2004, "*claim of rebate of duty paid on all excisable goods shall be lodged along with original copy of application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having Jurisdiction over the factory or warehouse or, as the case may be, the Maritime Commissioner;*". In the present case also they had filed their rebate claim with Assistant Commissioner of Central excise, Division South Daman, because Assistant Commissioner of Central Excise, have jurisdiction to sanction rebate for goods exported through any port in India.

- (vi) Further, in this matter, they had requested the office of Maritime Commissioner Mumbai I to issue letter address to Assistant Commissioner of Central Excise, Division Daman stating that the said claim is neither submitted nor sanctioned by their office. Accordingly, the Maritime Commissioner, Mumbai-I had issued letter dated 07.09.2012 addressed to Assistant Commissioner of Central Excise, Division Daman.
- (vii) The Commissioner (Appeals) had raised doubt at Para 11 of the order about claiming rebate from Maritime Commissioner, Raigad. In this case, the Applicant had approached the Office of Maritime Commissioner, Raigad for issuing letter stating that said claim is neither received nor sanctioned by their office. However, the Maritime Commissioner, Raigad had not issued certification in this regard. Thus there was no malafied intention to claim rebate from two different authorities for single ARE-1.
- (viii) Further, the said issue has been already settled by Revisionary Authority, vide GOI Order No. 40/2012-Cx dated 16.01.2012 in the case of M/s Cipla Ltd Vs. CCE, Daman.
- (ix) In respect of the goods exported after six months, Para 2 (b) of Notification No. 19/2004-CE (NT) dated 06.09.2004, itself suggest that

the condition is of procedural nature and may be relaxed as this condition have substitute provision of extension of validity ARE-1 and which is discretionary power to jurisdictional Commissioner of Central Excise. Therefore to reject their claim on the grounds of procedural lapse is hardship to them and tax on export.

- (x) As per Notification No. 19/2004- CE (NT) dated 6.9.2004, in order to sanction the rebate claim, the essential condition is the export of duty paid goods. This conditions had been fulfilled and there was no dispute by the adjudicating authority on this ground. The other requirements was procedural. Further, the Notification does not remotely suggest, reject of rebate claim for non compliance of any procedural condition when duty payment and export of goods is not in dispute. In this they relied in the case laws in RE: Commissioner of C.Ex. Bhopal [2006 (205) ELT 1093 (GOI)] and In RE: Harrison Chemcials [2006 (200) ELT 171 (GOI)]
- (xi) The Applicant submitted that if it is not possible to sanction their rebate by way of cash then we may please be allowed to take Cenvat credit for goods exported after six months.
- (xii) The Applicant prayed that the impugned Order-in-Appeal and Order-in-Original be set aside, their rebate claims be sanctioned and with directions to take Cenvat credit for goods exported after six months.

4. Personal hearing was fixed for 28.02.2018, 17.09.2019 and 11.10.2019 but no one attended the hearing. Since there was a change in the Revisionary Authority, final hearing was fixed on 07.01.2021, 14.01.2021, 21.01.2021 and 25.02.2021, however none appeared. Hence the case is taken up for decision on merits.

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

6. On perusal of the records Government observes that the goods cleared from the Applicant's factory under Central Excise Invoice No. MD1/14/11 dated 19.04.11 shows the consignee as *M/s Cipla Ltd (Export Depot-BWD), Bhiwandi, Exporter : UNIWORLD PHARMA PVT.LTD* and the ARE-1 No.14/MD1/2011 dated 19.04.11 shows *UNIWORLD PHARMA PVT.LTD. MUMBAI* as Merchant Exporter. The said goods were then split into five different consignments and exported by M/s Uniworld Pharma Pvt Ltd, Merchant Exporter on different dates i.e. 17.11.2011, 29.09.2011, 18.10.2011 and 20.10.2021 through Air Cargo Complex, Sahar and on 12.12.2011 through sea - JNPT (details in Para 2 above). Out of the five consignments, three were exported after six months from the date of clearance from the factory of the Applicant. The Applicant declared in the ARE-1 that they would claim rebate from Maritime Commissioner, Mumbai-IV, but filed claim with South Daman Division along with letter dated 07.09.2012 of Supdt (Rebate) of Mumbai-I stating that no claim of rebate has been filed for the said ARE-1. with the Government finds that in all the five exported consignments, the name of M/s Cipla Ltd. does not appear on any of the export documents i.e. Shipping Bills, Export Invoices, Bill of Lading, Airway Bill etc.

7. Government finds that there are three issue in the current Revision Application:

- (i) whether the rebate claim has been filed before the correct rebate authority;
- (ii) whether the Appellate Authority was correct in rejecting the rebate claim, on grounds of non compliance of Notification No. 19/2004-CE(NT) dated 06.09.2004 which insist that the goods

shall be exported from the factory of manufacturer or warehouse or as otherwise permitted by the CBEC, as the goods under claim of rebate were exported from the depot of M/s Cipla Ltd. and not directly from the manufacturer's premises;

(iii) whether the Appellate Authority was correct in rejecting the rebate claim, on the grounds that the goods were exported after six months from the date of clearance from the factory of the Applicant.

7.1 Government observes that the Applicant had declared in the ARE-1 No.14/MD1/2011 dated 19.04.2011 that they would claim rebate from "THE MARITIME COMMISSIONER, MUMBAI-IV", but filed claim with South Daman Division along with letter dated 07.09.2012 of Supdt (Rebate) of Mumbai-I stating that no claim of rebate has been filed for the said ARE-1.

7.2 Government observes that CBEC Circular No. 770/3/2004-CX dated 09.01.2004

"Subject :- Jurisdiction of Maritime Commissioners - regarding.

I am directed to say that doubts have been expressed regarding the jurisdiction of Maritime Commissioners regarding filing of rebate claims and execution of bonds consequent to issue of notifications No. 79/2003-CE (NT) and No. 80/2003-CE (NT) both dated 29.10.2003, amending the notifications No. 40/2001-CE (NT) and No. 42/2001-CE (NT) both dated 26.6.2001.

2. The matter has been examined by the Board. It may be seen that as per para 4 of Notification No. 40/2001-CE (NT) dated 26.06.2001, claim of rebate of duty was to be lodged with the Assistant /Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse, as the case may be, or the Maritime Commissioner. This position continues to remain the same after the aforesaid amendments. However earlier, Explanation-III of the said notification defined Maritime Commissioner as Commissioner of Central Excise under whose jurisdiction the port, airport, land customs station or post office of exportation is located in respect of certain

specified places only, but after issue of Notification No.79/2003-CE (NT) dated 29.10.2003, each Commissioner of Central Excise under whose jurisdiction the port, airport, land customs station or post office of exportation is located has been designated as Maritime Commissioner. Thus, the jurisdiction of the Maritime Commissioner is in relation to the port, airport, land customs station or post office under the jurisdiction of the said Commissioner of Central Excise from which the export has actually taken place. It is evident that the jurisdiction of the Maritime Commissioner is directly related and restricted to the port of exportation of the export goods under consideration. This position was clearly explained in Circular No.758/74/2003-CX dated 29.10.2003.

3. *Similarly, for exports under bond*

4. *It may be noted that amendment to notification No.40/2001-CE (NT) and No.42/2001-CE (NT) both dated 26.6.2001 have resulted in increase in number of Maritime Commissioners but the basic concept of jurisdiction of Maritime Commissioner continues to be related to the jurisdiction of the Commissioner of Central Excise under whose jurisdiction the port/ airport/ land customs station or post office of exportation is located. "*

- 7.3 Government notes that Para 8 of Chapter of C.B.E.& C Excise Manual of Supplementary instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. The Applicant submitted that as per directions of their buyer party, export of subject goods was affected from two ports viz. Air Cargo Complex, Sahar and JNPT and the Maritime Commissioner, Mumbai-I do not have jurisdiction to sanction rebate claim when goods have been exported from other than Air Cargo Complex, Sahar. Hence as per provision at Para 3(b)(i) of Notification No. 19/2004-CE.(NT.) dated 06.09. 2004, they had filed their rebate claim with Assistant Commissioner of Central excise, Division South Daman, because Assistant Commissioner of Central Excise, have jurisdiction to sanction rebate for goods exported through any port in India.

Government notes that in the instant case, the export had taken place through Air Cargo, Mumbai and JNPT Cargo. In such case, Government finds that the Applicant has correctly filed the rebate claim with Assistant Commissioner of Central excise, Division South Daman who is have jurisdiction to sanction rebate for goods exported through any port in India.

7.4 Government feels that grounds taken by the lower authorities in rejection of the rebate claim is purely of technical nature. Government notes that this procedural lapse is condonable as mentioning of wrong rebate sanctioning authority cannot be sufficient ground for denying the substantial benefit of rebate of duty paid on exported goods. Hence Government holds that the rebate claims cannot be rejected on the point of jurisdiction.

8. Rejection of the rebate claim on the grounds that the goods could not be exported directly from factory or warehouse in terms of Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, Government notes that there are catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue. Further, Government has decided identical issues in a catena of its judgments, wherein it has been held that in case where the goods could not be exported directly from factory or warehouse in terms of the Notification No. 19/2004-C.E.(N.T.) dated, substantial compliance of aforesaid circular dated 30.01.1997 and resultant export of duty paid goods, rebate claims have to be held admissible.

- (i) GOI Order No. 664-666/12-CX dated 26.06.2012 in the case of Commr. of C.Ex., Customs & ST Vs M/s Rajat Pharmachem Ltd, Ankleshwar;

- (ii) GOI Order No. 656-660/12-CX dated 21.06.2012 in the case of Commr. of C.Ex.& Customs Vs M/s Khatu Shree Chem, M/s Avdhoot Pigments Pvt Ltd. and M/s Hay Yogeshwar Chemical Industries.

Further, the Applicant had submitted copy of goods receipt note, goods dispatch note, lorry receipt No. 29387 dated 02.12.2011 and delivery challan No. 44832 dated 02.12.2011 in respect of the goods transported from depot to their custom house agent at port of shipment. Hence, Government holds that rebate claims are not deniable to the Applicant on the grounds that the goods could not be exported directly from factory or warehouse in terms of Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004.

9.1 In respect of the goods exported after six months from the date of clearance from the factory of the Applicant, 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 present case, there has been failure on the part of the Applicant in not applying to competent authority for extension of time, which cannot be justified. The Applicant has exhibited utter disregard for the procedures laid down. The Hon'ble Bombay High Court has in the case of Cadila Healthcare Ltd. vs. UOI [2015(320)ELT 287(Bom)] while interpreting the amplitude of condition 2(b) 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. The judgment of the Hon'ble Bombay High Court being a judgment

rendered by the jurisdictional High Court is binding and therefore the rebate in respect of exports which were not affected within permitted period of six months from the date of clearance of goods from the factory cannot sustain.

9.2 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:

“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.”

9.3 Government finds that out of the five consignments, three were exported after six months and two were exported within six months from the date of clearance from the factory of the Applicant. Therefore the rebate claim in respect of exports of Airway Bills Nos. 57430766046 dated 27.09.2011 and 57430766352 dated 17.10.2011 which were exported within the period of six months from the date of clearance of goods from the factory are allowed.

10. With the above observations, Government remands the matter to the original authority for the limited purpose of verification of the claim in respect of exports of Airway Bills Nos. 57430766046 dated 27.09.2011 and 57430766352 dated 17.10.2011 with directions that he shall reconsider the

claims for rebate on the basis of the aforesaid documents submitted by the Applicant. After satisfying the authenticity of those documents, and the fact of export of duty paid goods, the original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

11. In view of above, Government sets aside the impugned Order-in-Appeal No. SRP/95/DMN/2013-14 dated 12.06.2013 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Daman and the matter is remanded to the Original Adjudicating Authority.

12. The revision application is allowed in terms of above.


30/3/21
(SHRAWAN KUMAR)

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

ORDER No. 168/2021-CX (WZ)/ASRA/Mumbai Dated 30.03.2021

To,
M/s Meditab Specialities Pvt. Ltd.(Unit-1),
Plot No. 17 & 18, Golden Industrial Estate,
Somnath Road,
Daman - 396210.

Copy to:

1. The Commissioner of CGST, Daman, 2nd floor, Hani's Landmark, Vapi-Daman Road, Chala, Vapi - 396 191.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.